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**TITLE 54**  
**BOARD OF NURSING**



**APRIL 2004**

**CHAPTER 54-01-01**

**54-01-01-01. Organization of board of nursing.**

1. **History and functions.** The 1915 legislative assembly passed a law governing the registration of nurses and created a board of nursing, codified as North Dakota Century Code chapter 43-12. The 1947 legislative assembly passed a law governing practical nurses, codified as North Dakota Century Code chapter 43-21. The 1977 legislative assembly passed a Nurse Practices Act which combined the two laws, codified as North Dakota Century Code chapter 43-12.1. The 1995 legislative assembly amended the law to define nursing and the requirements for the practice of nursing, and to require the governor to appoint a board of nursing to implement the law.
2. **Board membership.** The board consists of nine members appointed by the governor. Five members are registered nurses, three are licensed practical nurses, and one is a public member. Members of the board serve four-year terms with the public member's appointment coinciding with that of the governor. No member may be appointed for more than two consecutive terms.
3. **Executive director.** The executive director is employed by the board and is responsible for the administration of the board's office and activities.
4. **Inquiries.** Inquiries concerning the board and nursing practice in North Dakota may be addressed to:

North Dakota Board of Nursing  
919 S. 7th St., Suite 504  
Bismarck, North Dakota 58504-5881  
[www.ndbon.org](http://www.ndbon.org)

**History:** Amended effective July 1, 1982; November 1, 1985; October 1, 1987; December 1, 1989; November 1, 1996; April 1, 2004.

**General Authority:** NDCC 28-32-02.1

**Law Implemented:** NDCC 28-32-02.1, 43-12.1

## CHAPTER 54-01-03

**54-01-03-01. Definitions.** The terms used in this title have the same meaning as in North Dakota Century Code chapter 43-12.1 and apply to North Dakota Administrative Code title 54 unless the context indicates otherwise.

1. "Abandonment" means accepting the client assignment and disengaging the nurse and client relationship without giving notice to a qualified person.
2. "Abuse" means any behavior that is designed to harass, intimidate, or injure another human being through the use of verbal, sexual, emotional, or physical harm.
3. ~~"Academic requirement" means completion of coursework from an accredited institution of higher learning that meets the criteria and reporting requirements established by the board.~~
4. ~~"Accountability" means being responsible.~~
  - a. ~~Licensed nurse accountability means being responsible for decisions in the context of assignment and delegation and for the action of self and for the resultant client outcomes.~~
  - b. ~~Unlicensed assistive person accountability means being responsible for the action of self.~~

"Accreditation" means the official authorization or status granted by a nationally recognized agency other than a state board of nursing.
- 5- 4. "Activities of daily living" includes interventions associated with nutrition and hydration, elimination, maintaining mobility, assistance with self-administration of routine regularly scheduled medications, and personal cares. Personal care includes bathing, hair care, nail care, shaving, dressing, oral care, and supporting a safe and healthy environment.
- 6- 5. "Acts or omissions" means patterns of unsafe behavior, nursing practice deficits, failure to comply with acceptable standards of nursing practice, or grounds for discipline identified in North Dakota Century Code chapter 43-12.1 or these rules.
- 7- 6. "Applicant" means an individual seeking official action by the board.
7. "Approved" means that the standards established by the board are met.
8. "Assignment" means a licensed nurse designates ~~another person~~ with the responsibility for performance of nursing interventions to another licensed nurse. ~~Assignment is not the transfer of authority.~~

~~Assignments are made to individuals who already have authority to provide nursing interventions through licensure as a nurse.~~

9. "Assisting with self-administration of routine, regularly scheduled medications" means helping the client with one or more steps in the process of taking medications. Examples of "assisting" include opening the medication container or reminding the client of the proper time to take the medication. Assisting with the administration of medication may be a delegated intervention.
10. "Authority" means legal authority to provide nursing care granted through licensure as a registered nurse, licensure as a practical nurse, or through delegation of nursing interventions from the licensed nurse.
11. "Certification" means a process of voluntary recognition by a national nursing organization of the person's specialty knowledge, skills, and abilities in a defined area of nursing practice. The certification process measures the theoretical and clinical content denoted in the specialty scope of practice and is developed in accordance with generally accepted standards of validity and reliability.
12. "Client" means the recipient of nursing care, which may include an individual, family, group, or a community.
13. "Competence" means ~~the state or quality of being capable as a result of having the required~~ application and integration of knowledge, skills, and ability, and judgment necessary to meet standards.
  - a. ~~Licensed nurse competence means the ability of the nurse to apply interpersonal, technical, and decisionmaking skills at the level of knowledge consistent with the prevailing standard for the nurse's current nursing practice role.~~
  - b. ~~Unlicensed assistive person competence means having the required knowledge, skills, and ability to perform nursing interventions and includes:~~
    - (1) ~~Utilizing effective communication;~~
    - (2) ~~Collecting basic objective and subjective data;~~
    - (3) ~~Performing selected nursing interventions safely, accurately, and according to standard procedures; and~~
    - (4) ~~Seeking guidance and direction when appropriate.~~
14. "Consultative nurse" means a licensed nurse who provides guidance and information related to nursing procedures and interventions to the



facility or agency but is not individually responsible to direct the plan of care for the client.

15. "Continuing education" means planned, organized learning experiences designed to augment the knowledge, skills, and abilities for the delivery of safe and effective nursing care for the citizens of North Dakota which meets the criteria and reporting requirements established by the board.
16. "Delegation" means the ~~transfer of authority and accountability authorization~~ for the performance of selected nursing interventions from a licensed nurse to an unlicensed assistive person. ~~Delegation decision includes:~~
  - ~~a. Determining which nursing intervention may be delegated;~~
  - ~~b. Selecting which competent unlicensed assistive person may provide the delegated intervention;~~
  - ~~c. Determining the degree of detail and method to be used to communicate the delegation plan; and~~
  - ~~d. Selecting a method of supervision and evaluation.~~
17. "Denial" means the board's refusal to issue or renew a current license or registration.
18. "Direction" means the provision of written or verbal guidance, or both, and supervision by a licensed nurse who is responsible to manage the provision of nursing interventions by another person.
19. "Encumber" means to place on probation.
20. ~~"Health care team" means any health care professional licensed under North Dakota Century Code title 43.~~ "Evidence-based practice" means integration of research findings with clinical expertise and client values for optimum care.
21. "Impaired" means the ability to practice nursing safely has been affected by the use or abuse of alcohol or other drugs ~~or~~, psychiatric or physical disorders, or practice deficiencies.
22. "Incompetence" means conduct that deviates from either standards of nursing practice approved by the board or the definition of competence in this section.
23. "Instate nursing program", "nursing program", or "nursing education program" means a nurse program with faculty or facilities located in North Dakota and approved by the board.

- ~~24.~~ 24. "Interdisciplinary team" means a group of health care professionals currently licensed under North Dakota Century Code title 43.
- ~~25.~~ 25. "Licensed nurse" means a person licensed pursuant to North Dakota Century Code chapter 43-12.1 and North Dakota Administrative Code title 54.
- ~~24.~~ 26. "Licensed practitioner" means a person lawfully authorized to prescribe medications or treatments under North Dakota Century Code title 43.
- ~~25.~~ 27. "Licensee" means a person who has met all the requirements to practice as a licensed nurse pursuant to North Dakota Century Code chapter 43-12.1 and has been issued a license to practice nursing.
- ~~26.~~ 28. "Licensure" means the process by which the board grants legal privilege to an individual to engage in the practice of nursing upon finding that the individual has attained the essential degree of education and competence necessary to ensure that the public health, safety, and welfare will be protected.
- ~~27.~~ 29. "Limit" means to restrict, qualify, or otherwise modify the license or registration.
- ~~28.~~ 30. "Major incident" means an act or omission in violation of North Dakota Century Code chapter 43-12.1 or this title which indicates an applicant licensee's or registrant's continuing to practice poses a high risk of harm to the client or another person.
- ~~29.~~ 31. "Medication administration" means the delivery of medication by a licensed nurse or an individual directly delegated to and supervised by a licensed nurse, to a client whose use of that medication must be monitored and evaluated applying specialized knowledge, skills, and abilities possessed by a licensed nurse.
32. "Medication assistant" means an individual who has a current registration as an unlicensed assistive person, has successfully completed an approved medication assistant program, has demonstrated competency in the administration of routine, regularly scheduled medications, and possesses a current registration from the board as a medication assistant.
- a. Medication assistant I is a person who has completed all the requirements for a medication assistant program I. A medication assistant I is limited to employment in a setting in which a licensed nurse is not regularly scheduled.
- b. Medication assistant II is a person who has completed additional training past the medication assistant program I and met all the requirements for a medication assistant program II. A medication



assistant II may be employed both in a setting in which a licensed nurse is regularly scheduled and a setting in which a licensed nurse is not regularly scheduled.

33. "Medication assistant program" means a program of study and clinical practice in the administration of routine, regularly scheduled medications which meets board requirements.
30. 34. "Minor incident" means an act or omission in violation of North Dakota Century Code chapter 43-12.1 or this title which indicates an applicant licensee's or registrant's continuing to practice poses a low risk of harm to the client or another person.
31. 35. "Misappropriation of property" means the patterned or knowing, willful, or intentional misplacement, exploitation, or wrongful, temporary, or permanent use of a client's, employer's, or any other person's or entity's belongings, money, assets, or property without consent.
32. 36. "Neglect" means a disregard for and departure from the standards of care which, ~~under similar circumstances, would be exercised by a competent licensee or registrant, and which~~ has or could have resulted in harm to the client.
33. 37. "Nurse administrator" means a person responsible for organized nursing services and who manages from the perspective of the organization as a whole.
34. ~~"Nurse advocacy committee" refers to the nurse advocacy committee composed of three board members selected by the board and the nurse advocacy program consultant. The purpose of the committee is to review and recommend policy for the nurse advocacy program to the board.~~
35. ~~"Nurse advocacy consultant" is a registered nurse employed by the board to manage and administer the nurse advocacy program. The program consultant must hold a current unencumbered North Dakota registered nurse license and be qualified through education and experience.~~
36. ~~"Nurse advocacy program" means the nurse advocacy program administered by the board as set out in the Nurse Practices Act and this title permitting nurses with chemical dependency or psychiatric or physical disorders to seek treatment and participate in monitored practice, voluntarily or by the board's order.~~
37. ~~"Nurse advocacy program agreement" means an individualized written agreement between the nurse and the nurse advocacy program. The agreement must include the criteria for entrance and the terms and conditions for successful completion of the nurse advocacy program.~~

38. "Nursing intervention" means the initiation and completion of client-focused actions necessary to accomplish the goals defined in the plan of care. ~~Nursing interventions which may include activities of daily living.~~
- a. ~~Nursing interventions vary from setting to setting depending on the client population served and the acuity and complexity of the client's care needs.~~
- b. ~~Refer to chapter 54-05-04 for the licensed nurse accountability and responsibility for the delegation process.~~
39. "Out-of-state nursing program" means a program whose faculty and facilities are located outside North Dakota but within the United States, which is approved by the licensing board for nurses in the particular state or United States territory and is equivalent to an "instate nursing program".
40. "Practice deficiency" means a practice activity that does not meet the standards of nursing practice.
41. "Practice site" means a facility that signs a written agreement with the nursing education program to provide practice experiences for students.
42. "Probation" means issuance of a current license or registration marked "encumbered" and identification of specific requirements, restrictions, or limitations against a nursing license or registration for a period of time.
- 40: 43. "Professional boundaries" means the provision of nursing services within the limits of the nurse and client relationship which promote the client's dignity, independence, and best interests and refrain from inappropriate involvement in the client's or client's ~~family's~~ family personal relationships.
- 41: 44. "Professional misconduct" means any practice or behavior that violates the applicable standards governing the individual's practice necessary for the protection of the public health, safety, and welfare.
42. ~~"Organization policy" means a written plan for the provision of nursing care.~~
- 43: 45. "Reactivation" means issuance of a previously active license or registration.
- 44: 46. "Registrant" means an unlicensed assistive person as defined in North Dakota Century Code section 43-12.1-02.

- ~~47.~~ 47. "Regularly scheduled presence of a licensed nurse" means that a licensed nurse is present a minimum of eight hours in a twenty-four-hour period of time in a setting where nursing care is continuously delivered.
- ~~45.~~ 48. "Reinstatement" means activation of a board-sanctioned license or registration.
- ~~46.~~ 49. "Reprimand" means action of the board stating the board's concerns regarding the professional conduct of the licensee or registrant.
- ~~47.~~ 50. "Revocation" means the withdrawal by the board of the license or registration of the right to practice nursing or assist in the practice of nursing for a specified length of time of no less than one year. If no specified length of time is identified by the board, revocation is permanent.
- ~~48.~~ "Specialty practice registered nurse license" means the document issued to the registered nurse that has met the qualifications outlined in these rules.
51. "Scope of practice" means the delineation of the nature and extent of practice.
52. "Sponsor institution" means the governing organization that provides necessary administrative and fiscal resources for a nursing program.
- ~~49.~~ 53. ~~"Stable and predictable"~~ means a situation in which the client's clinical and behavioral status and nursing care needs are determined by the registered nurse or licensed practitioner to be predictable, nonfluctuating, and consistent or in which the fluctuations are expected and the interventions are planned.
- ~~50.~~ 54. "Stay" means the action of the board that does not immediately take place and may not take place if other conditions, such as probation terms, are met. Violations of the terms and conditions may result in lifting of the stay and imposition of the sanction.
- ~~51.~~ 55. "Supervision" means maintaining accountability to determine whether or not nursing care is adequate and delivered appropriately. Supervision includes the assessment and evaluation of the client's condition and responses to the nursing plan of care and evaluation of the competence of the person providing nursing care.
- a. "Condition of supervision" means the method of supervision as direct or indirect, the identification of the persons to be supervised as well as the nursing interventions being provided, and the stability or predictability, or both, of the client's condition.



- b. "Direct supervision" means that the responsible licensed nurse is physically present in the clinical area and is available to assess, evaluate, and respond immediately. Direct supervision does not mean that the responsible licensed nurse must be in the same room or "looking over the shoulder" of the persons providing nursing care.
  - c. "Indirect supervision" means that the responsible nurse is available through periodic inspection and evaluation or telecommunication, or both, for direction, consultation, and collaboration.
56. "Survey" means an onsite visit or a paper review of a program approved by the board of nursing.
- 52- 57. "Suspension" means withholding by the board of the license or registration of the right to practice nursing or assist in the practice of nursing for a specified or indefinite period of time.
- 53- 58. "Technician" means an unlicensed assistive person who may perform limited nursing functions within the ordinary, customary, and usual roles in the person's field. Examples may include surgical and dialysis technicians and medical assistants.
- 54- 59. "Temporary suspension" means action by the board when there are reasonable grounds to believe the licensee or registrant has violated a statute or rule the board is empowered to enforce and continued practice by the licensee or registrant would constitute a continuing and imminent threat to the public welfare.
- 55- 60. "Unlicensed assistive person registry" means a listing of all persons who are authorized by the board or included on another state registry, which has been recognized by the board to perform nursing interventions delegated and supervised by a licensed nurse.
- 56- 61. "Voluntary surrender" means an agreement by the a licensee or registrant, approved by the board, to ~~conditionally~~ relinquish the license or registration to the board.
62. "Workplace impairment program" means the program administered by the board as set out in the Nurse Practices Act permitting nurses with chemical dependency, psychiatric or physical disorders, or practice deficiencies to seek treatment and remediation and participate in monitored practice, voluntarily or by the board's order.
63. "Workplace impairment program agreement" means an individualized written agreement between the nurse and the program. The agreement

must include the terms and conditions for successful completion of the program.

**History:** Effective June 1, 2002; amended effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08(2)

**Law Implemented:** NDCC 43-12.1-08

## CHAPTER 54-02-01

**54-02-01-03. Testing dates.** Repealed effective April 1, 2004. The examination dates shall coincide with the national testing dates set by the national council of state boards of nursing for the use of the national council licensure examination. Notice of the requirement for filing the application shall be sent to all board-approved nursing education programs in North Dakota at least yearly.

**History:** Amended effective June 1, 1982; January 1, 1994.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(5)

### **54-02-01-07. Transcript.**

1. A graduate from another state or territory or an English-speaking Canadian nursing education program must provide an official completed transcript. The transcript must be sent directly from the nursing education program to the board office, as proof of satisfactory completion of the appropriate nursing education program.
2. A graduate from a foreign country nursing education program, except for English-speaking Canadian programs, must may be requested to provide an English translated evaluation of the full nursing education program academic record from a board-recognized national credential's evaluation service.

**History:** Amended effective June 1, 1982; January 1, 1994; February 1, 1998; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09(1) 43-12.1-09(2)

**54-02-01-09. Foreign graduates.** The certificate issued by the commission on graduates of foreign nursing schools shall be required of any graduate from a foreign country, except for English-speaking Canadian programs, for admission to the national council licensure examination. Eligible foreign graduates will be issued an authorization to practice nursing when declared eligible for licensure by examination and upon written verification of nursing employment in a North Dakota health care facility.

**History:** Effective November 1, 1979; amended effective June 1, 1982; February 1, 1998; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09(1) 43-12.1-09(2)

**54-02-01-14. Recognition of programs from other jurisdictions.** For the purpose of licensure by examination to practice as a registered nurse or licensed

practical nurse, the board will recognize programs approved by other jurisdictions unless otherwise directed by the board.

**History:** Effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09(2)

## CHAPTER 54-02-02

**54-02-02-03. Failure of licensing examination.** Candidates who fail the licensing examination shall file a request for eligibility to retest and shall be responsible for payment of any fees charged by the national council of state boards of nursing for use of the national council licensure examination. The candidate's request for eligibility to retest will be accepted dependent upon the timeframes established by the national council of state boards for use of the item pool and a valid application to retest for licensure by examination.

**History:** Amended effective March 1, 1986; January 1, 1994; September 1, 1994; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09(1)

**54-02-02-09. Unlimited attempts to write the licensing examination.** Candidates will have unlimited attempts to pass the licensing examination. ~~The candidate must have completed the nursing education program within three years of the scheduled appointment to write the examination.~~

**History:** Effective January 1, 1994; amended effective May 1, 1996; June 1, 2001; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(5), 43-12.1-09(1)



## CHAPTER 54-02-05

**54-02-05-02. Renewal dates.** Nursing licenses will be valid for two calendar years and will be subject to renewal before December thirty-first of the second year. Applicants for initial licensure by endorsement or examination shall receive a license expiring on December thirty-first of the initial licensure year as a part of the application fee. Failure to receive the renewal notification does not relieve the licensee of the obligation to renew the license by the expiration date.

**History:** Amended effective November 1, 1990; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(8)~~ 43-12.1-10(1)

**54-02-05-05. Nonpracticing nurses.** Any nurse who has not actively practiced nursing in North Dakota for ~~five~~ four years or more must meet the following requirements before a license to practice is issued:

1. Complete the relicensure application.
2. Pay the current renewal fee.
3. Provide to the board for approval proof of one of the following:
  - a. Practice as a licensed registered nurse or licensed practical nurse which meets or exceeds ~~five~~ four hundred hours within the preceding ~~five~~ four years in another state, territory, or country. Verification of employment is to be submitted.
  - b. Completion of a refresher course in nursing, in accordance with board guidelines, within the preceding year.
  - c. Successful completion of a clinical nursing course in a board-recognized nursing program to further nursing education.
  - d. Other evidence the licensee wishes to submit which would provide proof of nursing competence.

**History:** Amended effective June 1, 1982; May 1, 1996; February 1, 1998; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(9)~~ 43-12.1-18

**54-02-05-05.1. Practice requirements for license renewal.** Nursing practice for purposes of relicensure must meet or exceed four hundred hours within the preceding four years. Nursing is defined in subsection ~~6~~ 5 of North

Dakota Century Code section 43-12.1-02. Hours practiced in another regulated profession cannot be used for nursing practice hours.

**History:** Effective July 1, 1987; amended effective November 1, 1990; September 1, 1994; May 1, 1996; May 1, 2003; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(9)~~ 43-12.1-18

**54-02-05-06. ~~Activating~~ Reactivating a license.** A nurse previously licensed in North Dakota who applies for relicensure reactivation must meet board requirements and ~~pay the nonrefundable renewal and thirty dollar activation fee;~~

1. Complete the application.
2. Pay the nonrefundable renewal fee and thirty dollar reactivation fee.
3. An applicant who is applying for reactivation must meet the requirements in section 54-02-05-05.1, practice requirements for license renewal, and section 54-02-05-08, continuing education requirement for license renewal.

**History:** Amended effective June 1, 1982; June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-10~~ 43-12.1-10(1), 43-12.1-20

**54-02-05-07. Encumbered license.** ~~Repealed effective April 1, 2004. A license that is encumbered by specific practice restrictions shall be issued with the following statement: "This license is encumbered. Please contact the board office." If a licensee has a registered nurse and an advanced practice registered nurse license, the encumbrance applies to both practices.~~

**History:** ~~Effective March 1, 1986; amended effective March 1, 1992; May 1, 1996.~~

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-14

**54-02-05-08. Continuing education requirement for license renewal.**

1. Continuing education for purposes of relicensure must be approved by the board and must meet or exceed twelve contact hours within the preceding two years.
2. All information concerning continuing education submitted with a renewal application is subject to audit. Upon request of the board, the licensee shall submit verification of successful completion of the required continuing education.
3. A licensee who does not meet the continuing education requirements for renewal or fails to provide verification of completion of the required

continuing education will be ineligible for renewal and may be subject to grounds for disciplinary action.

4. A licensee who earns in excess of the number of contact hours of continuing education required during a reporting period shall not apply the excess hours to satisfy future continuing education requirements.
5. Continuing education that is required by the board pursuant to a board order shall not be accepted by the board to satisfy or partially satisfy the continuing education requirements for license renewal.

**History:** Effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-20

## CHAPTER 54-02-06

### **54-02-06-01. Application and fee for license by endorsement.**

Applicants for license by endorsement must submit a completed notarized application and pay the nonrefundable endorsement fee of one hundred ten dollars. Applicants for licensure by endorsement must have completed a state-approved nursing education program which meets or exceeds those requirements outlined in article 54-03.2 ~~according to the date the applicant enrolled in the nursing education program. Nursing practice to demonstrate continued competency must meet or exceed five hundred hours within the preceding five years. A licensee from another jurisdiction with an inactive license must meet the requirements in section 54-02-05-05, relating to nonpracticing nurses.~~

**History:** Amended effective November 1, 1979; March 1, 1986; March 1, 1992; May 1, 1996; February 1, 1998; June 1, 2001; June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09(2)

### **54-02-06-03. Exceptions. Repealed effective April 1, 2004.**

1. ~~North Dakota nurse licensure is not a legal requirement for students enrolled in a board-approved program of nursing education which involves nursing practice such as:~~
  - a. ~~A program leading to licensure at another level of nursing or to a higher degree;~~
  - b. ~~A program conducted by a North Dakota health care facility to allow nurses licensed by another jurisdiction to receive short-term clinical education that involves direct patient contact. The North Dakota health care facility that will provide short-term clinical education to persons who do not have a license to practice in North Dakota must submit to and receive written approval from the board for the following information every twenty-four months or as changes occur:~~
    - (1) ~~The syllabus and objectives for the short-term clinical education activity;~~
    - (2) ~~The health care facility policy that addresses the following:~~
      - (a) ~~That client care is under the direct supervision and responsibility of a registered nurse with a current, unencumbered North Dakota license;~~
      - (b) ~~The method the facility uses to verify that the nurse receiving the short-term clinical education has a current, unencumbered license in another jurisdiction;~~



- ~~(e) The method the facility uses to ensure that no independent or unsupervised nursing practice occurs; and~~
    - ~~(d) That the short-term clinical education activity does not exceed eighty hours in a calendar year;~~
  - ~~(3) The name and qualifications of the North Dakota registered nurse who is responsible for providing the clinical education;~~
  - ~~(4) The name of the person receiving the short-term clinical education and proof of a current, unencumbered license from another jurisdiction; and~~
  - ~~(5) The short-term clinical education nonrefundable two-year approval fee of one hundred dollars;~~
- ~~c. A program leading to certification in a nursing specialty; or~~
- ~~d. Previously licensed nurses enrolled in a board-approved refresher course to update nursing skills.~~
- ~~2. This section shall not preclude programs of nursing or affiliating institutions from requiring licensure. A North Dakota license shall be required if the individual:~~
  - ~~a. Practices as a nurse, either voluntarily or for monetary compensation, during spare hours while enrolled in an educational program; or~~
  - ~~b. Exceeds eighty hours of short-term clinical nursing education in North Dakota per year.~~
- ~~3. North Dakota nurse licensure is not a legal requirement for a nurse licensed in another jurisdiction who:~~
  - ~~a. Is employed by a North Dakota health care agency but whose practice setting in another state requires attendance at general facility orientation or continuing education or workshops or committee meetings that do not require policy development and approval;~~
  - ~~b. Serves as a guest lecturer or short-term consultant for an education program or health care facility not to exceed forty hours per year or five working days per year; or~~

e. ~~Serves as an evaluator for an accrediting organization.~~

**History:** ~~Effective November 1, 1979; amended effective June 1, 1982;  
September 1, 1996; June 1, 2001; June 1, 2002.~~

**General Authority:** ~~NDCC 43-12.1-08~~

**Law Implemented:** ~~NDCC 43-12.1-04(2), 43-12.1-08(20)~~

## CHAPTER 54-02-07

**54-02-07-01.1. Grounds for discipline.** Practice inconsistent with acceptable standards of nursing practice by a licensee, applicant, or registrant means behavior that may place a client or other person at risk for harm or be in violation of the standards of nursing practice. Inconsistent practice includes incompetence by reason of negligence, patterns of behavior, or other behavior that demonstrates professional misconduct and includes the following:

1. Failure to provide nursing care because of client diagnosis, age, sex, race, religion, creed, or color.
2. Cause or permit verbal, physical, emotional, or sexual abuse or harassment or intimidation to a client, client's family, or other health care provider.
3. Assign or delegate the responsibility for performance of nursing interventions to unqualified persons.
4. Failure to appropriately supervise persons to whom nursing interventions have been assigned or delegated.
5. Practice of nursing without sufficient knowledge, skills, or nursing judgment.
6. Performance of nursing interventions in a manner inconsistent with acceptable nursing standards.
7. Inaccurate or incomplete documentation or recording, or the falsification, alteration, or destruction of board records or client, employee, or employer records.
8. Failure to adhere to the licensee's, registrant's, or applicant's professional code of ethics or other applicable standards governing the individual's practice.
9. Misappropriation of property, including any real or personal property of the client, employer, or any other person or entity or failure to take precautions to prevent such misappropriation.
10. Abandon or neglect a client who is in need of or receiving nursing care.
11. Failure to comply with mandatory requirements to report any violation of the Nurse Practices Act or duly promulgated rules, regulations, or orders of the board.
12. Practice nursing or assist in the practice of nursing while under the influence of alcohol or unauthorized drugs or while exhibiting impaired behavior.

13. Alter or falsify a license, registration, transcript, diploma, certificate, program of study, or continuing education document.
14. Use or permit the use of a nursing license or registration that has been fraudulently purchased, created, obtained, issued, counterfeited, or altered.
15. Failure to submit to a mental health, chemical dependency, or physical evaluation within the timeframe required by the board.
16. Violate any term of probation, condition, or limitation imposed by the board.
17. Failure to adhere to professional boundaries with a client or client's family.
18. Failure to comply with licensure or registration requirements.

**History:** Effective December 1, 1995; amended effective July 1, 1996; February 1, 1998; June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-14

**54-02-07-03.1. Reporting violations.** Protection of the public is enhanced by reporting of incidents that may be violations of North Dakota statutes or grounds for discipline by the board. Licensees, registrants, applicants, or citizens should use the following process to report any knowledge of the performance by others of acts or omissions that violate North Dakota Century Code chapter 43-12.1 or these rules:

1. **Minor incident.** If the act or omission meets the criteria for management of a minor incident, the applicant, licensee, or registrant should be aware of and follow the established policy within the practice setting for minor incidents. The established policy in the licensee's or registrant's practice setting should detect patterns of unsafe behavior that may be considered minor incidents and take corrective action resulting in safe practice.
  - a. A minor incident may be handled in the practice setting with a corrective action process if all the following factors exist:
    - (1) Potential risk of harm to others is low;
    - (2) There is no pattern of recurrence;
    - (3) The licensee or registrant exhibits evidence of remediation and adherence to standards of nursing practice; and



- (4) The corrective action process results in the licensee or registrant possessing the knowledge, skills, and abilities to practice nursing safely.
  - b. ~~When a decision is made that the act or omission by a licensee or registrant constitutes a minor violation, a report must be completed according to the practice setting's policy. Such report will be evidence of compliance with the requirement to report acts or omissions that are violations of this chapter or these rules to the board.~~
  - e. Other factors may be considered in determining the need to report such as the significance of the event in the particular practice setting, the situation in which the event occurred, and the presence of contributing or mitigating circumstances in the nursing care delivery system.
  - d. c. Nothing in this rule is intended to prevent reporting of a minor incident or potential violation directly to the board.
- 2. **Major incident.** If the act or omission is a major incident or factors are present that indicate a duty to report, the licensee, applicant, or registrant and the licensee's, applicant's, or registrant's supervisor must contact the board office. The report should include requested information about the act or omission, the individuals involved, and the action taken within the practice setting.
  - 3. **Termination of employment.** When a licensee, applicant, or registrant terminates from the practice setting, either voluntarily or by request, due to conduct that may be grounds for discipline under the Nurse Practices Act, a report shall be made to the board by the licensee, applicant, or registrant and by the licensee's, applicant's, or registrant's supervisor.

**History:** Effective December 1, 1995; amended effective June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-11

**54-02-07-06. Board decision —~~Revocation~~—~~Suspension~~.** The final decision will be adopted by a simple majority of the board and will include findings of fact, conclusions of law, and order. The decision of the board to impose or modify any restrictions upon the licensee or registrant or the licensee's or registrant's practice or to reinstate a license or registration will be communicated to the licensee or registrant in the form of a board order. In addition to the terms and conditions imposed by the board, the following may apply:

- 1. **Revocation.** If the board issues a revocation order, it may also indicate in the order the specific action necessary for the reapplication for licensure or registration by the individual. The national nursing

licensing examination may be waived by the board as a condition for the reissuance of a previously revoked license. The initial licensure or registration fee will be assessed for the reissuance of a revoked license or registration.

2. **Suspension.** If the board issues a suspension order, it may also indicate the specific action necessary for the reissuance of the license or registration. An individual whose license or registration is suspended may request reinstatement by the board at any regularly scheduled meeting following the conclusion of the time period specified in the order. The current year's renewal fee will be required for reissuance of a suspended license or registration.
3. **Encumbrance.** If the board issues an encumbrance order:
  - a. The licensee or registrant shall promptly surrender all current licenses and registrations.
  - b. An encumbered license or registration shall be issued with the following statement "License or registration is encumbered. Please contact the board of nursing."
  - c. If a licensee or registrant has more than one license or registration, the encumbrance applies to all licenses or registrations.

**History:** Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 28-32-13, 43-12.1-14

#### **54-02-07-07. Fees.**

1. Costs and disbursements, including witness fees and reimbursement of the board's expenses in any administrative hearing or other proceeding, may be recovered from the licensee, applicant, or registrant following any disciplinary action.
2. Penalty fees for each separate violation as established by the board may be imposed against the licensee, applicant, or registrant following any disciplinary action. Administrative fees may be imposed by the board against the licensee, applicant, or registrant following the issuance of nondisciplinary action.
3. If a witness is subpoenaed by the board to appear at the request of the licensee or registrant, the licensee or registrant is to deposit with the board sufficient funds to cover expenses for mileage, food, lodging, and witness fees as allowed by state reimbursement policies.



4. In the case of any request by the licensee, applicant, or registrant for the subpoena by the board of an expert witness, sufficient funds will also be deposited with the board, prior to the issuance of such subpoena, to cover such expert witness fees. The deposit with the board of funds for witness fees and expenses must be made prior to the issuance of the subpoena. The request for the subpoena by the board of a witness for the licensee, applicant, or registrant must be made in writing.

**History:** Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 28-32-09 28-32-26, 43-12.1-13

**54-02-07-08. Application for reinstatement.** Any person whose license or registration has been suspended or revoked by the board or voluntarily surrendered shall ~~apply in writing~~ submit a written application for reinstatement in the manner and form required by the board at the conclusion of the time period specified in the order. The burden of proof is on the licensee or registrant to prove to the satisfaction of the board that the condition that led to a sanction no longer exists or no longer has a material bearing on the licensee's professional ability or registrant's ability, or both. The board will consider the written application for reinstatement at the next regularly scheduled board meeting. If the board votes for reinstatement, the board may impose reasonable terms and conditions to be imposed prior to reinstatement, or as a condition of reinstatement. If the board denies reinstatement, reasons for denial must be communicated to the applicant.

**History:** Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-14

**54-02-07-09. Practice without a license or registration.** An individual seeking to initiate licensure or registration or to renew a license or registration who has failed to complete the registration process within the required time period and has been found to have been practicing nursing or assisting in the practice of nursing without a current license or registration shall be assessed the following:

1. **Nondisciplinary action.**

- a. A person who has duly applied for licensure or registration ~~or~~ and whose license or registration has been expired for thirty calendar days or less and who has been practicing nursing or assisting in the practice of nursing ~~thirty calendar days or less from the first date of practice without a current license or registration~~ may be issued a license or registration by paying to the board the required late licensure or registration fee and ~~penalty~~ administrative fee as established by the board and complying with any other requirements of the board.

- b. Upon compliance with board rules regarding licensure or registration and the remittance of all fees, a current license or registration shall be issued.

## 2. Disciplinary action.

- a. A person who has duly applied for licensure or registration ~~or and~~ whose license or registration has been expired for more than thirty calendar days and who has been practicing nursing or assisting in the practice of nursing ~~more than thirty calendar days from the first date of practice without a current license or registration~~ may be issued a license or registration by paying to the board the required late licensure or registration fee, penalty fee, duly complying with the imposition of any disciplinary sanction established by the board and complying with any other requirements of the board.
- b. A person who has not duly applied for licensure or registration and who has been practicing nursing or assisting in the practice of nursing without a current license or registration may be issued a license or registration by paying to the board the required late licensure or registration fee and penalty fee, duly complying with the imposition of any disciplinary sanction established by the board, and complying with any other requirements of the board.
- c. Upon compliance with board rules regarding licensure or registration and the remittance of all fees, a current license or registration shall be issued.
- e. d. Disciplinary action for practicing without a license or registration may be expunged from the licensee's or registrant's record if no further violations occur within five years after the imposition of the board's order.

**History:** Effective August 1, 1988; amended effective September 1, 1994; December 1, 1995; June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-14

**CHAPTER 54-02-08.1**  
**TRANSITIONAL LICENSE**

[Repealed effective April 1, 2004]

## CHAPTER 54-02-09

**54-02-09-01. Statement of intent.** It is the policy of the board to permit individuals ~~with a disability~~ who are unable to practice safely within the full scope of nursing, but who can practice safely within a modified scope, or practice safely with accommodations, or both, to be granted a limited license.

**History:** Effective September 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(11)~~ 43-12.1-08(2)(f)

**54-02-09-02. Definitions.** ~~Repealed effective April 1, 2004. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:~~

- ~~1. "Disability" means a physical or mental impairment that substantially limits the full scope of nursing practice and which has the potential for harm to the public.~~
- ~~2. "Limited license" means a nursing license for a licensed practical nurse, a registered nurse, or an advanced practice registered nurse which enables the individual nurse to practice within a modified scope of practice or with accommodations or both, as specified in writing by the board and can be instituted at anytime during the licensure cycle.~~

**History:** ~~Effective September 1, 1996.~~

**General Authority:** NDCC ~~43-12.1-08~~

**Law Implemented:** NDCC ~~43-12.1-08(11)~~

**CHAPTER 54-02-11**  
**SHORT-TERM CLINICAL EDUCATION**

Section

54-02-11-01

Short-Term Clinical Education

**54-02-11-01. Short-term clinical education.**

1. Short-term clinical education. A North Dakota health care facility may conduct a program to allow nurses licensed by another jurisdiction to receive short-term clinical education that involves direct patient contact and does not exceed eighty hours.
2. The North Dakota health care facility that will provide short-term clinical education to persons who do not have a license to practice in North Dakota must receive written approval from the board prior to commencing the program.
3. The following information must be submitted to the board prior to commencing the program and every twenty-four months or as changes occur to the program:
  - a. Syllabus that includes objectives.
  - b. Name and qualification of the North Dakota registered nurse who is responsible for providing the clinical education and the required supervision.
  - c. Name of nurse participating in the program and verification of current, unencumbered license from another jurisdiction.
  - d. Verification of the limit of eighty hours of practice in a calendar year.
  - e. Submission of a nonrefundable two-year approval fee of one hundred dollars.

**History:** Effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(2)(m)

## CHAPTER 54-03.2-01

**54-03.2-01-02. Definitions.** ~~Repealed effective April 1, 2004. The terms used throughout this article have the same meaning as in North Dakota Century Code chapter 43-12.1, except:~~

- ~~1. "Approved" means board recognition of a nursing program that meets legal requirements for nursing education programs.~~
- ~~2. "Competency" means the ability of a graduate to integrate cognitive, affective, and psychomotor skills in a performance that meets a specific standard.~~
- ~~3. "Curriculum" means the courses required for graduation from an approved nursing education program.~~
- ~~4. "Practice site" means a facility that signs a written agreement with the program to provide practice experiences for students.~~
- ~~5. "Preceptor" means an individual who provides supervision of a nursing student's practice experience and who precepts at the direction of the faculty member responsible for the course in which the student is enrolled.~~
- ~~6. "Program" means the components of the school that relate to the organization and administration, nurse administrator, faculty, students, and curriculum preparing students for the practice of nursing.~~
- ~~7. "School" means the postsecondary educational institution offering transferable academic credit.~~
- ~~8. "Survey visit" means an onsite visit of a nursing program by the board of nursing.~~

**History:** ~~Effective November 1, 1996.~~

**General Authority:** ~~NDCC 43-12.1-08~~

**Law Implemented:** ~~NDCC 43-12.1-08(6)~~

**54-03.2-01-03. Standards for nursing education.** Programs of nursing shall prepare nurses to deliver client-centered care as members of an interdisciplinary team emphasizing evidence-based practice, quality improvement approaches, and information management consistent with scope of practice and level of licensure sought.

1. The purpose and outcomes of the nursing program must be consistent with the Nurse Practices Act and administrative rules and other relevant statutes.



2. The purpose and outcomes of the nursing program must be consistent with generally accepted standards of nursing practice appropriate for graduates of the type of nursing program offered.
3. The input from the community of interest must be considered in the development and evaluation of the purpose and outcomes of the program.
4. The nursing program shall implement a comprehensive, systematic plan for ongoing evaluation that is based on program outcomes and incorporates continuous improvement.
5. The faculty and students shall participate in program planning, implementation, evaluation, and continuous improvement.
6. The curriculum must be evidence-based and provide diverse learning experiences consistent with program outcomes.
7. The fiscal, human, physical, and learning resources must be adequate to support program processes and outcomes.
8. The nursing program administrator must be a registered nurse who is academically qualified and has institutional authority with administrative responsibility for the program.
9. Academically qualified and registered nurse faculty must be sufficient in numbers and expertise to accomplish program outcomes and quality improvement.
10. Program information communicated by the nursing program must be fair, accurate, inclusive, consistent, and readily available to the public.

**History:** Effective April 1, 2004.

**General Authority:** NDCC 43-12.1-17

**Law Implemented:** NDCC 43-12.1-17(1)

## CHAPTER 54-03.2-02

**54-03.2-02-01. Accreditation requirements.** The ~~school sponsor~~ institution offering the nursing program must be accredited by the ~~north central association of colleges and schools commission on institutions of higher education~~ a United States department of education-recognized regional accreditation entity.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-02-02. Organizational design.** There must be ~~a school an~~ organizational design of the sponsor institution that demonstrates the relationship of the nursing program to the administration and to comparable programs within the institution, and that clearly delineates the lines of authority, responsibility, and channels of communication. The program faculty is given the opportunity to participate in the governance of the program and ~~school sponsor institution~~ sponsor institution.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-02-03. Program Nursing program organizational design.** The nursing program must have an organizational design with clearly defined authority, responsibility, and channels of communication that assures both faculty and student involvement.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-02-04. Program Nursing program consistency with school sponsor institution.** The program must have a written purpose that is consistent with the mission of the ~~school sponsor institution~~ sponsor institution. The program must have written policies that are congruent with the ~~school's~~ sponsor institution policies and are periodically reviewed.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-02-05. Program Nursing program evaluation.** The program must ~~have a plan for total program evaluation that includes the following: organization and administration, faculty, students, curriculum, and performance of graduates. A comprehensive nursing education program evaluation must be ongoing and must include student achievement of program outcomes, multiple measures of student~~

success after graduation, licensing examination pass rates, and evaluating program resources. Use of evaluation findings for relevant decisionmaking must be evident.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-02-06. Financial support.** There must be evidence of financial support and resources adequate to achieve the purpose of the nursing program. Resources include: facilities, equipment, supplies, and qualified administrative, instructional, and support personnel.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

## CHAPTER 54-03.2-03

**54-03.2-03-01. Administrator responsibilities.** ~~The administrator of the program must be a registered nurse, with an unencumbered license issued by the board, and with the additional education and experience necessary to direct the program.~~ The administrator provides the leadership and is accountable for the administration, planning, implementation, and evaluation of the program. The administrator responsibilities include the following:

1. ~~Development and maintenance of~~ Develop and maintain an environment conducive to the teaching and learning processes;
2. ~~Liaison and maintenance of the~~ Maintain a relationship with administrative and other units within the ~~school~~ academic setting;
3. ~~Leadership~~ Provide leadership within the faculty for the development and implementation of the curriculum;
4. ~~Preparation and administration of~~ Manage the program budget; and
5. ~~Facilitation~~ Provide oversight of faculty recruitment, development, performance review, promotion, and retention;.
6. ~~Liaison with and maintenance of the relationship with the board; and~~
7. ~~Facilitation of cooperative agreements with practice sites.~~

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-03-02. Practical or associate degree nurse program administrator qualifications.** The qualifications for an administrator in a program ~~preparing for practical nurse licensure leading to a certificate in practical nursing or associate degree in nursing~~ are:

1. ~~Minimum~~ A minimum of a master's degree from an accredited institution with a major in nursing; ~~and~~
2. ~~Evidence of experience in education, administration, and practice sufficient to administer the program.~~ A current unencumbered registered nurse license; and

3. Educational preparation or experience in teaching, curriculum development, and administration, including at least two years of nursing experience.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08 43-12.1-17

**Law Implemented:** NDCC 43-12.1-08(6) 43-12.1-17(2)

**54-03.2-03-03. Registered Baccalaureate or graduate nurse program administrator qualifications.** The qualifications for an administrator in a program preparing for registered nurse licensure leading to a baccalaureate or master's degree of nursing are:

1. A minimum of a master's degree and an earned doctoral degree from an accredited institution, one of which is in nursing; and
2. Evidence of experience in education, administration, and practice sufficient to administer the program. A current unencumbered registered nurse license; and
3. Educational preparation or experience in teaching, curriculum development, and administration, including at least two years of nursing experience.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08 43-12.1-17

**Law Implemented:** NDCC 43-12.1-08(6) 43-12.1-17(3)

**54-03.2-03-04. Graduate program qualifications.** Repealed effective April 1, 2004. The qualifications for an administrator in a program preparing for graduate education with a nursing focus are:

1. A master's degree and an earned doctoral degree, one of which is in nursing; and
2. Evidence of experience in education, administration, and practice sufficient to administer the program.

**History:** Effective November 1, 1996.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

**54-03.2-03-05. Unqualified administrator.** The board may approve a nursing program that employs an administrator who does not meet the educational requirements in section 54-03.2-03-02 or 54-03.2-03-03 in the following circumstances:

1. The sponsoring institution demonstrates to the satisfaction of the board that substantial effort was used to recruit a candidate with the required credentials; and
  - a. The candidate is currently enrolled in a master's or doctoral degree program and can demonstrate to the satisfaction of the board a specific plan of completion within four years for a master's degree and seven years of hire for a doctoral degree; and
  - b. The institution demonstrates to the satisfaction of the board that eighty-five percent of the nursing program's regular faculty have the required degree; or
  - c. A faculty of seven or fewer members will have no more than one faculty member that is unqualified.
2. Other circumstances as approved by the board.

**History:** Effective April 1, 2004.

**General Authority:** NDCC 43-12.1-17

**Law Implemented:** NDCC 43-12.1-17



## CHAPTER 54-03.2-04

**54-03.2-04-01. Faculty responsibilities.** There must be sufficient number of qualified faculty to meet the objectives and outcomes of the nursing program. Nursing program faculty responsibilities include the following:

1. Plan, implement, evaluate, and update the program;
2. Design, implement, evaluate, and update the curriculum using a written plan;
3. Develop, implement, evaluate, and update policies for student admission, progression, retention, and graduation in keeping with the policies of the ~~school~~ sponsor institution;
4. Participate in academic advisement and guidance of students;
5. Provide theoretical instruction and practice experiences;
6. Select, monitor, and evaluate preceptors and the student learning experience as defined in section 54-03.2-04-07<sub>1</sub>;
7. Evaluate student achievement of curricular outcomes related to nursing knowledge and practice;
8. Evaluate ~~teaching effectiveness~~ student learning outcomes and participate in the evaluation of program outcomes; and
9. Participate in activities that facilitate maintaining the faculty members' own nursing competence and professional expertise in the area of teaching responsibility.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-04-02. Faculty rights policies.** Faculty The policies and procedures are available in writing and include:

1. Qualifications for the position;
2. Rights and responsibilities related to the position;
3. Criteria for evaluation of performance; and

4. Promotion, retention, and tenure policies.

**History:** Effective November 1, 1996; ~~amended effective April 1, 2004.~~

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-04-03. Practical or associate degree nurse program faculty qualifications.** There must be sufficient faculty with graduate preparation and nursing expertise to achieve the purpose of the program.

1. ~~Nursing faculty must be registered nurses, with an unencumbered license issued by the board. The nursing nurse faculty who have primary responsibility for planning, implementing, and evaluating a nursing course in a program leading to licensure practice as a practical nurse or an associate degree-registered nurse must have:~~
  - a. ~~A minimum of a master's degree in nursing or a master's degree from an accredited institution. If the master's degree is in another a discipline with other than nursing, evidence of acceptable graduate level coursework in nursing must be submitted to the board; and~~
  - b. A current unencumbered registered nurse license; and
  - c. Evidence of prior nursing practice experience.
2. ~~Additional nurse faculty as needed must be registered nurses, with an unencumbered license issued by the board. These faculty must have:~~
  - a. ~~A minimum of a baccalaureate degree in nursing; and~~
  - b. ~~Evidence of prior nursing practice experience.~~

Clinical faculty that supervise nursing practice experiences of students enrolled in a program leading to practice as an associate degree-registered nurse shall meet the same requirements.

- a. A minimum of a master's degree from an accredited institution. If the master's degree is in a discipline other than nursing, evidence of acceptable graduate level coursework in nursing must be submitted to the board;
  - b. A current unencumbered registered nurse license; and
  - c. Evidence of prior nursing practice experience.
3. Clinical faculty that supervise nursing practice experiences of students enrolled in a practical nurse program shall meet the following requirements:

- a. A minimum of a baccalaureate degree in nursing;
- b. A current unencumbered registered nurse license; and
- c. Evidence of prior nursing practice experience.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-04-04. Registered Baccalaureate or graduate nurse program faculty qualifications.** There must be sufficient faculty with graduate preparation and nursing expertise to achieve the purpose of the program. ~~Nurse faculty must be registered nurses, with an unencumbered license issued by the board. The nursing faculty who have responsibility for planning, implementing, and evaluating a nursing course in a program leading to licensure as a registered nurse must have:~~

- 1. A Nurse faculty must have a minimum of a master's degree in from an accredited institution. If the master's degree is in a discipline other than nursing or a master's degree in another discipline with evidence of acceptable graduate level coursework in nursing must be submitted to the board; and
- 2. Evidence of prior nursing practice experience. The majority of graduate program faculty must hold an earned doctoral degree;
- 3. Nurse faculty must be registered nurses with a current unencumbered license;
- 4. Evidence of prior nursing practice experience; and
- 5. Clinical faculty that supervise clinical nursing experiences of students must hold a minimum of a master's degree.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(3)

**54-03.2-04-05. Graduate program faculty qualifications.** Repealed effective April 1, 2004. There must be sufficient faculty with graduate preparation and nursing expertise to achieve the purpose of the program. ~~The majority of these faculty must hold an earned doctoral degree. Nursing faculty in a graduate program with a nursing focus must be registered nurses with an unencumbered license issued by the board. The nursing faculty must have:~~

- 1. ~~A minimum of a master's degree in nursing or a master's degree in another discipline with evidence of acceptable graduate level coursework in nursing; and~~

2. ~~Evidence of prior nursing practice experience.~~

**History:** ~~Effective November 1, 1996.~~

**General Authority:** ~~NDCC 43-12.1-08~~

**Law Implemented:** ~~NDCC 43-12.1-08(6)~~

**54-03.2-04-06. Nonclinical nursing courses faculty qualifications.**

Faculty, who have primary responsibility for teaching supportive courses, must hold a master's degree from an accredited institution or a comparable professional credential in their respective discipline.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** ~~NDCC 43-12.1-08~~ 43-12.1-17

**Law Implemented:** ~~NDCC 43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-04-07. Preceptors.** ~~Preceptors may be used to enhance practice experiences. The following are guidelines for utilizing preceptors: A preceptor provides supervision of a nursing student's practice experience and precepts at the direction of the faculty member responsible for the course in which the student is enrolled.~~

1. ~~If a nurse, the~~ Clinical preceptors may be used to enhance clinical learning experiences, after a student has received clinical and didactic instruction in foundation courses;
2. Preceptors may not be used to replace clinical faculty in certificate, associate, or baccalaureate degree nursing programs;
3. Interdisciplinary preceptors must hold credentials for their applicable practice;
4. The preceptor must be educated at preferably the same or higher level as the academic program in which the student is enrolled or if a professional in another discipline, the preceptor must hold credentials must have demonstrated competencies that are appropriate for the student's learning experience;
2. 5. Criteria for selecting preceptors must be in writing;
3. 6. The functions and responsibilities of the preceptor must be delineated in writing and provided to the preceptor; and
4. 7. The faculty member retains responsibility for the student's learning experiences and confers periodically with the preceptor and student for the purposes of monitoring and evaluating the learning experiences; and

8. A preceptor shall supervise no more than two students during any one scheduled work time or shift.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-04-08. Unqualified faculty.** ~~Faculty members who do not meet the requirements of section 54-03.2-04-03, 54-03.2-04-04, or 54-03.2-04-05 shall provide the board with evidence of progression toward achievement of the required qualifications. The program may receive continued approval with faculty who do not meet the educational requirements in section 54-03.2-04-03 or 54-03.2-04-04 in the following circumstances:~~

1. The administrator demonstrates to the satisfaction of the board that substantial effort was used to recruit a candidate with the required credentials; and
  - a. The candidate is currently enrolled in a master's or doctoral degree program and can demonstrate to the satisfaction of the board a specific plan of completion within four years of hire for the master's degree or seven years for a doctorate degree; and
  - b. The administrator demonstrates to the satisfaction of the board that eighty-five percent of the nursing program's regular faculty have the required degree; or
  - c. A faculty of seven or fewer members will have no more than one faculty member who is unqualified.
2. Other circumstances as approved by the board.
3. A program with faculty holding less than a baccalaureate degree in nursing shall not be approved.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)



## CHAPTER 54-03.2-05

**54-03.2-05-01. Student policies.** Student policies ~~should~~ shall facilitate mobility and articulation and be consistent with the governing school. ~~Student policies in relation to the sponsoring institution. Nursing program policies, recruitment, and advertising shall demonstrate fair and ethical practices. The following policies must be in writing and available:~~

1. Admission, readmission, progression, retention, graduation, dismissal, and withdrawal;
2. ~~Meeting the health and legal~~ Health requirements and other standards as may be required by the affiliate agencies for protection of student health;
3. Student responsibilities;
4. Student rights and grievance procedures; and
5. Student opportunity to participate in program governance and evaluation; and
6. Refund of fees and tuition that complies with state law.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-05-02. Practical nurse competencies.** Repealed effective April 1, 2004. ~~Students enrolled in a practical nurse program shall be provided the opportunity to acquire and demonstrate the knowledge, skills, and abilities for safe and effective nursing practice. The graduate from a practical nurse program is responsible and accountable to practice according to the standards of practice for the licensed practical nurse as defined in chapter 54-05-01.~~

**History:** ~~Effective November 1, 1996.~~

**General Authority:** ~~NDCC 43-12.1-08~~

**Law Implemented:** ~~NDCC 43-12.1-08(6)~~

**54-03.2-05-03. Registered nurse competencies.** Repealed effective April 1, 2004. ~~Students enrolled in a registered nurse program shall be provided the opportunity to acquire and demonstrate the knowledge, skills, and abilities for safe and effective nursing practice. The graduate from a registered nurse program is responsible and accountable to practice according to the standards of practice for the registered nurse as defined in chapter 54-05-02.~~

**History:** ~~Effective November 1, 1996.~~

**General Authority:** ~~NDCC 43-12.1-08~~

**Law Implemented:** ~~NDCC 43-12.1-08(6)~~

**54-03.2-05-04. Performance of graduates on licensing examination.**

~~Repealed effective April 1, 2004. Acceptable performance on the licensing examination for each program is a pass rate of eighty percent for its first-time writers in any given calendar year. A program with a pass rate that falls below eighty percent for first-time writers in any two consecutive calendar years shall:~~

- ~~1. Present to the board a plan for identifying possible contributing factors and for correcting any identified deficiencies; and~~
- ~~2. Submit a periodic progress report to the board on a schedule determined by the board.~~

**History:** ~~Effective November 1, 1996.~~

**General Authority:** ~~NDCC 43-12.1-08~~

**Law Implemented:** ~~NDCC 43-12.1-08(6)~~

**54-03.2-05-05. Graduate prepared registered nurse competencies.**

~~Repealed effective April 1, 2004. Students enrolled in a graduate program with a nursing focus shall be provided the opportunity to acquire and demonstrate the knowledge, skills, and abilities for safe and effective advanced nursing practice. The graduate prepared registered nurse is responsible and accountable to practice according to the standards of practice for the specialized nursing role for which the nurse is prepared.~~

**History:** ~~Effective November 1, 1996.~~

**General Authority:** ~~NDCC 43-12.1-08~~

**Law Implemented:** ~~NDCC 43-12.1-08(6)~~

## CHAPTER 54-03.2-06

### 54-03.2-06-01. General curriculum. The curriculum must:

1. Be planned, implemented, and evaluated by the faculty with provisions for student input;
2. Reflect the mission and purpose of the nursing education program;
3. Be organized logically and sequenced appropriately to meet the program outcomes;
4. Require a number of credits consistent with other programs at the same degree level;
5. Facilitate articulation for upward mobility;
- 5- 6. Have a syllabus for each nursing course; and
- 6- 7. Have written, measurable ~~terminal~~ program outcomes that reflect the role of the graduate.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-06-02. Curriculum Programmatic changes.** Major curriculum programmatic changes must be submitted to the board for approval prior to implementation.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-06-03. Practice sites.** The program must shall have sufficient correlated practice experiences to assure development of nursing competencies:

1. ~~Sites used to provide practice experiences must be evaluated periodically by faculty;~~
2. ~~There must be sufficient practice experiences to assure the development of nursing competencies consistent with the level of preparation;~~
- 3- ~~There must be~~ Current written agreements with cooperating sites that ~~are reviewed and revised periodically; and~~
4. ~~Sufficient faculty must be employed to supervise student practice experiences. The ratio of students to faculty at any one time may not~~

~~exceed eight to one for beginning nursing students or a ratio acceptable to the board for advanced practice experiences. The student to faculty ratio must be maintained to provide for safety of patients, students, and faculty members.~~

- ~~2. A student to faculty ratio no greater than eight to one for beginning nursing students in clinical areas involving direct client care.~~

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-06-04. Practical nurse curriculum.** Repealed effective April 1, 2004. ~~The curriculum includes content that includes the following skill and knowledge areas necessary to meet requirements for an associate degree with a major in practical nursing:~~

- ~~1. Communication and information concepts;~~
- ~~2. Behavioral and social science concepts that serve as a framework for understanding growth and development throughout the life cycle, human behavior, interpersonal relationships, and cultural diversity;~~
- ~~3. Physical and biological sciences concepts that help the students gain an understanding of the principles of scientific theory and computation;~~
- ~~4. Nursing concepts that provide the basis for understanding the principles of nursing care and appropriate and sufficient correlated nursing practice experiences to assure development of competencies;~~
- ~~5. Concepts regarding legal and ethical issues and professional responsibilities; and~~
- ~~6. Courses to meet the school's general education requirements for the associate degree.~~

**History:** Effective November 1, 1996.

**General Authority:** NDCC ~~43-12.1-08~~

**Law Implemented:** NDCC ~~43-12.1-08(6)~~

**54-03.2-06-05. Registered nurse curriculum.** Repealed effective April 1, 2004. ~~The curriculum includes content that includes the following skill and knowledge areas necessary to meet requirements for a baccalaureate degree in nursing:~~

- ~~1. Concepts in written and oral communication, values clarification, scientific inquiry, computation, and technical and therapeutic information management;~~

2. Behavioral and social sciences concepts that serve as a framework for the understanding of growth and development throughout the life cycle; human behavior, interpersonal relationships, cultural diversity, and the social and economic context of health care;
3. Physical and biological sciences concepts that help the students gain an understanding of the principles of scientific theory;
4. Arts and humanities concepts that develop the aesthetic and intellectual capabilities of the student;
5. Nursing didactic content and practice experience that provide the basis for understanding:
  - a. The nursing process; and
  - b. The promotion and restoration of optimal health in clients across the lifespan in a variety of settings;
6. Concepts regarding research, legal and ethical issues, trends in nursing, principles of education and learning, and professional responsibilities;
7. Experiences that promote the development of leadership and management skills and professional socialization; and
8. Courses to meet the school's general education requirements for the baccalaureate degree.

**History:** Effective November 1, 1996.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

**54-03.2-06-06. Graduate program curriculum.** Repealed effective April 1, 2004. The curriculum must include content from nursing and related academic disciplines and meet requirements for a graduate degree with a nursing focus:

1. Advanced theory and research appropriate to the area of nursing specialization;
2. Advanced nursing practice experience relevant to the focus of nursing specialization;
3. Adequate role preparation for advanced nursing practice; and



~~4. Courses to meet the school's requirements for the master's degree:~~

**History:** Effective November 1, 1996.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

**54-03.2-06-07. Curriculum.** The curriculum of the nursing education program must assure the development of evidence-based practice for the level and scope of nursing practice. The program outcomes must reflect the scope of practice and level of licensure sought as defined in chapters 54-05-01, 54-05-02, and 54-05-03.1.

1. The curriculum of all practical nurse programs must include:
  - a. Content regarding biological, physical, social, and behavioral sciences and legal and ethical responsibilities for practical nursing practice;
  - b. Nursing process concepts;
  - c. Communication and documentation skills;
  - d. Pharmacologic concepts and medication administration;
  - e. Nutritional concepts;
  - f. Theory and clinical experience related to health promotion and disease prevention for individual clients across the lifespan and in a variety of clinical settings, including basic safety and infection control;
  - g. Learning experiences that promote client-centered care that:
    - (1) Involves clients in decisionmaking, self-care, and healthy lifestyles;
    - (2) Respects client differences, values, preferences, and expressed needs; and
    - (3) Is based on scientific evidence;
  - h. Learning experiences that promote supervision skills and socialization consistent with role and scope of practice and:
    - (1) Promotes functioning as a part of an interdisciplinary team; and

- (2) Supervised clinical practice that includes management and care of groups of clients and delegation and supervision of unlicensed assistive persons:
    - i. Sufficient practice experiences to assure the development of nursing competencies of the specific role and scope; and
    - j. Learning experiences and methods of instruction which are consistent with the written curriculum plan.
- 2. Additional requirements for associate degree practical nurse programs include:
  - a. Historical trends in nursing:
  - b. Theory and clinical experience related to section 54-05-01-07 relating to role of the licensed practical nurse intravenous therapy:
  - c. Data collection skills:
  - d. Use of available health information:
    - (1) Contributing to plan of care and care implementation; and
    - (2) Computer literacy:
  - e. Management skills; and
  - f. Courses that meet the sponsoring institution's general education requirements for the associate degree.
- 3. The curriculum of an associate degree program leading to registered nurse licensure must include content and sufficient clinical experience to prepare the graduate to:
  - a. Deliver client-centered care that respects client differences, values, preferences, and expressed needs and is based on scientific evidence:
    - (1) Biological, physical, social, and behavioral sciences, including disease process, nutrition, and pharmacology;
    - (2) Content regarding legal, ethical responsibilities and historical trends in nursing;
    - (3) Nursing process;
    - (4) Written, verbal, and therapeutic communication;

- (5) Basic decisionmaking skills;
  - (6) Data collection skills to obtain obvious information; and
  - (7) Health promotion and maintenance for the individual and families.
- b. Function effectively in an interdisciplinary team:
  - (1) Group dynamics;
  - (2) Goal-setting strategies; and
  - (3) Management concepts, including delegation and supervision of other members of the health care team.
- c. Deliver evidence-based practice, including application of evidence in managing common clinical problems.
- d. Apply quality improvement concepts in nursing care:
  - (1) Basic safety and infection control standards; and
  - (2) Quality improvement processes.
- e. Use available health information:
  - (1) Documentation of care plan, nursing care implementation, and evaluation of care provided; and
  - (2) Computer literacy.
- f. Inform and counsel patients and families:
  - (1) Concepts of informational readiness;
  - (2) Discharge planning; and
  - (3) Implementation of preestablished patient teaching plans.
- g. Demonstrate nursing values and roles consistent with the scope of practice:
  - (1) Registered nurse standards of practice; and
  - (2) Ethical concepts.
- h. Courses that meet the sponsoring institution's general education requirements for the associate degree.

4. The curriculum of a baccalaureate nurse program must include:
- a. Content regarding legal and ethical issues; history, trends, and theories in nursing; biological, physical, social, and behavioral sciences, including pharmacotherapy; nutritional therapy; and pathophysiology;
  - b. Nursing process;
  - c. Didactic instruction and clinical experience in health promotion, prevention, restoration, and maintenance of clients across the lifespan and in a variety of clinical settings:
    - (1) Communicate, manage knowledge, and support decisionmaking using information technology; and
    - (2) Provide client-centered care that:
      - (a) Respects client differences, values, preferences, and expressed needs;
      - (b) Involves clients in decisionmaking and care management;
      - (c) Coordinates an interdisciplinary team to cooperate, collaborate, communicate, and integrate client care and health promotion;
      - (d) Employs evidence-based practice to integrate best research with clinical expertise and client values for optimal care; and
      - (e) Applies quality improvement processes:
        - [1] Quality improvement theory;
        - [2] Measurement of quality in terms of structure, process, and client outcomes; and
        - [3] Participation in development of changes in processes through utilization of change theory and systems of care with the objective of improving quality;
  - d. Experiences that promote the development of leadership and management skills and professional socialization:
    - (1) Responsibilities as a member of the profession;

- (2) Management and leadership theory;
    - (3) Group dynamics and group leadership skills; and
    - (4) Systems and organizational theory;
  - e. Learning experiences and clinical practice to include management and care of groups of clients and delegation and supervision of health care providers:
    - (1) Infection control and safety;
    - (2) Epidemiology;
    - (3) Community health theory; and
    - (4) Case management theory;
  - f. Sufficient practice experiences to assure the development of nursing competencies to:
    - (1) Provide development of client-centered care;
    - (2) Provide opportunities to participate in interdisciplinary teams;
    - (3) Utilize or integrate research with clinical experience;
    - (4) Apply the principles of quality improvement; and
    - (5) Utilize technology and information management;
  - g. Learning experiences and methods of instruction must be consistent with the written curriculum plan; and
  - h. Courses that meet the sponsoring institution's general education requirements for the baccalaureate degree.
5. The curriculum preparing for licensure as an advanced practice registered nurse must include content and sufficient experience from nursing and related academic disciplines to meet requirements for a graduate degree with a nursing focus:
- a. Advanced theory and research appropriate to the area of nursing specialization;
  - b. Advanced nursing practice experience relevant to the focus of nursing specialization;



- c. Adequate role preparation for advanced nursing practice; and
  - d. Courses to meet the sponsoring institution's requirements for the master's degree.
- 6. Delivery of instruction by distance education methods must meet the standards for nursing education according to article 54-03.2, be congruent with the nursing program curriculum plan, and enable students to meet the goals, competencies, and objectives of the education program and standards of the board.
  - 7. Out-of-state prelicensure programs provided in this state must meet the standards for nursing education according to article 54-03.2.

**History:** Effective April 1, 2004.

**General Authority:** NDCC 43-12.1-17

**Law Implemented:** NDCC 43-12.1-17

## CHAPTER 54-03.2-07

**54-03.2-07-01. Evaluation of compliance with the standards for nursing education programs.** Evaluation of continuing compliance with the standards of nursing education involves the submission of a self-study report by the nursing education program and a site visit survey by a board representative. This process includes the following elements:

1. One Date mutually acceptable to the board and the nursing program will be set at least six months in advance of the scheduled survey;
2. No less than one month prior to a survey visit, a program must submit a narrative self-evaluation report that provides evidence of compliance with the standards of nursing education;
2. ~~The survey visit will be made by a representative of the board on dates mutually acceptable to the board and the program;~~
3. ~~Announcement of a survey visit will be sent to the program at least two months in advance of the visit~~ Unscheduled surveys may be conducted at the discretion of the board;
4. ~~The program will be asked to~~ shall schedule survey visit activities;
5. ~~The surveyor will~~ shall make a verbal report to the program at the end of the ~~visit~~ survey;
6. ~~The surveyor's written report will~~ shall be sent to the program prior to the review by the board;
7. ~~The board's board shall assess a fee for each program surveyed is two hundred dollars; and~~
8. ~~Following the board's review and decision, written~~ Written notification of the board action regarding the program approval of the program and, if necessary, the board's recommendations will must be sent to the nurse administrator of the program; and.
9. ~~Survey visits of individual programs may be conducted at shorter intervals upon the request of the board or from the school.~~

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08 43-12.1-17

**Law Implemented:** NDCC 43-12.1-08(6) 43-12.1-17(1)

**54-03.2-07-01.1. Performance of graduates on licensing examination.** Acceptable performance on the licensing examination for each program is a pass rate of eighty percent for its first-time writers in any given fiscal year. A program

with a pass rate that falls below eighty percent for first-time writers in any two consecutive fiscal years shall:

1. Present to the board a plan for identifying possible contributing factors and for correcting any identified deficiencies; and
2. Submit a periodic progress report to the board on a schedule determined by the board.

**History:** Effective April 1, 2004.

**General Authority:** NDCC 43-12.1-17

**Law Implemented:** NDCC 43-12.1-17(1)

**54-03.2-07-02. Initial approval.** The board may grant initial approval to a proposed nursing education program that complies with chapter 54-03.2-08.

1. ~~Initial approval is required prior to the enrollment of students in the first nursing course.~~ Before a nursing education program is permitted to admit students, the program shall submit evidence of the ability to meet the standards for nursing education according to chapter 54-03.2-01.
2. The board may continue initial approval:
  - a. Prior to the graduation of the first class, when review of materials specified in article 54-03.2, the most recent annual report, and the most recent ~~site-visit~~ survey report reveals compliance with the rules; or
  - b. After graduation of the first class, when review of the criteria for full approval reveals time is needed to fully comply with the rules.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08 43-12.1-17

**Law Implemented:** NDCC 43-12.1-08(6) 43-12.1-17(1)

**54-03.2-07-03. Full approval.** The board may grant full approval under the following circumstances to:

1. A program with initial approval that demonstrates compliance with the rules after:
  - a. The most recent annual report;
  - b. The most recent ~~site-visit~~ survey report;
  - c. The first class graduates; and

- d. The program pass rate for first-time writers of the licensing examination is eighty percent or greater in the first ~~calendar~~ fiscal year.
2. A program with full approval that demonstrates continued compliance with the rules by:
    - a. The most recent annual report;
    - b. The most recent ~~site-visit~~ survey report; and
    - c. The program pass rate for first-time writers of the licensing examination do not fall below an average of eighty percent pass rate for two consecutive ~~calendar~~ fiscal years.
  3. A program with conditional approval that demonstrates compliance with the rules by:
    - a. The most recent annual report;
    - b. The most recent ~~site-visit~~ survey report; and
    - c. The program pass rate for first-time writers of the licensing examination do not fall below an average of eighty percent pass rate for two consecutive ~~calendar~~ fiscal years.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-07-04. Conditional approval.** If the board determines that a program does not meet board rules, the ~~school~~ nursing program must be notified in writing detailing the deficiencies requiring correction within a given time period set by the board. The board may impose conditional approval for a length of time to be determined by the board but not to exceed two years following the date of written notification. Conditional approval allows the program to continue to operate while the program corrects the deficiencies and works toward full approval. If at the end of that time period established by the board the deficiencies have not been corrected, board approval shall be withdrawn and a date to discontinue the program shall be set by the board.

The deficiencies ~~not fully meeting the standards of nursing education~~ are ~~demonstrated~~ evidenced by:

1. The review of the most recent annual report;
2. The most recent ~~site-visit~~ survey report; or

3. The program pass rate for first-time writers of the licensing examination fall below an average of eighty percent pass rate for ~~three~~ two consecutive calendar ~~fiscal~~ years.

~~Conditional approval allows the program to continue to operate while the program corrects the deficiencies and works toward full approval. If at the end of that time period established by the board, the deficiencies have not been corrected, board approval shall be withdrawn and a date to discontinue the program shall be set by the board.~~

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-07-07. Certificate of approval.** Following the board's review and action regarding the site visit survey report, a certificate shall be issued by the board to the program indicating the level of board approval.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-07-09. Continuing compliance.**

1. ~~Annually by October thirty-first each~~ Each program shall submit ~~a~~ an annual report to the board providing requested information pertaining to the time period between July first of ~~the previous year~~ and June thirtieth.
2. ~~Each program must submit to the board a report and may have an onsite survey visit by the board every four years.~~
3. ~~The board may survey a program at any time at its discretion.~~ A program with continuing compliance shall be reevaluated:
  - a. At a minimum of every five years to ensure compliance with the standards for nursing education;
  - b. At the request of the nursing education program; or
  - c. At the discretion of the board.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)



## CHAPTER 54-03.2-08

**54-03.2-08-01. Development of a new program.** Repealed effective April 1, 2004. A school considering establishing a nursing education program may submit to the board a statement of intent at least eighteen months in advance of the expected opening date. The school shall:

1. ~~Conduct a feasibility study which includes information relative to:~~
  - a. ~~The type of nursing program to be established;~~
  - b. ~~The availability of health care agencies with sufficient practice experiences to support the program;~~
  - c. ~~Projection of adequate enrollment;~~
  - d. ~~Assurance of adequate educational facilities and practice sites;~~
  - e. ~~Assurance of adequate financial resources for the program;~~
  - f. ~~Assurance of qualified faculty for teaching and supervision;~~
  - g. ~~Proposed starting date; and~~
  - h. ~~Need for entry level nurses in the state and that region of the state.~~
2. ~~Present the feasibility study to the board in a written report.~~

**History:** Effective November 1, 1996.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

**54-03.2-08-02. Initial requirements of a new program.** The school sponsor institution shall employ a qualified nurse administrator to develop the program and submit a written application for approval to the board at least six months before the proposed starting date or at such earlier time as the board and the school nursing program may agree. The written application must include: evidence of meeting the requirements in article 54-03.2. Fifteen copies of the proposal for the new program must be submitted to the board.

1. ~~Evidence that the school either has or is progressing toward full accreditation by the north central association of colleges and schools commission on institutions of higher education;~~
2. ~~Mission and purpose of the school;~~
3. ~~Proposed purpose and outcomes of the program;~~
4. ~~Organizational design of school and program;~~

- ~~5. Curriculum organization with rationale and course descriptions;~~
- ~~6. Projected number of faculty with proposed employment dates;~~
- ~~7. Faculty qualifications, responsibilities, and personnel policies of the school;~~
- ~~8. Admission criteria and projected number of students to be admitted;~~
- ~~9. Description of practice sites;~~
- ~~10. Signed agreements with sites to be used for practice experiences;~~
- ~~11. Financial resources adequate for planning, implementation, and continuation of the program;~~
- ~~12. Description of academic facilities and staff to support the program; and~~
- ~~13. Description of support services for students.~~

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-08-03. First survey visit.** After the application proposal has been received, a survey visit of the ~~school~~ proposing the nursing education program must be made by the board's designee. A written copy of the surveyor's report must be submitted to the ~~school and the~~ nursing program nurse administrator.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-08-04. Board review and initial approval.** The board shall act on the application proposal and the surveyor's report within three months of the ~~site visit survey~~. The ~~school program~~ must be notified in writing of the board's decision whether to grant or deny initial approval.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-08-07. Annual survey.** The board's designee shall survey the program annually until the first class has graduated. Following graduation of the first class, a self-evaluation report of compliance with the rules shall be submitted

by the program. The board's designee shall conduct a survey visit for consideration of full approval.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

## CHAPTER 54-03.2-09

**54-03.2-09-01. Closure of a nursing education program.** A nursing program may close voluntarily or must be closed due to withdrawal of board approval. During the transition to closure, provision must be made for maintenance of the standards for nursing education; placement for students who have not completed the program; and for the storage of academic records and transcripts.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-09-02. Voluntary closing.** When the ~~school~~ sponsor institution decides to close a nursing program, the school shall notify the board in writing; of the plan for discontinuation and the intended date of closing.

1. The ~~school~~ nursing program may choose one of the following closing procedures:
  - a. Continue the nursing program until the last class enrolled is graduated; or
  - b. Transfer currently enrolled students to other board-approved nursing programs.
2. The nursing program shall continue to meet the standards for nursing education until closed.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-09-03. Closing as a result of withdrawal of approval.** When the board withdraws approval of a nursing program:

1. The board shall establish a date of closure.
2. The ~~school~~ nursing program shall present a plan for the transfer of students to other board-approved programs within a timeframe established by the board.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)

**54-03.2-09-04. Storage of records.** When a nursing program closes, the board must be advised of the arrangements for maintenance of academic

transcripts. If the ~~school~~ sponsor institution ceases to exist, the academic transcripts of each student and graduate must be transferred to the board.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-17

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-17(1)



## **CHAPTER 54-04.1-02**

**54-04.1-02-01. Qualifications.** To qualify for a nursing education loan, the applicant must:

1. Have all necessary application forms completed and on file in the board office by July first of the year in which the applicant wishes to be considered by the board for a nursing education loan. ~~Applicants for nurse refresher course nursing education loans will be considered at any board meeting;~~ and
2. Demonstrate one of the following:
  - a. Be accepted into and enrolled in a North Dakota board-approved or ~~recognized~~ undergraduate nursing education program for practical nurses or registered nurses;
  - b. Have a current North Dakota license and have been accepted into and enrolled in an educational program that is acceptable to the board; or
  - c. Be a resident of North Dakota for refresher courses and accepted into a refresher course that meets board requirements.

**History:** Effective October 1, 1987; amended effective October 1, 1989; March 1, 1992; November 1, 1996; May 1, 2003; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(14)~~ 43-12.1-08(2)(h)

## CHAPTER 54-04.1-03

**54-04.1-03-01. Amount of loans.** To the extent funds are available, educational loans will be made in the following amounts:

1. Students accepted into a nondegree licensed practical nurse program may receive a loan of no more than one thousand dollars.
2. Students in an associate degree licensed practical or registered nurse program may receive a loan of no more than two thousand dollars for the entire program, including a one plus one program.
- ~~2.~~ 3. Students in a baccalaureate registered nurse program may receive a loan of no more than two thousand five hundred dollars.
- ~~3.~~ 4. Graduate nurse students may receive a loan of no more than two three thousand five hundred dollars to complete studies for a master's degree in nursing. Graduate nurse students pursuing a doctorate may receive a loan of up to five thousand dollars.
- ~~4.~~ 5. Licensed practical nurses or registered nurses may receive a loan of no more than the cost of the course for a board-approved nurse refresher course.

**History:** Effective October 1, 1987; amended effective October 1, 1989; March 1, 1992; February 1, 1998; May 1, 2003; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(14)~~ 43-12.1-08(2)(h)

**54-04.1-03-05. Disbursements - Where made.** For practical nurse students and registered nurse students, the disbursements will be made to the school sponsor institution of the nursing program they are attending. For graduate nurse students, the disbursements will be made directly to the student. A receipt of payment signed by the loan recipient will be required when the disbursement is made directly to the recipient.

**History:** Effective October 1, 1987; amended effective March 1, 1992; May 1, 2003; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(14)~~ 43-12.1-08(2)(h)

## CHAPTER 54-04.1-04

**54-04.1-04-05. ~~Leave of absence~~ Deferment.** A ~~leave of absence during the employment period~~ request for delay of repayment may be granted at the discretion of the board of nursing.

**History:** Effective October 1, 1987; amended effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(14)~~ 43-12.1-08(2)(h)

## CHAPTER 54-05-01

**54-05-01-01. Statement of intent.** Each licensed practical nurse is responsible and accountable to practice according to the standards of practice prescribed by the board and the profession. The purpose of the standards is to:

1. ~~Establish acceptable levels of~~ To establish practice parameters for safe nursing practice for the licensed practical nurse.
2. ~~Serve~~ To serve as a guide for the board to ~~evaluate~~ regulate the practice of the licensed practical nurse ~~to determine if the practice is safe and effective.~~

**History:** Effective June 1, 1979; amended effective January 1, 1994; May 1, 1996; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-18

## CHAPTER 54-05-02

**54-05-02-01. Statement of intent.** The registered nurse is responsible and accountable to practice according to the standards of practice prescribed by the board and the profession. ~~Registered nurses established the practice parameters for nursing care for all client populations in all practice settings.~~ The purpose of the standards is:

1. To establish ~~acceptable levels of~~ practice parameters for safe nursing practice for the registered nurse.
2. To serve as a guide for the board to ~~evaluate~~ regulate the practice of the registered nurse ~~to determine if the practice is safe and effective.~~

**History:** Effective June 1, 1979; amended effective March 1, 1986; January 1, 1994; May 1, 1996; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-18

## CHAPTER 54-05-03.1

**54-05-03.1-01. Statement of intent.** The 1977 legislative assembly enacted legislation that recognized the performance of additional acts to be performed by registered nurses practicing in expanded roles and gave the board of nursing the power to set standards for nurses practicing in specialized roles. From 1980 to 1991, the board licensed advanced practitioners in nursing as nurse clinicians, nurse practitioners, clinical nurse specialists, certified nurse midwives, and certified registered nurse anesthetists. The 1991 legislative assembly added prescriptive practices to the acts an advanced practice registered nurse may perform, if qualified. The 1995 legislative assembly further defined the educational requirements for the advanced practice registered nurse.

The scope of practice for a registered nurse with advanced licensure is based upon an understanding that a broad range of health care services can be appropriately and competently provided by a registered nurse with validated knowledge, skills, and abilities in specific practice areas. The health care needs of citizens in North Dakota require that nurses in advanced practice roles provide care to the fullest extent of their scope of practice. The advanced practice registered nurse retains the responsibility and accountability for that scope of practice and is ultimately accountable to the patient within the Nurse Practices Act.

The advanced practice registered nurse is responsible and accountable to practice according to the standards of practice prescribed by the board and the profession. The purpose of the standards is:

1. To establish practice parameters for safe nursing practice.
2. To serve as a guide for the board to regulate the practice of the advanced practice registered nurse.

**History:** Effective March 1, 1992; amended effective November 1, 1996; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-02(1)(7)

**54-05-03.1-03. Definitions.** ~~Repealed effective April 1, 2004. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:~~

- ~~1. "Advanced practice registered nurse license" means the document issued to the registered nurse who has met the qualifications outlined in these rules.~~
- ~~2. "Certification" means a process of voluntary recognition by a national nursing organization of the applicant's advanced knowledge, skills, and abilities in a defined area of nursing practice. The certification process measures the theoretical and clinical content denoted in the advanced scope of practice, and is developed in accordance with~~



~~generally accepted standards of validity and reliability. The certification examination is open only to registered nurses who have successfully completed an advanced nursing education program.~~

- ~~a. If a certification examination is not available, another appropriate examination may be substituted as approved by the board; or~~
- ~~b. If no appropriate certifying examination is available, an alternate mechanism to assure initial competence may be substituted as approved by the board.~~
- ~~3. "Competence maintenance program" means the ongoing application and integration of knowledge, skills, application, and judgment necessary to meet standards of practice.~~
- ~~4. "Health care team" means any health care professional licensed under North Dakota Century Code title 43.~~
- ~~5. "Initial competence" means the possession of knowledge, skills, application, and judgment necessary to meet standards of practice.~~
- ~~6. "Scope of practice" means the delineation of the applicant's practice which identifies the nature and extent of the applicant's practice and includes focus of care, elements of care, type of client, and consultation patterns with members of the health care team.~~

~~History: Effective March 1, 1992; amended effective November 1, 1996; June 1, 2001.~~

~~General Authority: NDCC 43-12.1-08~~

~~Law Implemented: NDCC 43-12.1-08(6)~~

**54-05-03.1-03.1. Standards of practice for the advanced practice registered nurse.** The standards of practice for the registered nurse found in chapter 54-05-02 are the core standards of practice for all categories of advanced practice registered nurses. The advanced practice registered nurse has evolved into the roles of clinical nurse specialist, nurse anesthetist, nurse midwife, and nurse practitioner.

- ~~1. The standards of practice for the registered nurse found in chapter 54-05-02 are the core standards of practice for all categories of advanced practice registered nurses.~~
- ~~2. In addition to the core registered nurse standards of practice, each advanced practice registered nurse shall practice according to national standards acceptable to the board for advanced practice registered nurses.~~

The advanced practice registered nurse functions in an independent role in any setting as a member of the interdisciplinary team and provides care to the fullest extent of the scope of practice which includes:

1. Complete the assessment of the health status and health needs based on interpretation of health-related data and preventive health practices;
2. Analyze multiple sources of data, identify alternative possibilities as to the nature of a health care problem and select appropriate treatment;
3. Coordinate human and material resources for the provision of care;
4. Maintain accountability and responsibility for the quality of nursing care provided; and
5. Collaborate with the interdisciplinary team.

**History:** Effective November 1, 1996; amended effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-08(1)

**54-05-03.1-03.2. Scope of practice as an advanced practice registered nurse.**

1. Practice as an advanced practice registered nurse means an independent and interdependent expanded scope of nursing practice and may include:
  - a. Perform a comprehensive assessment of clients and synthesize and analyze data within a nursing framework;
  - b. Identify, develop, plan, and maintain evidence-based, client-centered nursing care;
  - c. Prescribe a therapeutic regimen of health care, including diagnosing, prescribing, administering, and dispensing legend drugs and controlled substances;
  - d. Evaluate prescribed health care regimen;
  - e. Participate in nursing care management according to chapter 54-05-04 relating to standards for assignment and delegation;
  - f. Promote a safe and therapeutic environment;
  - g. Provide health teaching and counseling to promote, attain, and maintain the optimum health level of clients;

- h. Communicate and collaborate with the interdisciplinary team in the management of health care and the implementation of the total health care regimen;
  - i. Manage and evaluate the clients' physical and psychosocial health-illness status and make independent decisions in solving complex client care problems;
  - j. Manage, supervise, and evaluate the practice of nursing;
  - k. Utilize evolving client information management systems;
  - l. Integrate quality improvement principles in the delivery and evaluation of client care;
  - m. Teach the theory and practice of nursing;
  - n. Analyze, synthesize, and apply research outcomes in practice; and
  - o. Integrate the principles of research in practice.
2. Notwithstanding the above, all services rendered by the licensee shall be commensurate with the academic preparation, knowledge, skills, and abilities of the advanced practice licensed nurse's experience, continuing education, and demonstrated competencies. The nurse must recognize individual limits of knowledge, skills, and abilities and plan for situations beyond the licensee's expertise.

**History:** Effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(1)

**54-05-03.1-04. Initial requirements for advanced practice registered nurse licensure.** Applicants for advanced practice registered nurse licensure must:

- 1. Possess a current license to practice as a registered nurse in North Dakota;
- 2. Submit evidence of completion of an advanced practice track within the nursing education program through December 31, 2000, or submit evidence of completion of the requirements for a graduate education program with a nursing focus beginning January 1, 2001. The exception is the women's health care nurse practitioner who must submit evidence of completion of an advanced nursing education program through December 31, 2006, or submit evidence of completion of the requirements for a graduate education program with a nursing focus beginning January 1, 2007 accredited by a national accrediting body;

3. Submit evidence of current certification by a national nursing certifying body in the ~~specific area of nursing practice or other evidence verifying initial competence as established by the board~~ specialty appropriate to educational preparation;
4. Submit a completed notarized application and pay the fee of one hundred dollars; and
5. Submit a scope of practice statement according to established board guidelines for review and approval by the board of nursing.

Applicants who have been issued a registered nurse temporary permit and meet all of the qualifications for advanced licensure may be issued a temporary advanced practice registered nurse license with the same date of expiration. The advanced practice registered nurse license will be issued to coincide with the renewal date of the initial registered nurse license.

Applicants for whom there is no appropriate certifying examination may submit other evidence verifying initial competence as established by the board. Evidence of an equivalent mechanism will not be accepted after January 1, 2005, and individuals will no longer be licensed without an approved advanced practice registered nurse examination.

**History:** Effective March 1, 1992; amended effective November 1, 1996; December 1, 1997; June 1, 2001; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-09(4)(5)~~ 43-12.1-09(2)(b)(c)(d)

**54-05-03.1-06. Requirements for advanced practice registered nurse licensure renewal.** The advanced practice registered nurse license is valid for the same period of time as the applicant's registered nurse license. Applicants for renewal of the advanced practice registered nurse license must have an active registered nurse license and:

1. ~~Renew their registered nurse license;~~
2. Complete the advanced practice registered nurse license renewal application;
3. ~~2.~~ Pay an advanced practice registered nurse licensure renewal fee of forty dollars;
4. ~~3.~~ Submit evidence of current certification or participate in a competence maintenance program as established by the board; and

- 5: ~~4.~~ Submit a scope of practice statement for review and approval by the board.

**History:** Effective March 1, 1992; amended effective November 1, 1996; June 1, 2001; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-10(1)

**54-05-03.1-07. Disciplinary action against advanced practice registered nurse license.** Repealed effective April 1, 2004. ~~The advanced practice registered nurse licensee may be subject to discipline by the board when the licensee has:~~

- ~~1. Been found in violation of any provision of North Dakota Century Code section 43-12.1-14; or~~
- ~~2. Failed to maintain national nursing certification or a competence maintenance program.~~

**History:** ~~Effective March 1, 1992; amended effective November 1, 1996; June 1, 2001.~~

**General Authority:** ~~NDCC 43-12.1-08~~

**Law Implemented:** ~~NDCC 43-12.1-08(6)~~

**54-05-03.1-08. Prescriptive authority review committee.** Prior to the first regular meeting after July first of each year, the board will request an appointment of a physician who holds a collaborative agreement with an advanced practice registered nurse; to the prescriptive authority review committee from the board of medical examiners and the board of pharmacy. The board shall appoint two committee members, at least one of whom must be a registered nurse board member and one must be an advanced practice registered nurse with prescriptive authority, at the July board meeting. The committee will meet at least once each year to review rules for prescriptive authority; and oversee the process of granting prescriptive authority; and recommend changes to the board. Reimbursement for the costs associated with attending the meetings will be the responsibility of the respective boards appointing the members.

**History:** Effective March 1, 1992; amended effective November 1, 1996; June 1, 2001; April 1, 2004.

**General Authority:** NDCC ~~43-12.1-08~~ 43-12.1-18

**Law Implemented:** NDCC ~~43-12.1-08~~ 43-12.1-18

**54-05-03.1-09. Requirements for prescriptive authority.** Applicants for prescriptive authority shall:

1. Be currently licensed as an advanced practice registered nurse in North Dakota.

2. ~~Submit evidence of completion of an advanced nursing education program through December 31, 2000, or submit evidence of completion of the requirements for a graduate education program with a nursing focus beginning January 1, 2001. The exception is the women's health care nurse practitioner who must submit evidence of completion of an advanced nursing education program through December 31, 2006, or submit evidence of completion of the requirements for a graduate education program with a nursing focus beginning January 1, 2007.~~
3. Submit a complete, notarized prescriptive authority application and pay the fee of fifty dollars.
4. 3. Provide evidence of completion of thirty contact hours of education or equivalent in pharmacotherapy related to the applicant's scope of advanced practice that:
  - a. ~~Include pharmacokinetic principles and their clinical application and the use of pharmacological agents in the prevention of illness, restoration, and maintenance of health.~~
  - b. Have been obtained within a three-year period of time immediately prior to the date of application for prescriptive authority; or
  - e. b. Have been obtained from one or more of the following methods:
    - (1) ~~Two academic semester hour credits in pharmacotherapy related to scope of practice is the equivalent of thirty contact hours;~~
    - (2) ~~Evidence of attendance at an approved pharmacotherapy seminar, lecture, workshop, class, or course either in person or via a telecommunication network may be submitted for part or all of the thirty contact hours;~~
    - (3) ~~Evidence of participation in an approved pharmacotherapy correspondence or home study continuing education course may be submitted for no more than one-half of the thirty contact hours;~~
    - (4) ~~Evidence of publication of one article related to pharmacotherapy in a refereed journal, one book chapter, or research project published in the license renewal timeframe may be submitted for a case-by-case review. Credit may be submitted for no more than one-sixth of the thirty contact hours;~~
    - (5) Evidence of participation as a presenter or lecturer for content related to pharmacotherapy is allowable, but credits may not total more than one-sixth of the requirement. A presentation



~~or lecture of fifty minutes or more may not be used more than once in the three years. The presentation or lecture must be approved for contact hours or be offered as part of an academic course; and~~

(6) Other methods that may be approved by the board.

5. ~~Include in the scope of practice statement required under subsection 5 of section 54-05-03.1-04 the nature and extent of the collaboration for prescriptive practices with a physician who is lawfully practicing medicine in North Dakota. The statement must address all of the following areas:~~
- ~~a. Broad classifications of drugs or devices to be commonly prescribed by the advanced practice registered nurse;~~
  - ~~b. Methods and frequency of the collaboration for prescriptive practices, which must occur as client needs dictate, but are no less than once every two months;~~
  - ~~c. Methods of documentation of the collaboration process regarding prescriptive practices; and~~
  - ~~d. Alternative arrangements for collaboration regarding prescriptive practices in the temporary or extended absence of the physician.~~
6. 4. Submit an affidavit from the licensed physician who will be participating in the collaborative prescriptive agreement acknowledging the manner of review and approval of the planned prescriptive practices. Information in the affidavit must also indicate that the advanced practice registered nurse's scope of prescriptive practice is appropriately related to the collaborating physician's medical specialty or practice.

**History:** Effective March 1, 1992; amended effective November 1, 1996; December 1, 1997; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-02(7), ~~43-12.1-09(4)(5)~~ 43-12.1-09(2)(c)(d)

**54-05-03.1-10. Authority to prescribe.**

1. A permanent advanced practice registered nurse license with the addition of prescriptive authority shall be issued following review and approval of the completed application by the board.
2. Between meetings of the board, board staff may review the prescriptive authority application and grant a temporary permit to prescribe if all the requirements are met.

3. The advanced practice registered nurse with prescriptive authority may prescribe drugs as defined by chapter 43-15-01 pursuant to applicable state and federal laws. Notice of the prescriptive authority granted will be forwarded to the board of pharmacy.
4. A prescriptive authority license does not include drug enforcement administration authority for prescribing controlled substances. Each licensee must apply for and receive a drug enforcement administration number before writing prescriptions for scheduled drugs.
5. The licensee may prescribe, administer, sign for, dispense, and procure pharmaceutical samples following state and federal regulations.
6. The signature on documents related to prescriptive practices must clearly indicate that the licensee is an advanced practice registered nurse.
7. The advanced practice registered nurse with prescriptive authority may not prescribe, sell, administer, distribute, or give to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.

**History:** Effective March 1, 1992; amended effective November 1, 1996; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(19)~~ 43-12.1-08(1)

**54-05-03.1-11. Prescriptive authority renewal.** Prescriptive authority is valid for the same period of time as the applicant's advanced practice registered nurse and registered nurse license. The applicant for renewal must:

1. Renew the applicant's registered nurse license.
2. Submit evidence verification of current certification by a national nursing certification body in the specific area of nursing practice.
3. Submit a completed advanced practice registered nurse with prescriptive authority renewal application.
4. Pay the advanced practice registered nurse renewal fee of forty dollars and the fifty dollar renewal fee for prescriptive authority.
5. ~~Submit a scope of practice statement that complies with requirements of section 54-05-03.1-06 and addresses all of the following areas:~~
  - ~~a. Broad classifications of drugs or devices to be commonly prescribed by the advanced practice registered nurse;~~

- ~~b. Methods and frequency of the collaboration for prescriptive practices, which must occur as client needs dictate, but no less than once every two months;~~
  - ~~c. Methods of documentation of the collaboration process regarding prescriptive practices; and~~
  - ~~d. Alternative arrangements for collaboration regarding prescriptive practices in the temporary or extended absence of the physician.~~
6. Provide evidence of completion of fifteen contact hours of education during the previous two years in pharmacotherapy related to the scope of practice. These contact hours may fulfill the registered nurse renewal continuing education requirement. The education or its equivalent as approved by the board may be obtained from one or more of the following methods: include academic credits, attendance at approved seminars and courses, or participation in approved correspondence or home study continuing education courses.
- ~~a. One academic semester hour credit in pharmacotherapy related to scope of practice is the equivalent of fifteen contact hours;~~
  - ~~b. Evidence of attendance at an approved pharmacotherapy seminar, lecture, workshop, class, or course either in person or via a telecommunication network may be submitted for part or all of the fifteen contact hours;~~
  - ~~c. Evidence of participation in an approved pharmacotherapy correspondence or home study continuing education course may be submitted for no more than one-half of the fifteen contact hours;~~
  - ~~d. Evidence of publication of one article related to pharmacotherapy in a refereed journal, one book chapter, or research project published within the license renewal timeframe may be submitted for a case-by-case review. Credit may be submitted for no more than one-sixth of the fifteen contact hours;~~
  - ~~e. Evidence of participation as a presenter or lecturer for content related to pharmacotherapy is allowable, but credits may not total more than one-sixth of the requirement. A presentation or lecture of fifty minutes or more may not be used more than once in the two years. The presentation or lecture must be approved for contact hours or be offered as part of an academic course; and~~
  - ~~f. Other methods that may be approved by the board.~~
7. 6. Submit an a verification of affidavit from the licensed physician who will be participating in the collaborative prescriptive agreement acknowledging the manner of review and approval of the planned

prescriptive practices. Information in the affidavit must also indicate that the advanced practice registered nurse's scope of prescriptive practice is appropriately related to the collaborating physician's medical specialty or practice.

**History:** Effective March 1, 1992; amended effective November 1, 1996; June 1, 2001; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-10(1)

**54-05-03.1-14. Encumbered license. Repealed effective April 1, 2004.**  
~~Encumbrances placed on the advanced practice registered nurse license will also be placed on the registered nurse license.~~

~~**History:** Effective March 1, 1992; amended effective November 1, 1996.~~

~~**General Authority:** NDCC 43-12.1-08~~

~~**Law Implemented:** NDCC 43-12.1-08(13)~~

## CHAPTER 54-05-04

**54-05-04-01. Statement of intent.** These rules govern the provision, administration, and management of nursing care by licensed nurses and by unlicensed assistive persons providing nursing services. Licensed nurses are directly accountable and responsible to clients for the nature and quality of all nursing care rendered. Licensed nurses provide nursing care through a variety of roles including:

1. The direct provision of care;
2. The indirect provision of care through administering, managing, and supervising the practice of nursing;
3. The teaching of health care practice to ~~individuals, families, and groups~~ clients; and
4. Collaboration and consultation with other health care professionals in the management of health care.

Registered nurses practice nursing independently and interdependently through the application of the nursing process. Registered nurses also practice nursing dependently through the execution of diagnostic or therapeutic regimens prescribed by licensed practitioners. The administration and management of nursing by registered nurses is an independent and interdependent practice and includes assigning and delegating nursing interventions that may be performed by others.

Licensed practical nurses practice nursing dependently under the direction of registered nurses, advanced practice registered nurses, or licensed practitioners through the application of the nursing process and the execution of diagnostic or therapeutic regimens prescribed by licensed practitioners. The administration and management of nursing by licensed practical nurses includes assigning and delegating nursing interventions that may be performed by others.

~~The registered nurse is responsible for the nature and quality of nursing care that a client receives.~~ Unlicensed assistive persons complement the licensed nurse in the performance of nursing interventions but may not substitute for the licensed nurse. Unlicensed assistive persons are responsible to the licensed nurse to assist with client care rather than be independently accountable to the client.

**History:** Effective February 1, 1998; amended effective June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-02(5)

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-08(1)

**54-05-04-03. Delegation process for nursing interventions.** A licensed nurse may delegate a nursing intervention to a competent unlicensed assistive person if the licensed nurse utilizes a decisionmaking process to delegate in a

manner that protects public health, welfare, and safety. Such a process must include:

1. Assessment of clients and human and material resources by:
  - a. Identifying the needs of the client;
  - b. Consulting the plan of care;
  - c. Considering the circumstances and setting; and
  - d. Assuring the availability of adequate resources, including supervision.
2. Planning for delegation that must include:
  - a. Criteria for determining nursing interventions that may be delegated and includes:
    - (1) The nature of the specific nursing intervention, its complexity, and the knowledge and skills required to perform the intervention;
    - (2) The results of the intervention are predictable;
    - (3) A determination that the potential risk to client is minimal; and
    - (4) A standard and unchangeable procedure which does not require any exercise of independent nursing judgment.
  - b. Selection and identification of unlicensed assistive persons to whom nursing interventions may be delegated. Licensed nurses who assess and identify the unlicensed assistive person's training, experience, and competency to provide a selected nursing intervention shall:
    - (1) Teach the nursing interventions; or
    - (2) Verify the unlicensed assistive person's competency to perform the nursing intervention; and
    - (3) Observe the unlicensed assistive person's demonstration of current competence to perform the nursing intervention; and
    - (4) Document the unlicensed assistive person's competency to perform the nursing intervention.
  - c. Selection and identification of the methods of supervision and the licensed nurses responsible to provide supervision.



- (1) Direct supervision means that the responsible licensed nurse is physically present in the clinical area and is available to assess, evaluate, and respond immediately.
  - (2) Indirect supervision means that the responsible licensed nurse is available through periodic inspection and evaluation of telecommunication, or both, for direction, consultation, and collaboration.
- d. The method of supervision and the frequency of assessment, inspection, and evaluation must be determined, but not limited to the following:
  - (1) The willingness and ability of the client to be involved in the management of the client's own care;
  - (2) The stability of the client's condition;
  - (3) The experience and competency of the unlicensed assistive person providing the nursing intervention; and
  - (4) The level of nursing judgment required for the delegated nursing intervention.
3. Implementation of the delegated nursing interventions by providing direction and supervision.
  - a. Direction must include:
    - (1) The unlicensed assistive person's access to written instructions on how the nursing intervention is to be performed, including:
      - (a) Reasons why the nursing intervention is necessary;
      - (b) Methods used to perform the nursing intervention;
      - (c) Documentation of the nursing intervention; and
      - (d) Observation of the client's response.
    - (2) The licensed nurse's:
      - (a) Monitoring to assure compliance with established standards of practice and policies; and
      - (b) Evaluating client responses and attainment of goals related to the delegated nursing intervention.

- b. Supervision may be provided by the delegating licensed nurse or by other licensed nurses. The degree and method of supervision required must be determined by the licensed nurse after an evaluation of the appropriate factors involved, including:
    - (1) The number of clients for whom nursing interventions are delegated;
    - (2) The stability of the client;
    - (3) The training and competency of the unlicensed assistive person to whom the nursing intervention is delegated;
    - (4) The nature of the nursing intervention delegated; and
    - (5) The proximity and availability of the licensed nurse when the nursing intervention is performed.
- 4. Evaluation of the delegated nursing interventions through:
  - a. Measurement of the client's response and goal attainment related to the delegated interventions;
  - b. Modification of nursing interventions as indicated by client's response;
  - c. Evaluation of the performance of the intervention by the unlicensed assistive person;
  - d. Feedback from unlicensed assistive person; and
  - e. Provision of feedback to unlicensed assistive person.

**History:** Effective February 1, 1998; amended effective June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-02(5)

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-08(1)

**54-05-04-04. Accountability and responsibility for within the delegation process.** It is the responsibility of the licensed nurse delegating the intervention to determine that the unlicensed assistive person is able to safely perform the nursing intervention.

- 1. The registered nurse administrator shall:
  - a. Select nursing service delivery models for the provisions of nursing care which do not conflict with this chapter.

- b. Assess the health status of groups of clients, analyze the data, and identify collective nursing care needs, priorities, and necessary resources.
  - c. Establish training, supervision, and competency requirements of all individuals providing nursing care. The nurse administrator shall identify nursing personnel by a position title, job description and qualifications, and includes licensed nurse delegation to technician. A licensed nurse may delegate an intervention to a technician who may perform limited nursing functions within the ordinary, customary, and usual roles in the individual's field provided the individual:
    - (1) Is enrolled in or has completed a board-recognized formal training program;
    - (2) Is registered or certified by appropriate board-recognized national bodies; or
    - (3) Has completed other education that may be approved by the board.
  - d. Communicate nursing service delivery models and training and competency requirements to nursing personnel.
  - e. Be accountable to provide adequate human and material resources to carry out the delegation process.
2. The registered nurse shall:
- a. Assess the client's individual health status, analyze the data, and identify the client's specific goals, nursing care needs, and necessary interventions.
  - b. Instruct the unlicensed assistive person using step-by-step directions in the delegated nursing intervention and verify the unlicensed assistive person's competence to perform the nursing intervention on an individual and client-specific basis.
  - c. Determine the method of supervision on an individual basis and identify any other licensed nurses who have been assigned the responsibility for supervision.
  - d. Communicate decisions regarding selected interventions and the conditions of supervision to licensed nurses responsible to provide supervision and to unlicensed assistive persons responsible to provide nursing interventions as appropriate and on an individual basis.

- e. Retain accountability for individual delegation decisions and evaluation of the outcomes.
3. The licensed practical nurse shall:
- a. Contribute to the assessment of client's individual health status, nursing care needs, and interventions.
  - b. Assist in instructing unlicensed assistive persons in the delegated nursing intervention and verify the unlicensed assistive person's competence to perform the nursing intervention on an individual and client-specific basis.
  - c. Assist in the supervision on an individual basis.
  - d. Communicate decisions regarding selected interventions to the unlicensed assistive person responsible to provide nursing interventions as appropriate and on an individual basis.
  - e. Retain accountability for individual delegation decisions and evaluation of the outcomes.
4. The unlicensed assistive person shall:
- a. Retain accountability for the action of self.
  - b. Not transfer the authority of a delegated nursing intervention to another unlicensed assistive person.

**History:** Effective February 1, 1998; amended effective June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-02(5)

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-08(1)

## CHAPTER 54-07-02

**54-07-02-01. Unlicensed assistive person registry.** The board shall establish and maintain an unlicensed assistive person registry. The board shall enter identifying demographic information on each individual on the unlicensed assistive person registry upon receipt of information required.

1. An applicant for initial registry status shall submit a completed application and fee that includes an affidavit verification of competency ~~determination~~ by the an employer or licensed nurse. A national nurse ~~assistant~~ aide competency evaluation testing program may be used in lieu of the employer or licensed nurse validation of competency.
2. Upon receipt of the required information, and a fee of ~~ten~~ fifteen dollars, an initial registry listing card ~~for a period of twenty-four months~~ will be sent to the unlicensed assistive person.
3. ~~Registry~~ Initial registry listing is ~~valid for twenty-four months and will be subject to renewal on or before the last day of the twenty-fourth month.~~ Registry listing renewal requires verification of continued competency by the employer or licensed nurse or completion of a national nurse assistant competency evaluation program and proof that the unlicensed assistive person functions under the direction of a licensed nurse June thirtieth of the second year and every two years thereafter.
4. ~~The renewal fee for the unlicensed assistive person will be ten dollars.~~

**History:** Effective November 1, 1992; amended effective September 1, 1994; February 1, 1998; June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** ~~NDCC 43-12.1-08(15)~~ 43-12.1-08(2)(i)

**54-07-02-01.1. Renewal of registration.** Each registration to practice as an unlicensed assistive person shall be renewed every two years prior to the expiration date. Failure to receive the renewal notification does not relieve the registrant of the obligation to renew the registration by the expiration date.

An applicant must submit:

1. A completed application form;
2. The nonrefundable renewal fee of fifteen dollars; and
3. Verification of competency.

**History:** Effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-10(2)

**54-07-02-02.1. Unlicensed assistive person registry status.**

1. Unlicensed assistive persons who carry out delegated nursing interventions must hold current registry status. An unlicensed assistive person may not work as an unlicensed assistive person with an expired registration.
2. Individuals holding current registry status on a board-recognized registry meet this requirement.
3. Individuals who are employed to perform nursing interventions delegated by a licensed nurse who have never held registry status have four months from the date of initial employment to achieve registry status.
4. A lapsed registry status may be reinstated reactivated by submission of ~~the required competency verification by the employer or completion of a national nurse assistant competency evaluation program~~ meeting the renewal requirements and payment of the required fee.

**History:** Effective February 1, 1998; amended effective June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(15)~~ 43-12.1-08



## CHAPTER 54-07-03.1

**54-07-03.1-01. Minimum competence requirements for unlicensed assistive persons.** Unlicensed assistive person competence means having the required knowledge, skills, and ability to perform delegated nursing interventions safely, accurately, and according to standard procedures. The unlicensed assistive person shall demonstrate competencies in the following areas ~~as appropriate to the job expectations:~~

1. Infection control.
2. Safety and emergency procedures.
3. Collection and documentation of basic objective and subjective client data.
4. Activities of daily living.
5. ~~Understanding the agency's standards, policies, and procedures.~~
6. Decisionmaking skills.
7. 6. Client rights.
8. 7. Communication and interpersonal skills.
9. 8. Client cognitive abilities and age-specific needs.
10. ~~The unlicensed assistive person may not be delegated medication administration unless the unlicensed assistive person has met the requirements of chapter 54-07-05. The exception is when a licensed nurse specifically delegates to a specific unlicensed assistive person the administration of a specific medication for a specific client.~~

**History:** Effective February 1, 1998; amended effective June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6) 43-12.1-08(1)

## CHAPTER 54-07-05

**54-07-05-01. Statement of intent.** North Dakota Century Code chapter 43-12.1 allows the licensed nurse to delegate and supervise nursing interventions to individuals authorized by the board to perform those functions. Medication administration is a nursing intervention. Medication administration is the responsibility of licensed nurses and requires the knowledge, skills, and abilities of the licensed nurse to ensure public safety and accountability. ~~Nurse assistants~~ Unlicensed assistive persons who have completed a prescribed training program in medication administration or who have been delegated the delivery of a specific medication for a specific client may perform the intervention of giving or applying certain routine, regularly scheduled medications to the client. ~~These medications must~~ Routine, regularly scheduled medications means the components of an identified medication regimen for an individual or groups of individuals with stable conditions which are administered on a routine basis and do not require determination of need, drug calculation, or dosage conversion. The licensed nurse must be available to monitor the client's progress and effectiveness of the prescribed medication regimen. Delegation of medication administration in acute care settings or for individuals with unstable or changing nursing care needs is specifically precluded by these rules.

**History:** Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-08(1)

**54-07-05-02. Definitions.** Repealed effective April 1, 2004. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

- ~~1. "Medication administration" means the delivery of medication by a licensed nurse or an individual directly delegated to and supervised by a licensed nurse, to a client whose use of that medication must be monitored and evaluated applying specialized knowledge, skills, and abilities possessed by a licensed nurse.~~
- ~~2. "Medication assistant" means an individual who has a current registration as a nurse assistant, has successfully completed an approved medication assistant program, has demonstrated competency in the administration of routine, regularly scheduled medications, and possesses a current registration from the board as a medication assistant.~~
  - ~~a. Medication assistant I is a person who has completed all the requirements for a medication assistant program I. A medication assistant I is limited to employment in a setting in which a licensed nurse is not regularly scheduled.~~

- ~~b. Medication assistant II is a person who has completed additional training past the medication assistant program I and met all the requirements for a medication assistant program II. A medication assistant II may be employed both in a setting in which a licensed nurse is regularly scheduled and a setting in which a licensed nurse is not regularly scheduled.~~
- ~~3. "Medication assistant program" means a program of study and clinical practice in the administration of routine, regularly scheduled medications which meets board requirements. The board has developed criteria for two types of programs:~~
  - ~~a. Medication assistant program I, chapter 54-07-06.1, is applicable to settings in which a licensed nurse is not regularly scheduled and provides indirect supervision; or~~
  - ~~b. Medication assistant program II, chapter 54-07-07, is applicable to settings in which a licensed nurse is regularly scheduled and available to provide direct supervision.~~
- ~~4. "Regularly scheduled presence of a licensed nurse" means that a licensed nurse is present a minimum of eight hours in a twenty-four hour period of time in a setting where nursing care is continuously delivered.~~
- ~~5. "Routine, regularly scheduled medications" means the components of a legally identified medication regimen for an individual or groups of individuals with stable, predictable conditions which are administered on a routine basis and do not require drug calculations, determination of need, or dosage conversion.~~
- ~~6. "Specific delegation of medication administration" means the licensed nurse delegates the delivery of specific medication for a specific client to a specific nurse assistant.~~
- ~~7. "Stable and predictable" means a situation where the client's clinical and behavioral status and nursing care needs are determined by the licensed nurse or licensed practitioner to be nonfluctuating and consistent or where the fluctuations are expected and the interventions are planned.~~

**History:** Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

**54-07-05-04. Requirements for supervision. The**

1. In a licensed nursing facility, the licensed nurse must be on the unit and available for immediate direction ~~in a licensed nursing facility.~~
2. In any other setting where the licensed nurse delegates the intervention of giving medications to another individual, the licensed nurse must establish in writing the process for providing the supervision in order to provide the recipient of the medication appropriate safeguards.

**History:** Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-08(1)

**54-07-05-05. Eligibility for medication assistant registration.** An application for registration as a medication assistant and a twenty dollar fee must be submitted by the applicant to the board office. The applicant for medication assistant registration must have registration on ~~a board-recognized nurse assistant~~ the unlicensed assistive person registry. Upon receipt of the required materials, a medication assistant registration I or II, that reflects the type of program completed, will be issued to correspond with the applicant's registration as ~~a nurse assistant~~ an unlicensed assistive person.

1. ~~Nurse assistants~~ Unlicensed assistive persons may obtain initial medication assistant I registration by:
  - a. Successfully completing a board-approved medication assistant program I; or
  - b. Submitting evidence of successful completion of a medication assistant program in another state equal in content to a board-approved medication assistant program I curriculum.
2. ~~Nurse assistants~~ Unlicensed assistive persons may obtain initial medication assistant II registration by:
  - a. Successfully completing a board-approved medication assistant program II;
  - b. Showing satisfactory evidence of successful completion of two semesters of nursing school, each of which must have included a clinical nursing component. The two semesters combined must have included the required medication assistant program II curriculum content; or
  - c. Submitting evidence of successful completion of a medication assistant program in another state equal in content to a board-approved medication assistant program II curriculum.

3. ~~Nurse assistants~~ Unlicensed assistive persons successfully completing a medication assistant program prior to August 1, 1999, are not subject to the initial medication assistant I registration requirements in subsection 1.

**History:** Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-09(6)~~ 43-12.1-09(1)

**54-07-05-06. Medication assistant registration renewal.** The medication assistant registration expiration date must correspond to the individual's ~~nurse assistant~~ unlicensed assistive person registration expiration date and must be renewable at the same time that the ~~nurse assistant~~ unlicensed assistive person registration is renewed. Medication assistant registry listing renewal requires verification of continued competence ~~by a licensed nurse within the employing facility.~~

~~Nurse assistants~~ Unlicensed assistive persons who have completed a medication assistant program prior to August 1, 1999, and ~~nurse assistants~~ unlicensed assistive persons who have completed either the medication assistant program I or the medication assistant program II after that date are not required to retake the program prior to renewing registration at the same level.

**History:** Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-10(2)

**54-07-05-07. ~~Reinstatement of~~ Reactivation of a lapsed medication assistant registration.** An individual with previous medication assistant training who has not performed medication assistant duties within the last two years must:

1. Demonstrate performance of medication administration to a licensed nurse within the employing facility by satisfactory completion of a board-approved clinical skills checklist; or
2. Complete a board-approved medication assistant program I or II that is appropriate to the practice setting.

**History:** Effective September 1, 1994; amended effective May 1, 1999; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-10(2)

**54-07-05-08. Medication assistant registration disciplinary action.** The registration issued to ~~a nurse assistant~~ an unlicensed assistive person, including

the medication assistant registration, may be revoked, suspended, encumbered, or denied based upon the provisions of chapter 54-02-07.

**History:** Effective September 1, 1994; amended effective February 1, 1998; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-14

**54-07-05-09. Routes or types of medication administration.**

1. Administration of the initial dose of a medication that has not been previously administered to the client must be administered according to organization policy.
2. Medication assistant students and medication assistants I or II may administer medications by the following routes to individuals or groups of individuals with stable, predictable conditions according to organization policy:
  - a. Oral, sublingual, and buccal medications;
  - b. Eye medications;
  - c. Ear medications;
  - d. Nasal medications;
  - e. Rectal medications and enemas;
  - f. Vaginal medications;
  - g. ~~Topical~~ Skin ointments, topical medications, including patches and transdermal medications;
  - h. Metered hand-held inhalants; and
  - i. Unit dose nebulizers.
3. Medication assistant students and medication assistants I or II may only administer medications by the following routes when specifically delegated by a licensed nurse for a specific client:
  - a. Gastrostomy;
  - b. Jejunostomy; and
  - c. Subcutaneous.



4. Medication assistant students and medication assistants I or II may not administer medications by the following routes:
  - a. Central lines;
  - b. Colostomy;
  - c. Intramuscular injection;
  - d. Intravenous medications;
  - e. Heparin lock;
  - f. Nasogastric tube;
  - g. Nonmetered inhaler;
  - h. Intradermal;
  - i. Nonunit dose aerosol/nebulizer; or
  - j. Urethral catheter.
5. Medication assistant students and medication assistants I or II may not administer the following kinds of medications:
  - a. Barium and other diagnostic contrast media; or
  - b. Chemotherapeutic agents.

**History:** Effective May 1, 1999; amended effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-08(1)

## CHAPTER 54-07-06.1

**54-07-06.1-01. Medication assistant program I.** The medication assistant program I is applicable to settings in which a licensed nurse is not regularly scheduled and provides direct or indirect supervision. The medication assistant program I consists of the theoretical concepts of medication administration and supervised clinical administration of medication. The curriculum must meet the requirements established by the board and include, at a minimum:

1. Course objectives described in terms of student outcome competencies, including the following:
  - a. Utilize the principles of safety in the administration of medication;
  - b. Define terms related to the administration of medications;
  - c. Correctly interpret abbreviations commonly used in administration of medications;
  - d. Keep accurate records; and
  - e. Identify legal parameters of the medication assistant role.
2. Medication assistant program I students must complete the clinical portion of the medication assistant program within six months of completion of the theory portion. Failure to do so will render the individual ineligible to administer medications.
3. A passing score of eighty-five percent is required on the theory test with an opportunity to retake the test one time. If a student fails on retake, additional instruction is required before further testing is allowed.
4. Medication assistant program I students shall demonstrate satisfactory performance of medication administration as evidenced by satisfactory completion of the clinical skills checklist.
5. During the clinical learning experience, the licensed nurse shall:
  - a. Provide direct over-the-shoulder supervision with initial medication pass;
  - b. Observe and evaluate the student's performance until a ninety percent performance standard on the clinical skills checklist is obtained; and
  - c. Decrease the amount of supervision only when the student demonstrates the ninety percent performance standard.

6. Medication assistant program coordinators are required to submit to the board office, within two weeks of completion of a course, a list of students completing the medication assistant program. The list must contain the name, address, and social security number of the student; the name and qualifications of the faculty; the clinical facility or employer and address; and facility clinical coordinator of each student who successfully completes the course.
7. A certificate must be awarded to a person who has successfully completed the medication assistant program I. The certificate must include the name and location of the institution, course title, date of completion, full name of the person who completed the program, signature of the program coordinator, and date the certificate was awarded.
8. Medication assistant programs shall maintain records that are available for a period of seven years. These records must include:
  - a. Program records.
    - (1) Curriculum; and
    - (2) Evaluation tools for student performance, both theory and clinical.
  - b. Student records.
    - (1) Course start and completion date;
    - (2) Clinical skills checklist;
    - (3) Examination scores; and
    - (4) Copy of certificate of successful completion.
9. Medication assistant programs must be approved by the board every four years.

Medication assistant programs I conducted prior to August 1, 1997, in North Dakota service settings will have twenty-four calendar months to meet the requirements of this chapter.

**History:** Effective May 1, 1999; amended effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-08(1)

**54-07-06.1-03. Curriculum.** The medication assistant program I curriculum for delegated medication administration must include:

1. Medication concepts:
  - a. Terminology and commonly used abbreviations;
  - b. Classification of medications;
  - c. Generic and trade names;
  - d. Dosage, range, and action;
  - e. Side effects;
  - f. Medication routes; and
  - g. References and sources of information.
2. Roles, responsibilities, legal aspects, and limitations of medication assistant I and licensed nurse:
  - a. Scope of duties for a medication assistant I;
  - b. Licensed nurse responsibilities in relationship to a medication assistant I;
  - c. Client rights, including the right to refuse medication;
  - d. Laws related to medication administration; and
  - e. Knowledge of organization policy related to medication administration.
3. Methods of for medication packaging:
  - ~~a. Unit dose; and~~
  - ~~b. Stock.~~
4. Storage of medication.
5. Administering and charting medications:
  - a. Preparation and administration of medications;
  - b. ~~Five~~ Six rights;
  - c. Use of medication administration record to:

- (1) ~~Verify prescribers' orders;~~
  - ~~(2)~~ Administer medications; and
  - ~~(3)~~ (2) Documentation of medication administration; and
- d. Medication errors and reporting techniques.
- 6. Standard precautions for infection control.
  - 7. An overview of the major categories of medications and body systems.
  - 8. Additional instruction must include those categories of medications relevant to the health care setting where the medication assistant will be employed.
  - 9. Clinical instruction for the purpose of demonstration of medication administration and evaluation of individual competence.

**History:** Effective May 1, 1999; amended effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-08(1)

## CHAPTER 54-07-07

**54-07-07-01. Medication assistant program II.** The medication assistant program II is applicable to settings in which a licensed nurse may or may not be regularly scheduled. The medication assistant program II consists of a minimal timeframe: forty hours of theory, eight hours of laboratory, and thirty-two hours of clinical learning experience. The curriculum must meet the requirements established by the board and include, at a minimum:

1. Course objectives described in terms of student outcome competencies, including the following:
  - a. Utilize the principles of safety in the administration of medication;
  - b. Define terms related to the administration of medications;
  - c. Correctly interpret abbreviations commonly used in administration of medications;
  - d. Keep accurate records; and
  - e. Identify legal parameters of the medication assistant role.
2. Medication assistant program II students who complete the classroom portion of the medication assistant program have six months from the completion of classroom instruction to successfully complete the clinical portion of the program. Failure to do so will render the individual ineligible to complete the clinical portion of the program, unless the individual has performed duties as a medication assistant in another state within the last six months.
3. Tests are developed for each unit in the curriculum, including a final test. A passing score of eighty-five percent is required on each unit test with an opportunity to retake each test one time. If a student fails on retake, additional instruction is required before further testing is allowed. The theory portion of the course must be successfully completed before beginning the clinical portion.
4. Medication assistant students shall demonstrate satisfactory performance of medication administration as evidenced by satisfactory completion of the laboratory skills and clinical skills checklist.
5. During the clinical learning experience, the licensed nurse shall:
  - a. Provide direct over-the-shoulder supervision with initial medication pass;



- b. Observe and evaluate the student's performance until a ninety percent performance standard on the clinical skills checklist is obtained; and
  - c. Decrease the amount of supervision only when the student demonstrates the ninety percent performance standard.
- 6. Medication assistant program coordinators are required to submit to the board office, within two weeks of completion of a course, a list of students completing the medication assistant program. The list must contain the name, address, and social security number of the student; the name and qualifications of the faculty; the clinical facility or employer and address; and facility clinical coordinator of each student who successfully completes the course.
- 7. A certificate must be awarded to a person who has successfully completed the medication assistant program II. The certificate must include the name and location of the institution, course title and length of the program, date of completion, full name of the person who completed the program, signature of the program coordinator, and date the certificate was awarded.
- 8. Medication assistant programs shall maintain records that are available for a period of seven years. These records must include:
  - a. Program records.
    - (1) Curriculum; and
    - (2) Evaluation tools for student performance, both theory and clinical.
  - b. Student records.
    - (1) Course start and completion date;
    - (2) Laboratory skills and clinical skills checklist;
    - (3) Examination scores; and
    - (4) Copy of certificate of successful completion.
- 9. Medication assistant programs shall be approved by the board every four years.

Medication assistant programs II conducted prior to August 1, 1997, in North Dakota service settings will have twenty-four calendar months to meet the requirements of this chapter.

**History:** Effective May 1, 1999; amended effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-08(1)

**54-07-07-03. Curriculum.** The medication assistant program II curriculum for delegated medication administration must include:

1. Medication concepts:
  - a. Terminology and commonly used abbreviations;
  - b. Classification of medications;
  - c. Generic and trade names;
  - d. Dosage, range, and action;
  - e. Side effects;
  - f. Medication routes; and
  - g. References and sources of information.
2. Roles, responsibilities, legal aspects, and limitations of medication assistant II and licensed nurse:
  - a. Scope of duties for a medication assistant II;
  - b. Licensed nurse responsibilities in relationship to a medication assistant II;
  - c. Client rights, including the right to refuse medication;
  - d. Laws related to medication administration; and
  - e. Knowledge of organization policy related to medication administration.
3. Methods of for medication packaging:
  - a. Unit dose; and
  - b. Stock.

4. Storage of medication.
5. Administering and charting medications:
  - a. Preparation and administration of medications;
  - b. ~~Five~~ Six rights;
  - c. Use of medication administration record to:
    - (1) ~~Verify prescribers' orders;~~
    - (2) Administer medications; and
    - (3) (2) Document medication administration; and
  - d. Medication errors and reporting techniques.
6. Standard precautions for infection control.
7. Major categories of medications related to body systems, including:
  - a. Cardiovascular;
  - b. Endocrine;
  - c. Gastrointestinal;
  - d. Integumentary;
  - e. Musculoskeletal;
  - f. Nervous;
  - g. Reproductive;
  - h. Respiratory;
  - i. Sensory; and
  - j. Urinary.
8. Additional instruction must include those categories of medications relevant to the health care setting where the medication assistant will be employed.

9. Laboratory and clinical instruction for the purpose of demonstration of medication administration and evaluation of individual competence.

**History:** Effective May 1, 1999; amended effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-08(1)

## CHAPTER 54-07-08

**54-07-08-01. Specific delegation.** A licensed nurse who delegates the delivery of specific medication administration to a specific nurse assistant for a specific client to an unlicensed assistive person shall:

1. Supply organization procedural guidelines for the ~~nurse assistant~~ unlicensed assistive person to follow in the administration of medication by specific delegation.
2. Teach each ~~nurse assistant~~ unlicensed assistive person for each specific client's medication administration which includes verbal and written instruction for the specific client's individual medications:
  - a. The trade name and generic name;
  - b. The purpose of the medication;
  - c. Signs and symptoms of common side effects, warnings, and precautions;
  - d. Route of administration; and
  - e. Instructions under which circumstances to contact the licensed nurse or licensed practitioner.
3. Observe the ~~nurse assistant~~ unlicensed assistive person administering the medication to the specific client until competency is demonstrated.
4. Verify the ~~nurse assistant's~~ unlicensed assistive person's competency through a variety of methods, including oral quizzes, written tests, and observation. The nurse verifies that the ~~nurse assistant~~ unlicensed assistive person:
  - a. Knows the ~~five~~ six rights for each medication for the specific client:
    - (1) Right client;
    - (2) Right medication;
    - (3) Right dosage;
    - (4) Right route; ~~and~~
    - (5) Right time; and
    - (6) Right documentation.

- b. Knows the name of the medication and common dosage;
  - c. Knows the signs and symptoms of side effects for each medication;
  - d. Knows when to contact the licensed nurse;
  - e. Can administer the medication properly to the client; and
  - f. Documents medication administration according to organization policy.
5. Document the training of the ~~nurse-assistant~~ unlicensed assistive person related to the specific delegation of medication administration for each client.
6. Evaluate the client when medication orders change and determine if further instruction for each ~~nurse-assistant~~ unlicensed assistive person is necessary to implement the change.

**History:** Effective May 1, 1999; amended effective April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(6)~~ 43-12.1-08(1)



## CHAPTER 54-09-01

**54-09-01-01. Statement of intent.** The board recognizes that problems resulting from the diseases of chemical dependency ~~as well as~~ or psychiatric or physical disorders, ~~as well as practice deficiencies,~~ may impair a nurse's ability to safely practice nursing. Nurses who develop such diseases, deficiencies, or disorders may be able to, with appropriate treatment and remediation, ~~be assisted with recovery and~~ return to the practice of nursing. It is the intent of the board that nurses who are chemically dependent, have practice deficiencies, or suffer from psychiatric or physical disorders may be offered an opportunity to seek evaluation, remediation, and treatment and return to or continue the practice of nursing in a manner which benefits the public health, safety, and welfare, as well as aids in the nurse's recovery from such diseases, deficiencies, and disorders. The board supports a nurse monitoring program for nurses who would otherwise be charged with violating the Nurse Practices Act due to chemical dependency, practice deficiencies, or psychiatric or physical disorders. The board will cooperate with employers of nurses duly admitted to the program in order to facilitate the nurse's ability to practice safely while participating in the program.

**History:** Effective September 1, 1996; amended effective June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(12)~~ 43-12.1-08(2)(g)

## CHAPTER 54-09-02

**54-09-02-01. ~~Nurse-advocacy program~~ Program management and administration.** The program is managed and administered by the ~~consultant~~ program coordinator who shall:

1. Serve as a member of the ~~nurse-advocacy program~~ committee.
2. Review and manage the information provided by the nurse related to compliance with the program agreement.
3. Serve as a liaison between the program and treatment providers, employers, and program participants.
4. Provide information and education regarding the program.
5. Report progress of the program and statistical information to the board.

**History:** Effective September 1, 1996; amended effective June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(12)~~ 43-12.1-08(2)(g)

**54-09-02-02. ~~Nurse-advocacy program~~ Program.** When a person licensed to practice nursing seeks treatment for the diseases of chemical dependency, practice deficiencies, or psychiatric or physical disorders that may otherwise lead to formal disciplinary action, the board may abstain from taking formal disciplinary action if the licensee can be treated effectively for such diseases, deficiencies, or disorders and that there reasonably exists no danger to the public health or the board may order a nurse to participate in the program. The board shall:

1. Establish ways and means to identify nurses qualified to enter the program and monitor nurses participating in the program;
2. Establish alternatives to traditional disciplinary procedures of the board; and
3. Establish criteria for the acceptance, denial, and termination of nurses in the program. Only nurses qualified for the program and approved by the ~~consultant~~ coordinator may participate in the program.

Nurses who are not being investigated or currently monitored by the board, but who believe the offerings of the program may aid them personally or professionally, may voluntarily participate in the program to lend support to their recovery process.

**History:** Effective September 1, 1996; amended effective June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(12)~~ 43-12.1-08(2)(g)

#### **54-09-02-03. Eligibility.**

1. Any nurse who self-refers requesting access to the program or is reported to the board for a violation of the Nurse Practices Act and whose nursing practice may be affected by addiction to or abuse of alcohol or other drugs, practice deficiencies, or psychiatric or physical disorders will be advised of the opportunity for participation in the monitoring program, under its terms and conditions, unless the board determines that it is in the best interest of the public that participation in the program not be offered.
2. A nurse offered participation in the program will be advised of the program procedures, requirements, and implications of noncompliance with the program. If admitted to participate in the program, the nurse must agree, in writing, to follow all requirements of the program.
3. The ~~consultant~~ coordinator may grant participation in the program to a nurse after interviewing the nurse and determining that all requirements for admission to the program have been or will be duly met by the nurse seeking entrance into the program.
4. The nurse will enter the program after signing the program agreement.
5. The nurse will pay a thirty dollar per month fee to participate in the ~~nurse advocacy~~ program unless for good cause the fee is waived or reduced by the board.

**History:** Effective September 1, 1996; amended effective February 1, 1998; June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(12)~~ 43-12.1-08(2)(g)

**54-09-02-04. Causes for termination from the program.** The ~~consultant~~ coordinator may terminate a nurse's participation in the program for any of the following reasons:

1. Successful completion of the program.

2. Failure to comply with any aspect of the program. Such failure may result in termination of the nurse's participation in the program and referral to the board for disciplinary action.
3. Information is received, which after investigation by the ~~consultant~~ coordinator, indicates the participant may have violated a provision of the law or rules governing the practice of nursing, in which case the nurse may be referred to the board for disciplinary action.

**History:** Effective September 1, 1996; amended effective June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(12)~~ 43-12.1-08(2)(g)

#### **54-09-02-05. Confidentiality.**

1. All program records and related information ~~related to a nurse's treatment for chemical dependency, psychiatric, or physical disorders as well as program monitoring~~ are shall be confidential unless the nurse is ordered by the board to participate in the program.
2. All program records shall be maintained in a secure storage area.
3. By signing the program agreement, the program participant authorizes communication between the program ~~consultant~~ coordinator and the employers, potential employers, the treatment professionals, appropriate health care professionals, identified sponsors, the drug testing company and its agents, and any other individuals involved in the facilitation and monitoring of the program.
4. After the ~~consultant~~ coordinator has determined that a nurse has duly completed the program requirements, the ~~consultant~~ coordinator shall purge and destroy such records pertaining to the nurse's participation in the program, as permitted by law and the board's records retention schedule.
5. Information or records received by the board prior to acceptance of the applicant into the program or which relate to a nurse terminated from the program under subsections 2 and 3 of section 54-09-02-04 may be utilized by the board in any disciplinary proceedings instituted against the participant.

6. Information ~~otherwise confidential~~ may be shared with the administrator of a comparable program in another jurisdiction when necessary to monitor participation by the nurse under section 54-09-02-06.

**History:** Effective September 1, 1996; amended effective February 1, 1998; June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(12)~~ 43-12.1-08(2)(g)

**54-09-02-06. Other jurisdictions.**

1. Participation in an impaired nurse program in another jurisdiction may be accepted, in whole or part by the ~~consultant~~ coordinator as participation in the program, providing that such comparable program meets the requirements of the board's program.
2. The ~~consultant~~ coordinator may provide information to other jurisdictions when licensing information is requested.
3. By signing the program agreement, the program participant authorizes communication between the program ~~consultant~~ coordinator and other impaired nurse programs to coordinate facilitation and monitoring of the program.

**History:** Effective September 1, 1996; amended effective June 1, 2002; April 1, 2004.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC ~~43-12.1-08(12)~~ 43-12.1-08(2)(g)

**TITLE 55.5**

**BOARD OF OCCUPATIONAL THERAPY PRACTICE**





**FEBRUARY 2004**

**CHAPTER 55.5-01-01**

**55.5-01-01-01. Organization of the board of occupational therapy practice.**

1. **History and function.** The 1983 legislative assembly passed legislation to license occupational therapists, codified as North Dakota Century Code chapter 43-40. This chapter requires the governor to appoint a state board of occupational therapy practice. It is the responsibility of the board to license occupational therapists.
2. **Board membership.** The board shall consist of five members appointed by the governor. Three members must be licensed occupational therapists, one member must be a licensed occupational therapy assistant, and one member must be a consumer. Each board member serves a term of three years. No member may serve more than two successive terms on the board.
3. **Officers.** Officers must be elected annually in January of each year. The board may hire ~~an executive secretary~~ staff as necessary.
4. **Inquiries.** Inquiries regarding the board may be addressed to:

North Dakota State Board of Occupational  
Therapy Practice  
P.O. Box 4005  
Bismarck, ND 58502-4005  
Telephone & Fax (701) 250-0847  
Fax (701) 224-9824  
[www.ndotboard.com](http://www.ndotboard.com)

**History:** Effective April 1, 1988; amended effective June 1, 1993; November 1, 2000; February 1, 2004.

**General Authority:** NDCC 28-32-02.1, 43-40-05

**Law Implemented:** NDCC 43-40-04

## CHAPTER 55.5-02-01

**55.5-02-01-01. Licensure application.** An application for a license to practice occupational therapy must be made to the state board of occupational therapy on forms approved by the board available upon request. The application must contain such information as the board may reasonably require.

1. Each application for a license must be accompanied by:
  - a. A prescribed fee.
  - b. Official verification of a passing score on an examination by a national occupational therapy certifying agency approved by the board and taken within eighteen months of the application.
2. All applications must be signed by the applicant and notarized.
3. Should any information included in the application change during the application process, the applicant must advise the board of those changes.
4. The board may request additional information or clarification of information provided on the application as it deems necessary, including verification of licensure in good standing from other jurisdictions.
5. The board may direct an applicant to appear before the board concerning the application.
6. ~~If the application process extends beyond six months from the date of application, the applicant must submit a new application.~~
7. The board may require a completed self-assessment of the applicant's or licensee's knowledge of the North Dakota laws, rules, and regulations of occupational therapy.

**History:** Effective April 1, 1988; amended effective November 1, 2000; February 1, 2004.

**General Authority:** NDCC 43-40-05

**Law Implemented:** NDCC 43-40-08

**55.5-02-01-02. Licensure renewal.** Licenses are renewable ~~annually~~ biennially in even-numbered years.

1. **Licensure renewal for occupational therapist.**
  - a. Applications for renewal of occupational therapy licenses will be mailed by the board on or before ~~May~~ April first ~~of the renewal year~~ to all licenseholders. Renewal applications, continued competency documentation, and fees ~~are due and payable to the board~~ must be

postmarked by the United States postal service or delivered to the board's office on or before June first of the renewal year.

- b. ~~Occupational therapy renewal license fees therapists~~ are considered delinquent and a late charge shall be assessed if the renewal application is, renewal license fee, and continued competency documentation are not postmarked by the United States postal service or other delivery service delivered to the board's office on or before June first of the renewal year.
- c. Occupational therapy licenses will expire if the renewal ~~form application~~, continued competency documentation, and fees are ~~not received postmarked by the United States postal service or delivered to the board's office by July first~~ June thirtieth of the renewal year. To reinstate an expired license, an applicant must submit:
  - (1) A renewal application form;
  - (2) The renewal license fee;
  - (3) Continued competency documentation; and
  - (4) Late charges as assessed by the board.

No late renewal of an occupational therapy license may be granted more than three years after expiration, at which time the initial application process is required.

- d. The renewal of an occupational therapy license will be mailed to the applicant by July first of the renewal year if the renewal request is complete and postmarked on or before June first of the renewal year.
- e. The board may require a completed self-assessment of the licensee's knowledge of the North Dakota laws, rules, and regulations of occupational therapy.

## **2. Licensure renewal for occupational therapy assistant.**

- a. Application for renewal of an occupational therapy assistant license will be mailed by the board on or before ~~May~~ April first of the renewal year to all licenseholders. Renewal applications, continued competency documentation, and fees ~~are payable to the board must be postmarked by the United States postal service or delivered to the board's office~~ on or before June first of the renewal year.

- (1) An occupational therapy assistant supervised during the renewal period shall submit a renewal application, substantiation of supervision, a renewal license fee, and continued competency documentation.
  - (2) An occupational therapy assistant not practicing occupational therapy during the renewal period shall submit the renewal application, renewal license fee, and continued competency documentation. Upon resumption of occupational therapy practice, the occupational therapy assistant shall submit substantiation of supervision.
- b. Delinquency and late charges.
- (1) Occupational therapy assistants who are supervised at the time of renewal are considered delinquent and a late charge will be assessed if the renewal application, ~~renewal license fee,~~ renewal licensure fee, continued competency documentation, and substantiation of supervision are not submitted; ~~and the renewal application is not~~ delivered to the board's office on or before June first of the renewal year.
  - (2) Occupational therapy assistants who are not practicing occupational therapy at the time of renewal are considered delinquent and a late charge shall be assessed if the renewal application, renewal license fee, and continued competency are not submitted and ~~the renewal application is not~~ delivered to the board's office on or before June first of the renewal year.
- c. Licenses will expire if the renewal form, renewal license fee, continued competency documentation, and substantiation of supervision form ~~is are not received postmarked by the United States postal service or delivered to the board's office by July first~~ June thirtieth of the renewal year. To reinstate an expired license, an applicant must submit:
- (1) A renewal application;
  - (2) The renewal license fee;
  - (3) Substantiation of supervision (if supervised); ~~and~~
  - (4) Continued competency documentation; and
  - (5) Late charges as assessed by the board.

No late renewal of a license may be granted more than three years after expiration, at which time the initial application process is required.

- d. The renewal of license will be mailed to the applicant by July first of the renewal year if the renewal request is completed and postmarked on or before June first of the renewal year.
- e. The board may require a completed self-assessment of the licensee's knowledge of the North Dakota laws, rules, and regulations of occupational therapy.

**History:** Effective April 1, 1988; amended effective November 1, 2000; February 1, 2004.

**General Authority:** NDCC 43-40-05

**Law Implemented:** NDCC 43-40-15

**55.5-02-01-03. Fees.** The board has adopted the following fee payment schedule:

- |  |                    |
|--|--------------------|
| 1. Initial application fees for occupational therapist license and occupational therapy assistant license                                | \$50.00            |
| 2. Initial <u>occupational therapist</u> license fee:  |                    |
| a. <del>Occupational therapist</del>   | <del>\$75.00</del> |
| b. <del>Occupational therapy assistant</del>   | <del>\$55.00</del> |
| a. <u>Application for license received after June thirtieth of the even-numbered year and before July first of the odd-numbered year</u> | <u>\$150.00</u>    |
| b. <u>Application for license received after June thirtieth and on or before December thirty-first of the odd-numbered year</u>          | <u>\$75.00</u>     |
| c. <u>Application for license received on or after January first of an even-numbered year</u>  | <u>\$150.00</u>    |
| 3. <u>Initial occupational therapy assistant license fee:</u>  |                    |
| a. <u>Application for license received after June thirtieth of the even-numbered year and before July first of the odd-numbered year</u> | <u>\$110.00</u>    |
| b. <u>Application for license received after June thirtieth and on or before December thirty-first of the odd-numbered year</u>          | <u>\$55.00</u>     |
| c. <u>Application for license received on or after January first of an even-numbered year</u>  | <u>\$110.00</u>    |

4. Occupational therapists and occupational therapy assistants whose applications for licensure are received on or after January first and on or before June thirtieth of the even-numbered year are exempt from the renewal of license for the next licensing period.
5. Renewal fee:
  - a. Occupational therapist ~~\$75.00~~  
\$150.00
  - b. Occupational therapy assistant ~~\$55.00~~  
\$110.00
- 4- 6. Student limited permit fee:
  - a. Occupational therapist \$40.00
  - b. Occupational therapy assistant \$30.00

Student limited permit fees will be applied to the initial license fee.
- 5- 7. Late fee \$100.00
- 6- 8. Copy of license \$10.00
- 7- 9. Change of license \$10.00
- 8- 10. Verification of license \$20.00
- 9- ~~Therapists who initially become licensed after April first and before July first are exempt from the renewal license fee for the next licensing period.~~

**History:** Effective April 1, 1988; amended effective November 1, 2000; February 1, 2004.

**General Authority:** NDCC 43-40-05, 43-40-07

**Law Implemented:** NDCC 43-40-05, 43-40-07

**55.5-02-01-04. Continued competency.** Continued competency is the ongoing application and integration of knowledge, critical thinking, interpersonal, and psychomotor skills essential to safely and effectively deliver occupational therapy services within the context of a practitioner's role and environment.

1. The board requires a minimum of ~~ten~~ twenty contact hours within the ~~twelve~~ twenty-four months prior to the completed application for renewal of licensure.
  - a. One contact hour is equal to one clock-hour.
  - b. Ten contact hours are equal to one continuing education unit.
2. Any practitioner initially licensed between July first and December thirty-first of the odd-numbered year is required to complete ten contact

hours for that licensing period with twenty contact hours for each subsequent licensing period.

3. Any practitioner initially licensed on or after January first of the even-numbered year has no contact hour requirement until the following licensing period when the licensee is required to complete twenty contact hours for that licensing period and each subsequent licensing period.

4. When a practitioner has not been licensed for up to three years, the practitioner must submit evidence of a minimum of fifteen ~~twenty~~ contact hours of continued competency earned within the twenty-four months prior to the completed application for renewal of license.

~~3. Competency requirements for unlicensed practitioners:~~

~~a. When a practitioner has not been licensed for up to three years, the practitioner must submit evidence of a minimum of fifteen contact hours of continued competency to the board at the time of application for renewal.~~

~~b. When a practitioner has not been licensed for more than three years, the practitioner must submit evidence of a minimum of five contact hours for each year of nonlicensure with at least half of those hours of continued competency earned within the eighteen months preceding application or the practitioner must present official verification of a passing score on an examination by a national occupational therapy certifying agency approved by the board taken within the eighteen months prior to application for licensure.~~

~~4.~~ 5. Board-approved continued competency must:

- a. Be directly related to or supportive of occupational therapy practice;
- b. Enhance the occupational therapist's or occupational therapy assistant's professional development and competence; and
- c. Be specific to the applicant's or licensee's current area of practice or an intended area of practice within the next year.

~~5.~~ 6. Continued competency includes:

- a. Workshops, refresher courses, professional conferences, seminars, or education programs presented by organizations such as AOTA, NBCOT, NDOTA, medical associations, or educational and national or state health organizations. There is no limit on hours that may be earned under this subdivision.



- b. Presentations by licensee:
  - (1) Professional presentations, e.g., inservices, workshops, or institutes. Any such presentation may be counted only one time. There is no limit on hours that may be earned under this paragraph.
  - (2) Community or service organization presentations. Any such presentation may be counted only one time. No more than ~~four~~ eight hours may be earned under this paragraph.
- c. Formal academic coursework.
  - (1) One or two credit hour class is equal to five contact hours.
  - (2) Three or four credit hour class is equal to ten contact hours.
- d. Authoring professional publications. There is no limit on hours that may be earned under this subdivision. Publications include:
  - (1) Book;
  - (2) Chapter in a book;
  - (3) Thesis or dissertation;
  - (4) Article; or
  - (5) Multimedia.
- e. Formal self-study course with a completion certificate. There is no limit on hours that may be earned under this subdivision.
- f. Research approved by the board.
- g. Supervised clinical practice preapproved by the board.
- h. Professional leadership. This category encompasses leadership responsibilities or committee involvement in professional organizations, including officer or committee chairperson in an occupational therapy or related practice area of a professional organization or item writing for a professional certification examination. No more than ~~three~~ six hours may be earned under this subdivision.
- i. Facility-based continued competency education program. No more than ~~three~~ six hours may be earned under this subdivision.
- j. Distance learning activities.

7. Licenses and continuing education providers may submit continuing education courses to the board for preapproval.
- 6: 8. A copy of a continuing education unit certificate must be submitted for board approval. The continuing education unit certificate must contain the person's name, dates of attendance, title of the course, and contact hours. If the program was not formally granted contact hours or continuing education units, the licensee must submit written verification of attendance signed by a supervisor or program coordinator which includes the name of the participant, dates of attendance, title of the course, and hours of the course, not including breaks and lunch.
- 7: 9. Failure to meet the continuing competency requirements as outlined in this section will result in denial of an application for renewal and may subject a licensee to disciplinary action as outlined in North Dakota Century Code section 43-40-16. The board may waive or allow exceptions due to extraordinary circumstances. Contact hour accumulation begins May 15, 2001, for the licensure period of July 1, 2002.
10. Continued competency hours may only be used once to satisfy the requirements of this section.

**History:** Effective April 1, 1988; amended effective November 1, 2000; February 1, 2004.

**General Authority:** NDCC 43-40-05

**Law Implemented:** NDCC 43-40-15

**55.5-02-01-06. Duration of limited permit.** As used in subsections 2 and 3 of North Dakota Century Code section 43-40-13, "next available examination" and "next examination" mean examination within four months of completion of the education and experience requirements.

**History:** Effective February 1, 2004.

**General Authority:** NDCC 43-40-05

**Law Implemented:** NDCC 43-40-13

## **CHAPTER 55.5-02-02**

**55.5-02-02-01. Code of ethics.** The board has adopted and incorporated into this article by reference the principles of occupational therapy code of ethics of the American occupational therapy association adopted by the representative assembly in 2000 ~~M15~~.

**History:** Effective April 1, 1988; amended effective November 1, 2000; February 1, 2004.

**General Authority:** NDCC 43-40-05

**Law Implemented:** NDCC 43-40-16

## CHAPTER 55.5-02-03

**55.5-02-03-01. Supervision.** The occupational therapist shall exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensed therapist. No occupational therapist may supervise more than three occupational therapy assistants at the same time providing that at least one of the occupational therapy assistants has five or more years of experience in occupational therapy.

1. Supervision is a collaborative process that requires both the licensed occupational therapist and the licensed occupational therapy assistant to share responsibility. Supervision is providing direction in the performance of specific, delineated tasks and responsibilities that are delivered by a licensed occupational therapy assistant and includes the responsibility of reviewing the results of any occupational therapy procedure conducted by the supervisee. Appropriate supervision will include consideration given to factors such as level of skill, the establishment of service competency, experience, and work-setting demands, as well as the complexity and stability of the client population to be treated. Supervisors who take a leave of absence or vacation must make arrangements to have their supervisory responsibilities filled by another qualified supervisor.
2. ~~The entry-level~~ Any occupational therapy assistant who has practiced occupational therapy less than one thousand six hundred fifty hours shall receive onsite supervision from a licensed occupational therapist. Onsite supervision means daily, direct, face-to-face collaboration at least twenty-five percent of the workday and for the remaining seventy-five percent of the workday, the supervisor must be on the premises and readily available by methods such as telephone or electronic communication for face-to-face consultation.
3. The occupational therapy assistant, with greater than one thousand six hundred fifty hours but less than five years of work experience in occupational therapy, shall receive monthly, direct, face-to-face collaboration at the worksite by a licensed occupational therapist at least five percent of the total occupational therapy work hours as a practicing occupational therapy assistant with interim supervision occurring by other methods such as telephone or electronic communication.
4. The occupational therapy assistant with greater than five years of occupational therapy work experience shall receive monthly, direct, face-to-face collaboration by a licensed occupational therapist a minimum of two and one-half percent of the total occupational therapy work hours with interim supervision occurring by other methods such as telephone or electronic communication.
5. Licensed occupational therapy assistants, regardless of their years of experience, may require closer supervision by the licensed occupational

therapist for interventions that are more complex or evaluative in nature and for areas in which service competencies have not been established.

6. ~~Minimal supervision~~ Supervision of the occupational therapist limited permitholder and occupational therapy assistant limited permitholder shall include initial and periodic inspection of written evaluations, written intervention plans, patient notes, and periodic evaluation of client interaction. Such reviews and evaluations must be conducted in person by a licensed occupational therapist. ~~A minimum of six hours of supervision per week is required.~~ Supervision is required for a minimum of twenty-five percent of the weekly work hours. An occupational therapy assistant limited permitholder must have onsite supervision by a licensed occupational therapist.
7. Any documentation written by a limited permitholder for inclusion in the client's official record shall also be reviewed and signed by the supervising licensed occupational therapist.
8. The supervising occupational therapist shall determine that limited permitholders and occupational therapy assistants hold current permits or licenses to practice or assist in the practice of occupational therapy prior to allowing the limited permitholders and occupational therapy assistants to engage in or assist in the practice of occupational therapy.

**History:** Effective April 1, 1988; amended effective November 1, 2000; February 1, 2004.

**General Authority:** NDCC 43-40-05

**Law Implemented:** NDCC 43-40-01(3), 43-40-13

## **CHAPTER 55.5-03-01**

### **55.5-03-01-02. Educational background and scope of practice.**

1. The educational background of the occupational therapist includes anatomy, physiology, kinesiology, neuroanatomy, psychology, and other courses from the liberal arts and sciences, and enables the occupational therapist to assess and address an individual's deficits in occupational performance through the use of specific procedures, activities, modalities, and techniques, as taught in an accredited occupational therapy professional education program recognized by the board. The educational preparation and scope of practice of the occupational therapist to perform assessment and intervention may include the following:
  - a. Neurological and physiological sciences:
    - (1) Sensory integrative approaches;
    - (2) Developmental approaches;
    - (3) Sensorimotor approaches;
    - (4) Neurophysiological treatment approaches;
    - (5) Neuromuscular treatment approaches;
    - (6) Sensory education and reeducation;
    - (7) Visual and perceptual training;
    - (8) Integrational and cognitive components;
    - (9) Daily life tasks; and
    - (10) Such other approaches in the neurological and physiological sciences as may be recognized by the board.
  - b. Behavioral and social sciences:
    - (1) Behavioral approaches;
    - (2) Sensory integration;
    - (3) Interpersonal and intrapersonal skill development;
    - (4) Movement therapy;
    - (5) Vocational approaches;

- (6) Entry into community living;
- (7) Retirement planning;
- (8) Self-management training;
- (9) Leisure and play activities;
- (10) Daily life tasks;
- (11) Creative dramatics;
- (12) Disability prevention and health promotion; and
- (13) Such other approaches in the behavioral and social sciences as may be recognized by the board.

c. Biomechanical sciences:

- (1) Work-related programs;
- (2) Vocational programs and activities;
- (3) Range of motion;
- (4) Positioning and seating;
- (5) Design, fabrication, and selection of orthotic devices;
- (6) Design, fabrication, and selection of adaptive equipment;
- (7) Prosthetic training;
- (8) Therapeutic exercise and activity;
- (9) Environmental accessibility;
- (10) Design, provision, and training of assistive technology;
- (11) Daily life tasks; and
- (12) Such other approaches in the biomechanical sciences as may be recognized by the board.

d. Liberal arts and sciences.

- 2. The occupational therapist and occupational therapy assistant are responsible for proving competency in the use of specific procedures, activities, modalities, and techniques. Competency may be displayed

through documented educational programs in accordance with section 55.5-02-01-04.

- a. The board recognizes that the occupational therapist may be qualified and competent in the use of a variety of modalities and that the occupational therapy assistant may utilize modalities under the direct supervision of the occupational therapist.
- b. When physical or therapeutic agents are selected, they may be used only in preparation for, or as an adjunct to, purposeful activity to enhance occupational performance.
- c. These qualifications and competencies may be obtained through programs recognized by the board, including accredited educational programs (including fieldwork education), specific certification, appropriate continuing education, inservice education, and postbaccalaureate higher education.
- d. The occupational therapist and occupational therapy assistant shall:
  - (1) Document and demonstrate these qualifications and competencies at the request of the board;
  - (2) Comply with federal and state laws which, in the opinion of the board, have a direct bearing upon the ability to serve as an occupational therapist and occupational therapy assistant;
  - (3) Comply with the occupational therapy code of ethics of the American occupational therapy association adopted by the representative assembly in 2000 M15 and the standards of practice as revised in May 1999 by the American occupational therapy association; and
  - (4) Provide services in the best interests of the client.
- e. Continuing competency offerings specific to modalities and techniques must conform with:
  - (1) Occupation as the common core of occupational therapy;
  - (2) The applicable provisions of the rules of the board;
  - (3) Occupational therapy code of ethics, as revised in ~~August 1994~~ 2000, by the American occupational therapy association; and
  - (4) Standards of practice, as revised in May 1999, of the American occupational therapy association.



- f. Occupational therapist, occupational therapy assistants, and students of occupational therapy use modalities and techniques only when the individual has received the theoretical and technical preparation necessary for safe and appropriate integration of the intervention in occupational therapy.
- 9. When an occupational therapist delegates the use of modalities to an occupational therapy assistant or student, both shall:
  - (1) Comply with appropriate supervision requirements; and
  - (2) Assure that their use is based on service competency.

**History:** Effective November 1, 1992; amended effective November 1, 2000; February 1, 2004.

**General Authority:** NDCC 43-40-05

**Law Implemented:** NDCC 43-40-01, 43-40-05

**TITLE 61**  
**STATE BOARD OF PHARMACY**



DECEMBER 2003

CHAPTER 61-02-01

**61-02-01-03. ~~Equipment required~~ Pharmaceutical compounding standards.** The minimum of standards and technical equipment to be considered as adequate shall include:

1. Suitable storage facilities.
2. ~~Two scales~~ Scales or balances for bulk and medium weighing, at least one of which must be sensitive to one-half grain [32.40 milligrams] appropriate for the compounding done in the pharmacy.
3. ~~Weights; apothecary set from one-fourth grain to one ounce; avoirdupois set from one-half ounce to two pounds; metric set for ten milligrams to fifty grams.~~ Suitable area of the pharmacy used for compounding activities.
4. ~~Graduates capable of accurately measuring from five minims to one pint and from one-half cubic centimeter to five hundred cubic centimeters.~~
5. ~~Mortars and pestles; glass and wedgewood.~~
6. ~~Spatulas; steel and nonmetallic.~~
7. ~~Glass funnels, assorted sizes.~~
8. ~~Stirring rods.~~
9. ~~Pill tile or ointment pad.~~
40. 4. Suitable heating apparatus.
5. Logbook or record system to track each compounded prescription and the components used.
6. Record book containing formulas with directions for compounding.

- ~~7.~~ A policy and procedure manual is required. Policies and procedures must be in place pertinent to the level of volume and complexity of the compounding operation of the practice.
- ~~44.~~ 8. Poison record book and suitable prescription files.
- ~~42.~~ 9. Suitable current reference sources either in book or electronic data form (available in the pharmacy or on-line) which might include the United States Pharmacopeia and National Formulary, the United States Pharmacopeia Dispensing Information, Facts & Comparisons, Micro Medex, the ASHP Formulary, or other suitable references determined by the board which are pertinent to the practice carried on in the licensed pharmacy.
- ~~43.~~ 10. A reasonable amount of consumable material, such as filter paper, powder papers, litmus paper, empty capsules, ointment jars, bottles, vials, safety closures, powderboxes, labels, and distilled water.
11. It is acceptable to compound drug products to be used by practitioners in their office for administration to patients. These products cannot be dispensed or sold to others. Sales to other pharmacies, clinics, or hospitals are manufacturing and are not allowed.

The board of pharmacy recognizes that the equipment needed will depend on the type of pharmaceutical services offered, and therefore, variations for required equipment may be granted by the board of pharmacy.

**History:** Amended effective August 1, 1983; April 1, 1988; October 1, 1999; December 1, 2003.

**General Authority:** NDCC 28-32-02, 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-35(2), 43-15-35(3), 43-15-36

**Law Implemented:** NDCC 28-32-03, 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-35(2), 43-15-35(3), 43-15-36

## CHAPTER 61-02-08

### 61-02-08-01. Purpose and scope.

1. The state board of pharmacy is responsible for maintaining, continuing, and enhancing the development of the education and professional role of the pharmacist for the protection of the health, welfare, and safety of the citizens of North Dakota.
2. Rural North Dakota is facing an accessibility problem due to closing pharmacies.
3. In order to maintain or make pharmacy services available in areas that have lost their pharmacies or are in jeopardy of losing their pharmacies, rules are necessary to ~~establish a pilot project for~~ permit telepharmacies.
4. This chapter applies to ~~a pilot project of up to five~~ central pharmacies, each with one or more remote sites. Both the central pharmacy and remote site must be located within the state.

**History:** Effective October 1, 2001; amended effective December 1, 2003.

**General Authority:** NDCC 43-15-10(7)(9)(11)(12)(14)(19)

**Law Implemented:** NDCC 43-15-10, 43-15-32, 43-15-34, 43-15-35

### 61-02-08-02. Definitions.

1. "Remote site" means a pharmacy staffed by a registered pharmacy technician with access to its main pharmacy and registered pharmacists by computer link, videolink, and audiolink while open.
2. "Satellite consultation site" means a telepharmacy where any filled prescription ready for dispensing is prepared at another pharmacy and delivered to the satellite for dispensing via computer, videolink, and audiolink to the main pharmacy and a licensed pharmacist.
3. "Telepharmacy" means a central pharmacy with one or more remote sites in which all sites are connected via computer link, videolink, and audiolink.
4. "Telepharmacy in hospitals" means a central hospital pharmacy with one or more remote sites in which all sites are connected via computer, videolink, and audiolink.

**History:** Effective October 1, 2001; amended effective December 1, 2003.

**General Authority:** NDCC 43-15-10(7)(9)(11)(12)(14)(19)

**Law Implemented:** NDCC 43-15-10, 43-15-32, 43-15-34, 43-15-35

### 61-02-08-03. Operations.

1. A remote site shall comply with North Dakota Century Code section 43-15-35 governing requirements for a permit to operate a pharmacy. The remote site is considered to be under the personal charge of the pharmacist at the central pharmacy.
2. A remote site shall be connected to its central pharmacy via computer link, videolink, and audiolink.
3. A remote site shall use its central pharmacy's central processing unit.
  - a. Consecutive prescription numbers and all prescription records must be maintained at the central pharmacy.
  - b. Prescriptions filled at the remote site must be distinguishable on records from those filled at the central pharmacy.
  - c. Daily reports must be separated for the central pharmacy and the remote site but must be maintained at the central pharmacy.
  - d. Pharmacies must be able to generate labels from the central pharmacy or at the remote site.
  - e. All prescriptions distributed at the remote site must have a label that meets requirements set forth in chapter 61-04-06 attached to the final drug container before the pharmacist verifies the dispensing process.
4. A pharmacist at the central pharmacy must approve each prescription before it leaves the remote site.
  - a. Dispensing is considered to be done at the central pharmacy.
  - b. Both the pharmacist's and the technician's initials must appear on the fill screen, patient profile, and label.
  - c. A pharmacist shall compare via videolink the stock bottle, drug dispensed, and strength. The entire label must be checked for accuracy on the videolink.
5. Counseling must be done by a pharmacist via videolink and audiolink. The pharmacist must counsel the patient or the patient's agent on all new prescriptions and refills.
6. A pharmacist must complete monthly inspections of the remote site. Inspection criteria must be included in the policies and procedures for the site. The inspection reports must be maintained until the next state board of pharmacy inspection.

7. The remote site may have a prescription inventory. Controlled substances shall be kept at the remote site in accordance with North Dakota Century Code chapter 19-03.1, the Uniform Controlled Substances Act.
  - a. If controlled substances are kept, the remote site must be registered with the drug enforcement administration and obtain its own drug enforcement administration number.
  - b. All records must be stored at the central pharmacy, except those required by the drug enforcement administration to be at the drug enforcement administration-registered site.
8. There must be policies and procedures in place to ensure the safe and effective distribution of pharmaceutical products and delivery of required pharmaceutical care. There must be an ongoing review of incident reports and outcomes, with appropriate corrective action taken when necessary, to ensure there is no abnormal frequency of errors in dispensing drugs or devices.
9. The telepharmacy location must be in compliance with chapter 61-02-02, building standards for pharmacies; chapter 61-02-03, security standards for pharmacies; and chapter 61-02-04, sanitary standards for pharmacies; except as otherwise provided in this chapter.
10. Dispensing and consultation may be done when the registered pharmacy technician is not present, under the following circumstances:
  - a. The prescription has been prepared by the registered pharmacy technician and checked by the licensed pharmacist.
  - b. The prescription area is locked.
  - c. A separate locked drawer or cabinet is maintained for prescriptions ready for dispensing.
  - d. A log is maintained by the registered pharmacy technician of prescriptions placed in the locked drawer or cabinet.
  - e. A record must be made by the pharmacist as to the date and time at which dispensing and counseling occurs.
  - f. Supportive personnel, trained in the use of the audiolink and videolink, to the licensed pharmacist, are on hand, to assist the patients.
  - g. The patients receive their prescriptions as they are being counseled by the licensed pharmacist.



11. The permitholder or the pharmacist in charge of the central pharmacy must apply for a permit for the remote site. A class K permit is established under section 61-02-01-01 for the purpose of conducting a telepharmacy ~~as part of a pilot project~~. These permits are issued to a remote site connected to a central pharmacy via computer link, videolink, and audiolink.

**History:** Effective October 1, 2001; amended effective December 1, 2003.

**General Authority:** NDCC 43-15-10(7)(9)(11)(12)(14)(19)

**Law Implemented:** NDCC 43-15-10, 43-15-32, 43-15-34, 43-15-35

**61-02-08-07. Telepharmacy satellite consultation sites.**

1. These sites have no prescription inventory.
2. Only filled prescriptions, filled at the central pharmacy, with final patient labeling attached are allowed at these sites.
3. These sites may be controlled by supportive personnel who have been trained in the use of the patient counseling audiolink and videolink necessary for the dispensing and consultation to occur.
4. The supportive personnel assist the patient in accessing the pharmacist via the audiolink and videolink.
5. Prescription refill requests may be communicated to this site by the patient or the patient's agent.
6. Original written prescriptions may be brought to these sites by the patient or the patient's agent for faxing, scanning, and transmitting to the central pharmacy.
7. No prescription or refill communicated from practitioners may be received at these sites.
8. No drug enforcement administration number is necessary as only filled prescriptions will be at the site.
9. Security of filled prescriptions must be maintained by a separate locked drawer or cabinet.
10. A record must be made by the pharmacist as to the date and time at which dispensing and counseling occurred.

**History:** Effective December 1, 2003.

**General Authority:** NDCC 43-15-10(7)(9)(11)(12)(14)(19)

**Law Implemented:** NDCC 43-15-10, 43-15-32, 43-15-34, 43-15-35

**61-02-08-08. Telepharmacy in hospitals.**

1. The supervision required in subsection 3 of section 61-07-01-04 may be accomplished via audiolink, videolink, and computer link, if the hospital has a registered pharmacy technician on duty meeting the qualifications of subsection 1 of section 61-02-08-04.
2. No prescription order may be released for administration to a patient until approved by a pharmacist via the audiolink, videolink, and computer link.
3. The policy and procedures of the hospital pharmacy must address all aspects of the telepharmacy operation, including control of the pharmacy by the registered pharmacy technician in the absence of the pharmacist.
4. Contractual arrangements must be in place for the supervision of the technician by either the consultant pharmacist, another hospital pharmacy with adequate staffing, or a contracted pharmacist providing coverage when pharmacist staffing is not provided at the hospital.

**History:** Effective December 1, 2003.

**General Authority:** NDCC 43-15-10(7)(9)(11)(12)(14)(19)

**Law Implemented:** NDCC 43-15-10, 43-15-32, 43-15-34, 43-15-35

**61-02-08-09. Telepharmacy satellite remote dispensing machine sites.**

1. These sites have prescription inventory, which is secured in an automated dispensing device connected to the central processing unit at the central pharmacy.
2. A pharmacist must approve all prescription orders before they are released from the automated dispensing device.
3. Dispensing and counseling are performed by the licensed pharmacist at the central site via audiolink and videolink.

**History:** Effective December 1, 2003.

**General Authority:** NDCC 43-15-10(7)(9)(11)(12)(14)(19)

**Law Implemented:** NDCC 43-15-10, 43-15-32, 43-15-34, 43-15-35

## CHAPTER 61-04-04

**61-04-04-01. Definition of unprofessional conduct.** The definition of "unprofessional conduct" for purposes of subdivision i of subsection 1 of North Dakota Century Code section 43-15-10 for disciplinary purposes includes, but is not limited to, the following:

1. The violating or attempting to violate, directly, indirectly, through actions of another, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of North Dakota Century Code chapter 43-15, the Prescription Drug Marketing Act, the Robinson-Patman Act, or of the applicable federal and state laws and rules governing pharmacies or pharmacists.
2. Failure to establish and maintain effective controls against diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by state or federal laws or rules.
3. Making or filing a report or record which a pharmacist or pharmacy knows to be false, intentionally or negligently failing to file a report or record required by federal or state law, or rules, willfully impeding or obstructing such filing, or inducing another person to do so. Such reports or records include only those which the pharmacist or pharmacy is required to make or file in his the capacity as a licensed pharmacist or pharmacy.
4. Being unable to practice pharmacy with reasonable skill and safety by reason of illness, use of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition. A pharmacist affected under this subsection shall at reasonable intervals be afforded an opportunity to demonstrate that the pharmacist can resume the competent practice of pharmacy with reasonable skill and safety to his the pharmacist's customers.
5. Knowingly dispensed a prescription drug after the death of a patient.
6. Using a facsimile machine to circumvent documentation, authenticity, verification, or other standards of pharmacy practice.
7. Billing or charging for quantities greater than delivered, or for a brand when a generic is dispensed.
8. Submits fraudulent billing or reports to a third-party payor of prescription charges.
9. Refuses to provide information or answer questions when requested to do so by the patient, which affect the patient's use of medications prescribed and dispensed by the pharmacy.

10. Does not address or attempt to resolve and document a possible prescription error or situation of potential harm to the patient when apparent or should have been apparent to the pharmacist.
11. Does not attempt to affect the possible addiction or dependency of a patient to a drug dispensed by the pharmacist, if there is reason to believe that patient may be so dependent or addicted.
12. The assertion or inference in a public manner of material claims of professional superiority in the practice of pharmacy that cannot be substantiated.
13. The publication or circulation of false, misleading, or otherwise deceptive statements concerning the practice of pharmacy.
14. Refusing to compound and dispense prescriptions that may reasonably be expected to be compounded or dispensed in pharmacies by a pharmacist.
15. Participation in agreements or arrangements with any person, corporation, partnership, association, firm, or others involving rebates, kickbacks, fee-splitting, or special charges in exchange for professional pharmaceutical services, including, but not limited to, the giving, selling, donating, or otherwise furnishing or transferring, or the offer to give, sell, donate, or otherwise furnish or transfer money, goods, or services free or below cost to any licensed health care facility or the owner, operator, or administrator of a licensed health care facility as compensation or inducement for placement of business with that pharmacy or pharmacist. Monetary rebates or discounts which are returned to the actual purchaser of drugs as a cost-justified discount or to meet competition are permitted if the rebates or discounts conform with other existing state and federal rules and regulations.
16. Discriminating in any manner between patients or groups of patients for reasons of religion, race, creed, color, sex, age, or national origin.
17. ~~Divulging or revealing~~ Disclosing to others the nature of professional pharmaceutical services rendered to a patient without the patient's ~~express consent orally or in writing~~ authorization or by order or direction of a court or as otherwise permitted by law. This does not prevent pharmacies from providing information copies of prescriptions to other pharmacies or to the person to whom the prescription was issued and does not prevent pharmacists from providing drug therapy information to physicians for their patients.
18. Improper advertising. Prescription drug price information may be provided to the public by a pharmacy, if all the following conditions are met: No representation or suggestion concerning the drug's safety, effectiveness, or indications for use, is made. No reference is made

to controlled substances listed in ~~schedule~~ schedules II-V of the latest revision of the Federal Controlled Substances Act, North Dakota Uniform Controlled Substances Act, and the rules of the state board of pharmacy.

Interpretation of this definition of unprofessional conduct is not intended to hinder or impede the innovative practice of pharmacy, the ability of the pharmacist to compound, alter, or prepare medications, subsequent to a practitioner's order for the appropriate treatment of patients. Further, it is not intended to restrict the exercise of professional judgment of the pharmacist when practicing in the best interest of his the pharmacist's patient.

**History:** Effective November 1, 1991; amended effective December 1, 2003.

**General Authority:** NDCC 28-32-02, 43-15-10(1)(i)(12)(14)

**Law Implemented:** NDCC 28-32-02

## CHAPTER 61-04-08

### 61-04-08-02. Definitions. For purposes of this chapter:

1. "Collaborative agreement" means the written document signed by a physician and a pharmacist which describes the limited prescribing authority granted the pharmacist under North Dakota Century Code section 43-15-31.4.
2. "Immediate notification" means interactive two-way communication between the pharmacist and physician within twenty-four hours of the initiation or modification of drug therapy, unless specific reference is made in the collaborative agreement to situations in which a notification time limit of up to seventy-two hours is appropriate.
3. "Initiate drug therapy" means to begin administering for the first time a prescribed drug therapy for treating a patient with an existing diagnosis. A licensed physician shall make any diagnosis required.
4. "Medical record" means a written record of clinical care developed and maintained by a patient's physician which contains information and data about a patient's condition sufficient to justify the diagnosis and subsequent treatment. The record must contain further appropriate information as described in section 33-07-01.1-20.
5. "Modify drug therapy" means to change, within the same therapeutic class of drugs, a specific drug, the dosage, or route of delivery of a drug currently being administered for an existing diagnosis.
6. "Pharmacist in an institutional setting" means a pharmacist who:
  - a. Has a written agreement to provide daily or regular pharmaceutical services within a hospital, physician clinic, skilled nursing facility, swing-bed facility, or long-term care facility; and
  - b. Is physically present in the facility when exercising prescriptive practices under the terms of a collaborative agreement.
7. "Supervision" means the active role taken by the physician to oversee the pharmacist throughout the provision of drug therapy to patients under the terms of a collaborative agreement.

**History:** Effective December 1, 1996; amended effective December 1, 2003.

**General Authority:** NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4

**Law Implemented:** NDCC 28-32-02, 43-15-10(9)(12)(14), 43-15-31.4



**TITLE 67**

**DEPARTMENT OF PUBLIC INSTRUCTION**





DECEMBER 2003

CHAPTER 67-01-01

**67-01-01-01. Organization of the department of public instruction.**  
Repealed effective December 1, 2003.

1. **History.** ~~From 1864 to statehood, North Dakota was served by a territorial school board and a superintendent. In 1889, section 12 of article V of the Constitution of North Dakota provided for a state superintendent of public instruction. William Mitchell was the first state superintendent. The 1890 legislative assembly enacted a provision that the superintendent of public instruction must be a holder of a teacher's certificate of highest grade issued in the state. Statutes were also enacted at that time to provide that the state superintendent of public instruction shall have general supervision of the common and secondary schools of the state and shall be an ex officio member of the board of university and school lands.~~
2. **Superintendent.** ~~The state superintendent is an elected, constitutional officer who supervises the K-12 educational system in North Dakota. The superintendent is assisted by staff members in Bismarck and fifty-one county superintendents. The superintendent's broad duties entail the administration of the school laws, the planning, development, and implementation of service functions and technical assistance, liaison to other state agencies and to the various federal departments and agencies, and the official representative of education to various boards and commissions.~~
3. **Fiscal management.** ~~This office is responsible for the preparation and submission of the biennial budget, department payroll, and the internal accounting system. Responsibilities include the preparation of financial statements and various fiscal reports, maintenance of the department budget, grant and contract files, process and issuance of all payments, receipt of all revenue, and coordination of the A-128 audit process.~~
4. **Personnel and administrative office services.** ~~This office performs the personnel services of the department and supervises the~~

~~administrative areas designed to support internal, departmental functions including: mail distribution, telephone coverage, and supply.~~

5. ~~Division of school district support services.~~ This division coordinates and supervises the administrative support services provided to school districts. The director serves as agency public information officer and federal liaison representative, as legislative liaison and liaison to the office of the attorney general, and as the clearing point for requesting and filing of legal opinions.

a. ~~Administration.~~

- (1) ~~Telecommunications council.~~ The educational telecommunications council has twelve members appointed by the governor. Legislation designates who the members shall represent. The council is charged with developing and maintaining a statewide educational telecommunications system. The department provides support services to the council through the director of school district support services.
- (2) ~~Child nutrition and food distribution.~~ This unit is the authorized state agency which administers United States department of agriculture child nutrition programs, nutrition education and training, and commodity assistance for schools, institutions, and low income individuals.
- (3) ~~Management information systems.~~ This office collects, processes, and analyzes data and provides consultative and support services to state agencies, legislative, and school district personnel. The data collected pertains to enrollments, census, staffing, transportation, and school district finances.
- (4) ~~School finance and organization.~~ This office has two major areas of activity. In the area of school district finance, this unit supervises the distribution of state aid; assists with the implementation of the uniform accounting system; provides technical assistance to schools and school districts regarding annexation, reorganization, and dissolution procedures; supervises the school bus transportation program; approves school construction; and manages school construction loan programs. This unit also supervises the school district boundary restructuring program and works with consortiums to qualify for planning grants.
- (5) ~~Technology services.~~ The function of the technology services unit is to provide for administration of all school technology programs, including grant programs, loan programs, and selection of appropriate technologies for distance learning

~~applications. The unit is also responsible for administrative support of the North Dakota educational telecommunications council and for coordination of technology programs with vocational and higher education, and other interested organizations. The administrative systems arm of this unit includes administration of the departments computer network, systems support, application development and information processing.~~

~~b. Instruction:~~

- ~~(1) Assistant superintendent. This unit coordinates and supervises the programmatic areas of the instructional division. The assistant superintendent serves as the liaison to the county superintendents' association and the close up foundation; directs the accreditation activities of the north central association and the organizations concerned about rural education (OCRE).~~
- ~~(2) Adult education and literacy. Through area adult learning centers, the department assists communities in establishing adult learning programs. This unit also administers the displaced homemaker's program, adult education programs for the homeless and contracts sponsored by the Job Training Partnership Act. General educational development (GED) testing and records are also maintained in this unit.~~
- ~~(3) Compensatory education (chapters 1 and 2, ESEA). Chapter 1 of the Elementary and Secondary Education Act provides financial assistance to state and local education agencies to meet the needs of the educationally deprived children. The migrant education program and the education of homeless children and youth program are also coordinated through this unit.~~

~~Chapter 2 of Elementary and Secondary Education Act provides grants to local educational agencies to improve student achievement and the quality of education for students.~~

- ~~(4) Curriculum. This unit coordinates the development of state curriculum guidelines. In addition, this unit is responsible for the dissemination of the national diffusion network programs; administration of title II math/science programs; coordination of the teacher learning centers; coordination of the North Dakota curriculum council; and maintenance of the curriculum library.~~

- (5) ~~Elementary education/school improvement. This unit assures that elementary schools are in compliance with state statutes and administers the voluntary state accreditation program. Technical assistance, consultation, and collaborative activities are provided to further the quality of elementary education. The unit staff works with secondary education in reference to the state school improvement process and the director serves as NCA associate director, elementary schools.~~
- (6) ~~Guidance and counseling, drug free schools/testing/health. This unit provides consultation and technical assistance to schools and guidance counselors; administers the guidance counselors credentialing program; coordinates the national assessment of educational progress (NAEP); administers the drug free schools and chemical health programs; directs the statewide standardized achievement test program; facilitates inclusion of career development concepts into the school curriculum offerings; and coordinates health education including AIDS prevention and education activities.~~
- (7) ~~Indian education. The Indian education unit administers several state and federal grants which provide consultation and technical assistance, serve educational agencies and local school district personnel (inclusive of parents and students) serving students who are American Indian, refugee and limited English proficient/bilingual students. Activities also include data collection; development and dissemination of culturally appropriate curricula; and coordinating a federally funded program which provides direct funding assistance to eligible school districts which enroll significant numbers of newly arriving refugees.~~
- (8) ~~Secondary education/school improvement. This unit assures that middle level/junior high and high schools are in compliance with state statutes and administers the state accreditation program. Technical assistance, consultation, and collaborative activities are provided to further the quality of secondary education. The unit staff works with elementary education in reference to the state school improvement process. The director serves as the deputy state director for north central association, commission on schools.~~
- (9) ~~Special education. State and federal statutes require this unit to prescribe the rules and regulations for special education; assist school districts in the development and administration of special education programs, and establish the standards and provide for the approval and certification of schools;~~

~~teachers, and facilities. This unit also administers the gifted and talented program.~~

~~(10) Special projects. The function of the special projects unit is to provide technical assistance and inservice training to school boards, administrators, elementary and secondary teachers, supervisors, counselors, community organizations, and governmental agencies in a wide range of educational programs that address the needs for education equity and enrichment. These programs include: civil rights desegregation, technical assistance and training (race, national origin, and gender equity), refugee transitional program, multicultural education, national endowment for the humanities institutes, and the Robert C. Byrd scholarship program. In addition, the unit director acts as liaison between the department and the leadership educational administration development (LEAD) program and coordinates education restructuring efforts for the department.~~

~~(11) Teacher certification. The certificates for teachers and credentials for administrators as required by state law and department regulation are issued by this unit. The guidelines and regulations for teacher preparation and program approval, certification, and staff development are adopted by the superintendent of public instruction after consultation with the teachers' professional practices commission and after holding public hearings.~~

~~(12) Division of independent study (Fargo). This division operates the eighth largest public high school correspondence program in the United States and serves students from forty-one states and fourteen foreign countries. Required and elective courses are offered to supplement high school curricula and to provide an alternate method of earning a high school diploma. The division is north central association accredited.~~

~~The division also administers the North Dakota state film library which rents educational videotapes and sixteen millimeter films, and acts as a video film depository on a fee basis for other state agencies.~~

~~The talented and gifted resource center is located at the division. The talented and gifted resource center provides materials and information related to gifted education to teachers of rural, gifted students.~~

~~(13) North Dakota state library (Bismarek). The major goals of the North Dakota state library are: to provide or~~

~~coordinate the library services to those patrons with unique needs such as state government officials and employees, those without direct local library service, the blind and physically handicapped, and the clientele of state-supported institutions; to assist public libraries through advice and consulting services in areas such as collection development, technical services, budgeting and finances, building and facility planning, automation, and program development and evaluation; to coordinate the sharing of resources among the state's public library collections; to improve the quality of library services by providing continuing educational opportunities for librarians and public library trustees; and to equitably distribute and administer state and federal grants funds in accordance to applicable state and federal regulations.~~

- (14) ~~North Dakota division of vision services (Grand Forks). The North Dakota division of vision services provides a variety of services for visually impaired and multihandicapped/visually impaired school age children. Specific services provided by the North Dakota vision services include: outreach evaluation and consultation services, center-based educational services, and the loaning of materials through the instructional resource center. Through interagency agreement with the department of human services, office of vocational rehabilitation, services are also available to blind or visually impaired adults.~~

~~Examples of some of the services offered are as follows: outreach services - low vision and educational evaluations, teacher consultations, family support services and recommendations for program development; center-based educational services - direct instruction in independent living, communications and vocational training, diagnostic evaluations, and recommendations for continued programming; instruction resource center - large print and Braille textbooks, recorders, taped texts, electronic reading devices, and curriculum enhancements for the visually impaired.~~

- (15) ~~North Dakota school for the deaf (Devils Lake). The North Dakota school for the deaf is a fully accredited educational institution serving the educational needs of hearing-impaired students aged zero to twenty-one in North Dakota. Birth to two years of age falls in the parent/infant program, and ages three - twenty-one years is through the school program.~~

~~In addition to the school's traditional role as an educational institution, North Dakota school for the deaf also has become~~

~~a resource center on deafness, serving the needs of hearing impaired citizens statewide. Through its outreach program, the school has expanded consultation services, evaluation and assessment services, and off-campus educational services. Through collaborative and cooperative ventures with other agencies, the school has improved the delivery of services to hearing-impaired citizens.~~

6. ~~Functions subject to North Dakota Century Code chapter 28-32.~~ The function of teacher certification (North Dakota Century Code chapter 15-36) within the instructional division of the department of public instruction is subject to North Dakota Century Code chapter 28-32, the Administrative Agencies Practices Act.
7. ~~Inquiries.~~ Inquiries concerning teacher certification may be addressed to:

~~Director of Teacher Certification  
Department of Public Instruction  
600 East Boulevard Avenue  
Bismarck, North Dakota 58505-0440~~

~~History: Amended effective January 1, 1982; September 1, 1983; November 1, 1985; January 1, 1986; May 1, 1988; September 1, 1988; October 1, 1989; January 1, 1993.~~

~~General Authority: NDCC 28-32-02.4~~

~~Law Implemented: NDCC 28-32-02.4~~

**67-01-01-01.1. Organization of the department of public instruction.**

1. **History.** From 1864 to statehood, North Dakota was served by a territorial school board and a superintendent. In 1889, the constitution of North Dakota provided for a state superintendent of public instruction. William Mitchell was the first state superintendent. The 1890 legislative assembly enacted a provision that the superintendent of public instruction must hold a teacher's certificate of highest grade issued in the state. Statutes were also enacted at that time to provide that the state superintendent of public instruction shall have general supervision of the common and secondary schools of the state and shall be an ex officio member of the board of university and school lands. Effective January of 1991, authority for the supervision of the state schools for the deaf and blind and the state library was transferred to the office of the superintendent.
2. **Superintendent.** The superintendent is an elected, constitutional officer who supervises the kindergarten through grade twelve education system in North Dakota. The superintendent must be a qualified elector of the state, at least twenty-five years old, who holds a teacher's certificate at the highest grade issued by the state. The superintendent is charged with responsibility for the general supervision



of elementary and secondary schools and to assure that North Dakota public and nonpublic elementary, middle-junior high, and high schools comply with statutory minimum requirements. The superintendent administers the state accreditation and education improvement processes; manages the issuance of credentials to administrators, driver education instructors, counselors, library media personnel, and title I and special education personnel; administers summer school programs at both the elementary and high school levels; administers the statewide standardized achievement testing program; adopts and administers rules relevant to the accreditation process; and administers the school food programs and the federally funded technology grant program and is responsible for the administration and implementation of the federal Elementary and Secondary Education Act, also known as "No Child Left Behind". In 1989 the legislative assembly provided that the office of the superintendent of public instruction was to be known as the department of public instruction.

### **3. Administrative units.**

- a. Fiscal management. This unit is responsible for the preparation and submission of the biennial budget, department payroll, and the internal accounting system. Responsibilities include the preparation of financial statements and various fiscal reports, maintenance of the department budget, grant and contract files, process and issuance of all payments, receipt of all revenue, and coordination of school districts and other sub-recipient audits. The director coordinates agency risk management activities.
- b. Human resources management and office services. This unit performs personnel services for the department and supervises the administrative areas that support internal departmental functions, including printing, mail distribution, purchasing, and business communications.
- c. Child nutrition and food distribution. This unit administers United States department of agriculture's child nutrition programs, nutrition education and training programs, and commodity assistance for schools, institutions, and low-income individuals.
- d. Management information systems. This unit performs information technology and data management services to assist state and local education agencies, school personnel, and legislators. This includes administration and support of the local area network, hardware and software, training for users, and coordination with the North Dakota information technology department. This unit also provides application development and consulting services.
- e. School approval and accreditation. This unit assists kindergarten through grade twelve schools in providing quality education;

- administers the accreditation program; reviews public and nonpublic schools for statutory compliance; administers the statewide standardized achievement test program; and provides technical assistance for dual credit. The unit also administers the issuance of credentials for administrators, counselors, library media personnel, and driver education personnel.
- f. School finance and organization. This unit is responsible for several major areas of activity. In the area of school district finance, this unit supervises the distribution of state aid and assists with the implementation of the uniform accounting system. In the area of school organization, the unit provides technical assistance to schools and school districts regarding annexation, reorganization, and dissolution procedures; provides support and technical assistance for open enrollment; supervises the school bus transportation program; approves school construction; and manages school construction loan programs. This unit also provides administrative support to the state board for public school education and collects teacher compensation data.
  - g. Adult education and literacy. This unit provides funding and technical assistance to local programs and monitors progress of each funded project. This unit is also responsible for the administration of the general education development testing program.
  - h. Compensatory education. This unit provides financial assistance to state and local educational agencies to meet the needs of educationally deprived, at-risk children. The goal of title I is to provide instructional services and activities to meet the needs of disadvantaged children identified as failing, or most at risk of failing, the state's challenging performance standards. This includes programs for migrant education and education of homeless children. The even start intergenerational literacy program, reading first, and the comprehensive school reform are also coordinated through this unit.
  - i. Education improvement. This unit is responsible for the overall administration of the department's education improvement efforts, the development of state content standards and assessments, administration of title III English language acquisition programs and immigration, and offers statewide professional development opportunities (title II) and innovative programs (title V).
  - j. Special education. This unit prescribes state and federal rules and regulations for special education and assists school districts in the development and administration of special education programs.

- k. Special projects. This unit administers the twenty-first century community learning centers grant, a competitive grant that provides opportunities for student academic enrichment in an afterschool or out of school time setting. Additionally, this unit assists with administrative rules development and special projects that arise.
- l. School health programs. This unit administers the title IV-part A safe and drug free schools program and coordinates health education including AIDS prevention.
- m. Education technology. This unit allocates federal title II D technology grants funds to school districts to implement and integrate technology with school curricula in core academic skills. Allocation of grant funds is based on a competitive application process.

#### **4. Divisions.**

- a. North Dakota state library. The state library was established as the public library commission in 1907 and occupied a single room in the state capitol. In 1909, the library's name was changed to the state library commission. The commission consisted of three members - the superintendent of public instruction, the president of the North Dakota library association, and a member appointed by the governor. In 1927 the library was removed from the board of regents; it came under the auspices of the director of institutions until administrative authority was transferred to the superintendent of public instruction in 1989, effective January 1, 1991. The state library commission occupied the liberty memorial building on the capitol grounds from 1936-70 and later moved to the Randal building north of Bismarck. The agency's name was changed to the North Dakota state library in 1979 and in 1982 the state library returned to the liberty memorial building, its present location.

Today the superintendent appoints the state librarian. The state library specializes in state-of-the-art information services to state agencies and the general public and assumes a leadership role in promoting the development of library service for all North Dakota residents. Major goals of the state library are to provide library services to state government officials and employees, provide library services to patrons without direct local library services and to persons who are blind and physically disabled, and to provide libraries with consulting services in areas of collection, development, and evaluation. The state library coordinates the sharing of resources, provides continuing educational opportunities for librarians and public trustees, and maintains the state document depository program.

- b. North Dakota vision services - school for the blind. The school for the blind was created by the constitution in 1889, established by the legislative assembly in 1895, and opened in Bathgate, North Dakota, in 1908. In 1952, a constitutional amendment authorized selection of another location. An initiated measure adopted in 1958 provided funds for a new school located near the university of North Dakota in Grand Forks. The new facilities, administered by the director of institutions, opened in September of 1961. Authority for the supervision of the school was transferred to the department of public instruction in 1989, effective January 1, 1991. The 2001 legislative assembly changed its name to North Dakota vision services - school for the blind and it now functions as a statewide, comprehensive resource center and works cooperatively with related agencies in providing a full range of services to all persons who are blind or visually impaired, including those with multidisabilities. The superintendent of public instruction appoints the school superintendent. Land grant income and legislative appropriation support the school.
- c. North Dakota school for the deaf. The school for the deaf, created by the constitution in 1889 and established by the first legislative assembly in 1890, opened in 1890 and was located in Devils Lake, North Dakota. The school for the deaf was administered by the director of institutions until January 1, 1991, when supervision was transferred to the department of public instruction. The school provides a free educational program for deaf children between the ages of birth and twenty-one. In addition to the school's traditional role as an educational institution, North Dakota school for the deaf also has become a resource center on deafness, serving the needs of hearing-impaired citizens statewide. The school is supported by land grant income and legislative appropriation.

**History:** Amended effective January 1, 1982; September 1, 1983; November 1, 1985; January 1, 1986; May 1, 1988; September 1, 1988; December 1, 2003.

**General Authority:** NDCC 28-32-02(2)

**Law Implemented:** NDCC 28-32-02(2)

**67-01-01-02. Inquiries and contact information.** The public may obtain information or make submissions or requests by contacting the department of public instruction.

1. General inquiries regarding the department of public instruction may be addressed to the superintendent of public instruction at:

North Dakota Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Floors 9, 10, and 11  
Bismarck, ND 58505-0440

Telephone inquiries:

Local: (701) 328-2260

Fax: (701) 328-2461

Inquiries regarding the functions of a specific division may be addressed to the director of that division.

2. Mailing address for the North Dakota Vision Services - School for the Blind:

North Dakota Vision Services - School for the Blind

500 Stanford Road

Grand Forks, ND 58203-2799

Telephone inquiries:

Local: (701) 795-2700

Toll free: (800) 421-1181

Fax: (701) 795-2727

3. Mailing address for the North Dakota School for the Deaf:

North Dakota School for the Deaf

1401 College Drive

Devils Lake, ND 58301

Telephone inquiries:

Local: (701) 662-9000

Fax: (701) 662-9009

4. Mailing address for the North Dakota State Library:

North Dakota State Library

604 East Boulevard Avenue, Dept. 250

Bismarck, ND 58505-0800

Telephone inquiries:

Local: (701) 328-2492

Fax: (701) 328-2040

In state toll free: (800) 472-2104

5. The Department of Public Instruction's web page address is  
<http://www.dpi.state.nd.us/>.

**History:** Effective December 1, 2003.

**General Authority:** NDCC 28-32-02.1

**Law Implemented:** NDCC 28-32-02.1

## CHAPTER 67-11-03.1

**67-11-03.1-01. Credential required.** ~~A school must employ a teacher credentialed under this chapter to work directly or indirectly with those students who have failed to benefit from regular classroom instruction. Teachers newly hired for the 2003-04 school year, or a subsequent school year, to work with students who have failed to benefit from regular classroom instruction in reading or mathematics must comply with chapter 67-11-03.2 immediately. Teachers working directly or indirectly with students and who were working in a program supported with title I funds prior to July 1, 2003, may continue to work under credentials issued under this chapter, but must meet the requirements of chapter 67-11-03.2 by July 1, 2006. After July 1, 2003, the consolidated application for title I of a school employing noncredentialed staff that have not received the appropriate credential to teach title I classes or to teach in a schoolwide setting will not be approved. Persons holding valid RE01, RE02, RE03, and RE20 credentials on or prior to July 1, 2002, must comply with this chapter upon expiration of their existing credential.~~

**History:** Effective July 1, 2002; amended effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, §1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, §1119

**67-11-03.1-03. Requirements for mathematics credentials.** Mathematics credentials are issued to mathematics teachers who work directly or indirectly with students at the respective grade level that have failed to benefit from regular classroom instruction in mathematics.

1. To obtain a mathematics credential to instruct students in kindergarten through grade six in an elementary school setting a teacher must:
  - a. Have a major, minor, or endorsement in elementary education;
  - b. Hold a valid North Dakota educator's professional license; and
  - c. Have completed a minimum of six semester hours in mathematics.
2. To obtain a mathematics credential to instruct students in kindergarten through grade twelve a teacher must:
  - a. Have a major, minor, or endorsement in elementary or middle school education;
  - b. Hold a valid North Dakota educator's professional license; and

- c. Have completed a minimum of six semester hours in mathematics, including a course titled in college algebra or higher.

**History:** Effective July 1, 2002; amended effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, §1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, §1119

**67-11-03.1-06. Application process.** An applicant for a credential or initial credential must submit to the title I office:

1. A completed SFN 18041 form, including the applicant's name, ~~social security number~~ educator's professional license number and expiration date, address, telephone number, date of application, type of credential applied for, employment information, ~~contact information for references~~, and signature; and
2. A copy of the applicant's official transcripts.

**History:** Effective July 1, 2002; amended effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, §1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, §1119

**67-11-03.1-07. Renewals - Credentials - Valid license required - Renewal requirements - Synchronizing duration of educator's professional license and credential.** A credential issued under this chapter is valid only until June 30, 2003, and while the credentialed individual holds a valid North Dakota life teacher's certificate or a North Dakota educator's professional license. An applicant for renewal of a credential issued under this chapter must:

1. Renew Subject to section 67-11-03.1-01, renew the credential prior to the expiration of the applicant's educator's professional license, or every five years if the applicant has a life teacher certificate;
2. Provide a copy of official transcripts;
3. Submit a completed SFN 18041 form, including the applicant's name, address, ~~social security number~~ educator's professional license number and expiration date, date, telephone number, type of credential being renewed, employment information, and signature; and
4. Complete continuing education requirements as follows:
  - a. Except when a first-time credential issued under this chapter will expire within twenty-four months of issuance of the new credential because the educator's professional license will expire, must:



- (1) If prior to January 1, 2004, complete four semester hours of graduate level credit before the expiration date of the applicant's credential:
  - (a) The credits must be in mathematics if the credential being renewed is for mathematics;
  - (b) The credits must be in reading if the credential being renewed is for reading;
  - (c) The credits must consist of two each in reading and mathematics if the applicant is renewing both a mathematics and a reading credential; and
  - (d) The credits must consist of education-related courses if the credential being renewed is a secondary generalist title I teacher credential.
- (2) If after December 31, 2003, complete four semester hours of graduate level credit before the expiration date of the applicant's credential.
  - (a) The credits must be in mathematics if the credential being renewed is for mathematics;
  - (b) The credits must be in reading if the credential being renewed is for reading and at least one reading course must be based upon scientifically based reading research;
  - (c) The credits must consist of two each in reading and mathematics if the applicant is renewing both a mathematics and reading credential and at least one reading course must be based upon scientifically based reading research; and
  - (d) The credits must consist of education-related courses if the credential being renewed is a secondary generalist title I teacher credential and at least one reading course must be based upon scientifically based reading research.
- b. An applicant who holds a two-year educator's professional license must complete two semester hours of graduate level credit before the expiration date of the applicant's credential:
  - (1) If prior to January 1, 2004, complete two semester hours of graduate level credit before the expiration date of the applicant's credential:

- (a) The credits must be in mathematics if the credential being renewed is for mathematics;
  - (b) The credits must be in reading if the credential being renewed is for reading;
  - (c) The credits must consist of one each in reading and mathematics if the applicant is renewing both a mathematics and a reading credential; and
  - (d) The credits must consist of education-related courses if the credential being renewed is a secondary generalist title I teacher credential.
- (2) If after December 31, 2003, complete two semester hours of graduate level credit before the expiration date of the applicant's credential.
- (a) The credits must be in mathematics if the credential being renewed is for mathematics;
  - (b) The credits must be in reading if the credential being renewed is for reading and at least one reading course must be based upon scientifically based reading research;
  - (c) The credits must consist of one each in reading and mathematics if the applicant is renewing both a mathematics and reading credential and the reading course must be based upon scientifically based reading research; and
  - (d) The credits must consist of education-related courses if the credential being renewed is a secondary generalist title I teacher credential and at least one reading course must be based upon scientifically based reading research.

**History:** Effective July 1, 2002; amended effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, §1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, §1119

**67-11-03.1-09. Use of federal rules and policies.** Unless otherwise specified in this chapter, eligibility to participate in the title I program is governed

by federal regulations. The local program must conform to lawfully issued rules and policies relating to the title I program.

**History:** Effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, § 1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, § 1119

**67-11-03.1-10. Chapter repeal.** This chapter is repealed effective June 30, 2006.

**History:** Effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, § 1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, § 1119

**CHAPTER 67-11-03.2**  
**READING AND MATHEMATICS CREDENTIALS**

<u>Section</u>	
<u>67-11-03.2-01</u>	<u>Credential Required</u>
<u>67-11-03.2-02</u>	<u>Requirements for Reading Credentials in an Elementary School Setting</u>
<u>67-11-03.2-03</u>	<u>Requirements for Reading Credentials in Grades Five Through Eight in a Middle School or Junior High School Setting</u>
<u>67-11-03.2-04</u>	<u>Requirements for Mathematics Credentials in an Elementary School Setting</u>
<u>67-11-03.2-05</u>	<u>Requirements for Mathematics Credentials in Grades Five Through Eight in a Middle School or Junior High School Setting</u>
<u>67-11-03.2-06</u>	<u>Requirements for Mathematics Credentials in Grades Seven Through Twelve in a Secondary School Setting</u>
<u>67-11-03.2-07</u>	<u>Requirements for Secondary Generalist Title I Teacher in a Secondary School Setting</u>
<u>67-11-03.2-08</u>	<u>Initial Credentials</u>
<u>67-11-03.2-09</u>	<u>Application Process</u>
<u>67-11-03.2-10</u>	<u>Renewals</u>
<u>67-11-03.2-11</u>	<u>Use of Federal Rules and Policies</u>

**67-11-03.2-01. Credential required.** Teachers newly hired for the 2003-04 school year, or a subsequent school year, to work with students who have failed to benefit from regular classroom instruction in reading or mathematics must comply with this chapter immediately. Teachers working directly or indirectly with students who were working in a program supported with title I funds prior to July 1, 2003, and who have previously been issued a credential in title I reading or mathematics, may continue to work under credentials issued under chapter 67-11-03.1, but must meet the requirements of this chapter on or before July 1, 2006. After July 1, 2003, the consolidated application for title I of a school employing staff that have not received the appropriate credential to teach title I classes or to teach in a schoolwide setting will not be approved.

**History:** Effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02; Pub. L. 107-110, § 1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, § 1119

**67-11-03.2-02. Requirements for reading credentials in an elementary school setting.** A reading teacher, who works directly or indirectly with students who have failed to benefit from regular classroom instruction in reading in an elementary school setting, must obtain a reading credential to teach reading in an elementary school setting. To obtain a reading credential to teach students in an elementary school setting, a teacher must:

1. Hold a valid North Dakota educator's professional license;

2. Have a major or endorsement in elementary education;
3. Have completed the required coursework from a state-approved institution of higher education, including:
  - a. Two semester hours in diagnosis and correction of reading disabilities which may not be from a workshop;
  - b. Two semester hours in clinical or laboratory practicum in reading which may not be from a workshop; and
  - c. Two semester hours in reading in the content areas which may be from a workshop; and
4. Complete a minimum of eight semester hours in no fewer than three courses from the areas on the following list. In no event may more than two classes in any of these areas be used to fulfill this requirement:
  - a. Early childhood;
  - b. Research and literature in reading or language arts;
  - c. Exceptional child;
  - d. Creative language activities, including poetry for children, storytelling, writing, and dramatics; or
  - e. Curriculum development.

**History:** Effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, § 1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, § 1119

**67-11-03.2-03. Requirements for reading credentials in grades five through eight in a middle school or junior high school setting.** A reading teacher who works directly or indirectly with students who have failed to benefit from regular classroom instruction in reading in grade five through eight in a middle school or junior high school setting must obtain a credential under this section. To obtain a reading credential to instruct students in grades five through eight in a middle school or junior high school setting a teacher must:

1. Hold a valid North Dakota educator's professional license;
2. Have a major in middle school education, a major in elementary education with an endorsement in middle school, or a secondary degree with an endorsement in middle school; and

3. Have completed the coursework for the secondary generalist as provided in section 67-11-03.2-07.

A reading credential to instruct students in grades seven through twelve in a secondary school setting is obtained under section 67-11-03.2-07.

**History:** Effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, § 1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, § 1119

**67-11-03.2-04. Requirements for mathematics credentials in an elementary school setting.** A mathematics teacher who works directly or indirectly with student who have failed to benefit from regular classroom instruction in mathematics in an elementary school setting must obtain a mathematics credential to teach mathematics in an elementary school setting. To obtain a mathematics credential to instruct students in an elementary school setting a teacher must:

1. Hold a valid North Dakota educator's professional license;
2. Have a major or endorsement in elementary education; and
3. Have completed a minimum of six semester hours in mathematics.

**History:** Effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, § 1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, § 1119

**67-11-03.2-05. Requirements for mathematics credentials in grades five through eight in a middle school or junior high school setting.** A mathematics teachers who works directly or indirectly with students who have failed to benefit from regular classroom instruction in mathematics in grades five through eight in a middle school or junior high school setting must obtain a mathematics credential to teach mathematics in grades five through eight in a middle school or junior high school setting. To obtain a mathematics credential to instruct students in grades five through eight in a middle school or junior high school setting a teacher must:

1. Hold a valid North Dakota educator's professional license;
2. Have a major in middle school education, a major in elementary education with an endorsement in middle school, or a secondary degree with an endorsement in middle school; and

3. Have completed a minimum of six semester hours in mathematics, including a course in college algebra or higher.

**History:** Effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, § 1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, § 1119

**67-11-03.2-06. Requirements for mathematics credentials in grades seven through twelve in a secondary school setting.** A mathematics teacher who works directly or indirectly with students who have failed to benefit from regular classroom instruction in mathematics in grades seven through twelve in a secondary school setting must obtain a mathematics credential to teach mathematics to students in grades seven through twelve in a secondary school setting. To obtain a mathematics credential to instruct students in grades seven through twelve in a secondary school setting a teacher must:

1. Hold a valid North Dakota educator's professional license; and
2. Have a major in mathematics at the secondary level.

**History:** Effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, § 1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, § 1119

**67-11-03.2-07. Requirements for secondary generalist title I teacher in a secondary school setting.** A teacher who instructs students in a secondary school setting in any content subject where reading is a required skill must obtain a credential to instruct students in a secondary school setting. To obtain a credential to instruct students in a secondary school setting who have failed to benefit from regular classroom instruction in any content subject where reading is a required skill a teacher must:

1. Hold a bachelor's degree or endorsement in secondary education as prescribed by the education standards and practices board;
2. Hold a valid North Dakota educator's professional license;
3. Hold a college-granted major in English, social studies, or science; and
4. Complete the required coursework from a state-approved institution of higher education including a minimum of two semester hours in three of the following course areas:
  - a. Foundations or survey of reading;
  - b. Reading in the secondary school;

- c. Diagnosis and correction of reading disabilities;
- d. Clinical or laboratory practicum in reading with secondary students;
- e. Research and the literature in reading or language arts;
- f. Exceptional child;
- g. Curriculum development;
- h. English education methods; or
- i. Reading in the content areas.

**History:** Effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, § 1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, § 1119

**67-11-03.2-08. Initial credentials.**

1. A teacher who holds a valid educator's professional license and either a bachelor's degree in elementary, middle, or secondary education, or an endorsement in elementary, middle, or secondary education, but does not meet the requirements to obtain a credential under section 67-11-03.2-02, 67-11-03.2-03, 67-11-03.2-04, 67-11-03.2-05, 67-11-03.2-06, or 67-11-03.2-07 may apply for an initial credential under this section.
2. An initial credential is valid until the end of the second full school term following the date the credential is issued to the teacher.
3. To obtain an initial credential a teacher must:
  - a. Provide the title I office in the North Dakota department of public instruction with a written offer of employment as a title I teacher from a North Dakota school district;
  - b. Provide the title I office in the North Dakota department of public instruction with a written plan of study which will qualify the teacher for a credential under section 67-11-03.2-02, 67-11-03.2-03, 67-11-03.2-04, 67-11-03.2-05, 67-11-03.2-06, or 67-11-03.2-07 within two calendar years after the date the initial credential is issued. The plan of study must include coursework that, in addition to courses previously taken, will complete the requirements for a credential under either section 67-11-03.2-02, 67-11-03.2-03, 67-11-03.2-04, 67-11-03.2-05, 67-11-03.2-06, or 67-11-03.2-07; and



- c. Provide the title I office in the North Dakota department of public instruction with the items required by section 67-11-03.1-09.

**History:** Effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, § 1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, § 1119

**67-11-03.2-09. Application process.** An applicant for a credential or initial credential must submit to the title I office:

1. A completed SFN 18041 form, including the applicant's name, educator's professional license number and expiration date, address, telephone number, date of application, type of credential applied for, employment information, and signature; and
2. A copy of the applicant's official transcripts.

**History:** Effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, § 1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, § 1119

**67-11-03.2-10. Renewals.** A credential issued under this chapter is valid only while the credentialed individual holds a valid North Dakota life teacher's certificate or a North Dakota educator's professional license. An applicant for renewal of a credential issued under this chapter must:

1. Renew the credential prior to the expiration of the applicant's educator's professional license or every five years if the applicant has a life teacher certificate;
2. Provide a copy of official transcripts;
3. Submit a completed SFN 18041 form, including the applicant's name, address, educator's professional license number and expiration date, application date, telephone number, type of credential being renewed, employment information, and signature; and
4. Complete continuing education requirements as follows:
  - a. Except when a first-time credential issued under this chapter will expire within twenty-four months of issuance of the new credential because the educator's professional license will expire, the applicant must complete four semester hours of graduate level credit before the expiration date of the applicant's credential.
    - (1) The credits must be in mathematics if the credential being renewed is for mathematics;

- (2) The credits must be in reading if the credential being renewed is for reading and at least one reading course must be based upon scientifically based reading research;
  - (3) The credits must consist of two each in reading and mathematics if the applicant is renewing both a mathematics and reading credential and at least one reading course must be based upon scientifically based reading research; and
  - (4) The credits must consist of education-related courses if the credential being renewed is a secondary generalist title I teacher credential and at least one reading course must be based upon scientifically based reading research.
- b. An applicant who holds a two-year educator's professional license must complete two semester hours of graduate level credit before the expiration date of the applicant's credential.
- (1) The credits must be in mathematics if the credential being renewed is for mathematics;
  - (2) The credits must be in reading if the credential being renewed is for reading and at least one reading course must be based upon scientifically based reading research;
  - (3) The credits must consist of one each in reading and mathematics if the applicant is renewing both a mathematics and reading credential and the reading course must be based upon scientifically based reading research; and
  - (4) The credits must consist of education-related courses if the credential being renewed is a secondary generalist title I teacher credential and at least one reading course must be based upon scientifically based reading research.

**History:** Effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, § 1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, § 1119

**67-11-03.2-11. Use of federal rules and policies.** Unless otherwise specified in this chapter, eligibility to participate in the title I program is governed by federal regulations. The local program must conform to lawfully issued rules and policies relating to the title I program.

**History:** Effective June 1, 2003.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 15.1-02-16, 28-32-02; Pub. L. 107-110, § 1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, § 1119

## CHAPTER 67-11-14

### **67-11-14-00.1. Definitions. For purposes of this chapter:**

1. "Instructional support" means:
  - a. The provision of one-on-one tutoring planned by the teacher if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher;
  - b. Assistance with classroom management, including organizing instructional and other materials;
  - c. Providing instructional assistance in a computer laboratory;
  - d. Conducting parental involvement activities;
  - e. Providing support in a library or media center;
  - f. Acting as a translator; or
  - g. Providing instructional support services under the direct supervision of a teacher.
2. "Paraprofessional" means an individual providing service as an aide, paraprofessional, or paraeducator who provides instructional support in an early childhood through grade twelve setting.
3. "Paraprofessionals providing instructional support in a program supported with title I funds" means:
  - a. In a targeted assistance program, paraprofessionals paid with title I funds.
  - b. In a title I schoolwide program, all paraprofessionals in the building.

**History:** Effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**67-11-14-01. Certificate of completion required.** The paraeducator for Paraprofessionals providing instructional support in a program supported with title I funds and paraprofessionals serving students with disabilities, except paraprofessionals providing services only in the speech-language pathology

discipline, must hold the North Dakota certificate of completion for their respective discipline.

**History:** Effective February 1, 2000; amended effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**67-11-14-02. Issuing agency.** The North Dakota paraeducator paraprofessional certificate of completion issuing agency address is issued by the:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

**History:** Effective February 1, 2000; amended effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**67-11-14-03. Certificate of completion standards.** Twenty To obtain a certificate of completion, a paraprofessional must submit a completed application form and:

1. Paraprofessionals providing instructional support to individuals with disabilities must demonstrate completion of twenty contact hours of inservice training for the paraeducator must be conducted within one calendar year of employment in which the paraeducator assumes assigned duties. Areas of preparation include:
  1. a. Student support concepts.
  2. b. Human growth and development and the impact of disabilities.
  3. c. Utilizing effective instructional strategies to serve students with disabilities in integrated settings.
  4. d. Strengthening behavior.
2. Paraprofessionals providing instructional support in a program supported with title I funds must either:
  - a. Obtain a postsecondary degree of associate or higher;
  - b. Complete a minimum of two years of postsecondary education which is considered the equivalent of forty-eight semester hours;  
or

c. Achieve a passing score on a state-approved mathematics, reading, and writing assessment that evaluates at a level equivalent to the second year of college and includes assessment of:

- (1) The knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
- (2) The knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness.

**History:** Effective February 1, 2000; amended effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**67-11-14-04. Verification process - Exclusion.**

1. The local special education unit must have an approved comprehensive system of personnel development plan on file with the superintendent of public instruction detailing how requirements will be met. In order for the comprehensive system of personnel development plan to be approved, it must include:
  - a. The nature and content of the training.
  - b. The number of contact hours.
  - c. A description of local recordkeeping procedures used for verification of training.
2. Indication of completion of twenty hours of training by the paraeducator must be documented by a letter of verification signed by the person providing the training. The letter of verification must be on file in the special education administrative office for monitoring purposes.
3. The requirements of this section do not apply to speech-language pathology paraprofessionals or to paraprofessionals providing instructional support in a program supported with title I funds.

**History:** Effective February 1, 2000; amended effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**67-11-14-05. Effective dates.**

1. Effective on February 1, 2000 December 1, 2003, all certificates will be issued based on the standards and procedures provided in this chapter. Paraprofessionals previously authorized to provide paraprofessional services who continue to work in the same school district must comply with this chapter by July 1, 2005, or must receive an extension from the department, as outlined in subsection 2. Paraprofessionals previously authorized to provide paraprofessional services, who initially begin employment in another school district on or after January 8, 2002, and paraprofessionals initially providing paraprofessional services on or after January 8, 2002, must comply with this chapter immediately.
2. Paraprofessionals previously authorized to provide paraprofessional services who continue to work in the same school district may seek an extension of time to complete their training if the person seeking the extension:
  - a. Was providing paraprofessional services in the same title I school since January 7, 2002, or in the same school district under a title I schoolwide program since January 7, 2002;
  - b. Is pursuing the certificate of completion through the associates degree or two years of higher education option;
  - c. Submits a written plan of study to the department no later than July 1, 2005, documenting that the person has been taking coursework which will qualify the paraprofessional for the certificate of completion by January 8, 2006. The plan of study must include coursework that in addition to any courses previously taken will complete the requirements for the certificate of completion. The plan of study must be provided on letterhead of an accredited institution of higher education and must be signed by the head of the department providing the coursework; and
  - d. On or before January 8, 2006, provides the department with the following items:
    - (1) A completed application for paraprofessional certificate of completion form, including the applicant's name, address, telephone number, date of application, type of credential applied for, employment information, and the applicant's signature.
    - (2) A copy of the applicant's official transcripts showing successful completion of an education curriculum satisfactory to meet the requirements for a certification of completion.

An extension under this subsection is valid only until January 8, 2002.

**History:** Effective February 1, 2000; amended effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**67-11-14-06. Reconsideration.** If an application for a certificate of completion is denied, the applicant will be notified of the opportunity for reconsideration. Upon receipt of a written denial, the applicant may request a reconsideration of the denial. A request for reconsideration must be in writing and must be received by the superintendent of public instruction within twenty-one days of the date the denial was mailed to the applicant by the superintendent of public instruction. Untimely requests will not be considered. The request for reconsideration must discuss:

1. The fact, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the fact, law, or rule should have been applied, giving specific reasons and a thorough analysis.

The superintendent of public instruction will issue a final written response on the reconsideration request within twenty-one days after receiving a complete and timely reconsideration request.

**History:** Effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**67-11-14-07. Use of federal rules and policies.** Unless otherwise specified in this chapter, applicable federal law and program regulations govern paraprofessionals.

**History:** Effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**CHAPTER 67-11-20**  
**CERTIFICATE OF COMPLETION FOR SPEECH-LANGUAGE PATHOLOGY**  
**PARAPROFESSIONALS**

**Section**

<b><u>67-11-20-01</u></b>	<b><u>Definitions</u></b>
<b><u>67-11-20-02</u></b>	<b><u>Certificate of Completion Required</u></b>
<b><u>67-11-20-03</u></b>	<b><u>Issuing Agency</u></b>
<b><u>67-11-20-04</u></b>	<b><u>Certificate of Completion Standards</u></b>
<b><u>67-11-20-05</u></b>	<b><u>Speech-Language Pathology Paraprofessional Services</u></b>
<b><u>67-11-20-06</u></b>	<b><u>Reconsideration</u></b>
<b><u>67-11-20-07</u></b>	<b><u>Use of Federal Rules and Policies</u></b>

**67-11-20-01. Definitions.** For purposes of this chapter:

1. "Speech-language pathology paraprofessional" means an individual providing service as a paraprofessional who meets the requirements of this chapter and provides services authorized in this chapter in a school setting from early childhood through grade twelve.
2. "Supervising speech-language pathologist" means an individual who:
  - a. Supervises no more than two speech-language pathology paraprofessionals;
  - b. Holds a current restricted educator's professional license for speech-language pathology at the master's degree level issued by the North Dakota education standards and practices board or holds a current speech-language pathology license issued by the North Dakota state board of examiners on audiology and speech-language pathology; and
  - c. Has a minimum of one year of full-time experience providing speech-language pathology services since receiving the individual's license.

**History:** Effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09, 43-37-03(4)

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09, 43-37-03(4); 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**67-11-20-02. Certificate of completion required.** Individuals providing speech-language pathology paraprofessional services in school settings from early childhood through grade twelve must hold the North Dakota certificate of completion for speech-language pathology or hold a current restricted educator's professional license for speech-language pathology at the master's degree level issued by the North Dakota education standards and practices board or a current



speech-language pathology license issued by the North Dakota state board of examiners on audiology and speech-language pathology.

**History:** Effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09, 43-37-03(4)

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09, 43-37-03(4); 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**67-11-20-03. Issuing agency.** The North Dakota certificate of completion for speech-language pathology is issued by the:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

**History:** Effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**67-11-20-04. Certificate of completion standards.** To obtain a certificate of completion for speech-language pathology, an individual must submit a completed application form and either:

1. Have been employed as a speech-language pathology paraprofessional on or before October 1, 2003, and have both a bachelor's degree in speech-language pathology or communication disorders and at least one hundred clock-hours of supervised field experience; or
2. Have completed an associate's or bachelor's degree which incorporates:
  - a. Thirty hours of general college education including oral and written communication skills, mathematics, psychology, and the biological and health sciences;
  - b. Thirty hours of college education in the area of speech-language pathology, including classes in anatomy, physiology of speech, language, swallowing and hearing mechanisms, communication development, introduction of clinical processes, and fundamentals of human behavior management; and

- c. A minimum of one hundred clock-hours of fieldwork experience which is supervised by a qualified speech-language pathologist.

**History:** Effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**67-11-20-05. Speech-language pathology paraprofessional services.**

1. Speech-language pathology paraprofessionals may only provide speech-language pathology paraprofessional services under the direct control of a supervising speech-language pathologist.
2. A speech-language pathology paraprofessional may:
  - a. Provide speech-language screenings, without interpretation, following specified screening protocols developed by the supervising speech-language pathologist;
  - b. Perform documented tasks developed by the supervising speech-language pathologist;
  - c. Document students' progress toward meeting objectives and report this information to the supervising speech-language pathologist; and
  - d. Prepare materials, perform scheduling, and maintain space or equipment.
3. A speech-language pathology paraprofessional may not:
  - a. Make independent decisions regarding changes on the student's individual program;
  - b. Perform standardized or nonstandardized diagnostic tests, formal or informal evaluations, or interpret test results;
  - c. Take referrals or dismiss students from a caseload;
  - d. Participate in conferences or other multidisciplinary team meetings without the presence of the supervising speech-language pathologist;
  - e. Disclose confidential information either orally or in writing to anyone not designated by the supervising speech-language pathologist;

- f. Provide counseling to the student or family regarding a communication disorder;
- g. Prepare or sign any formal documentation, including an individualized education program or an assessment plan as a supervising speech-language pathologist; or
- h. Maintain the person's own caseload.

**History:** Effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**67-11-20-06. Reconsideration.** If an application for a speech-language pathology certificate of completion is denied, the applicant will be notified of the opportunity for reconsideration. Upon receipt of a written denial, the applicant may request a reconsideration of the denial. A request for reconsideration must be in writing and must be received by the superintendent of public instruction within twenty-one days of the date the denial was mailed to the applicant by the superintendent of public instruction. Untimely requests will not be considered. The request for reconsideration must discuss:

- 1. The fact, law, or rule the applicant believes was erroneously interpreted or applied; and
- 2. The applicant's arguments on how the fact, law, or rule should have been applied, giving specific reasons and a thorough analysis.

The superintendent of public instruction will issue a final written response on the reconsideration request within twenty-one days after receiving a complete and timely reconsideration request.

**History:** Effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

**67-11-20-07. Use of federal rules and policies.** Unless otherwise specified in this chapter, applicable federal law and program regulations govern speech-language pathology paraprofessionals.

**History:** Effective December 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-02-16, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15); 20 USC 6319(c)-(f); 34 CFR 200.58

## CHAPTER 67-12-01

**67-12-01-01. Minimum standards required.** Except as specifically provided in this chapter, all public schoolbuses operated in North Dakota must meet the minimum body and chassis standards established or referenced in this chapter. Through June 30, 2008, a school may use a noncomplying van to transport school children to and from school and school-related activities if:

1. The van was purchased by the school district and placed into service for the purpose of transporting school children to and from school and school-related activities prior to March 1, 2003;
2. The van is equipped with a seatbelt for the driver and each passenger in the van; and
3. The van is driven in compliance with rules of the road applicable to schoolbuses.

**History:** Effective May 1, 1999; amended effective July 1, 2003; December 1, 2003.

**General Authority:** NDCC 28-32-02, 39-21-27, 39-21-27.1

**Law Implemented:** NDCC 39-21-27, 39-21-27.1

**ARTICLE 67-25**

**FILING AGREEMENTS MADE WITH FEDERAL AGENCIES**

[Repealed effective December 1, 2003]

**TITLE 69**  
**PUBLIC SERVICE COMMISSION**



**MARCH 2004**

**CHAPTER 69-05.2-01**

**69-05.2-01-02. Definitions.** The definitions in North Dakota Century Code section 38-14.1-02 apply to this article and the following terms have the specified meaning except where otherwise indicated:

1. "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation, alluvial valley floors, or other resources may be adversely impacted by surface coal mining and reclamation operations.
2. "Affected area" means any land or water upon or in which surface coal mining and reclamation operations are conducted or located.
3. "Agricultural activities" means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. Those uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.
4. "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.
5. "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.
6. "Best technology currently available" means equipment or techniques which will:



- a. Prevent, to the extent possible, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state law.
  - b. Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values and achieve enhancement of those resources where practicable.
  - c. The term includes equipment or techniques which are currently available anywhere as determined by the commission, even if they are not in routine use.
  - d. The term includes construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities, and sedimentation pond design.
  - e. The commission has the discretion to determine the best technology currently available on a case-by-case basis.
- 7. "Blaster" means a person directly responsible for the use of explosives in surface coal mining operations who is certified under chapter 69-05.2-31.
  - 8. "Cemetery" means any area of land where human bodies are interred.
  - 9. "Coal mining operation" means, for purposes of restrictions on financial interests of employees, the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.
  - 10. "Coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.
  - 11. "Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to, the following: loading facilities, storage and stockpile facilities, sheds, shops and other buildings, water treatment and water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.
  - 12. "Coal processing waste" means earth materials which are wasted and separated from product coal during cleaning, concentrating, or other processing or preparation of coal.

13. "Collateral bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee and which is supported by the deposit with the commission of cash, negotiable bonds of the United States or of North Dakota, or negotiable certificates of deposit of any bank authorized to do business in North Dakota, or an irrevocable standby letter of credit issued by a federally insured or equivalently protected bank authorized to do business in the United States, payable only to the commission upon presentation.
14. "Combustible material" means organic material that is capable of burning, either by fire or through a chemical process (oxidation), accompanied by the evolution of heat and a significant temperature rise.
15. "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations, or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health, or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.
16. "Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.
17. "Complete inspection" means an onsite review of a permittee's or operator's compliance with all permit conditions and requirements imposed under North Dakota Century Code chapter 38-14.1 and this article, within the entire area disturbed or affected by surface coal mining and reclamation operations and includes the collection of evidence with respect to every violation of those conditions or requirements.
18. "Complete permit application" means an application for a surface coal mining and reclamation operations permit, which contains all information required by North Dakota Century Code chapter 38-14.1 and this article, to allow the commission to initiate the notice requirements of North Dakota Century Code section 38-14.1-18 and a technical review for the purpose of complying with the permit approval or denial standards of North Dakota Century Code section 38-14.1-21 and of this article.
19. "Cooperative soil survey" means a field or other investigation that locates, describes, classifies, and interprets for use the soils in a given area. The survey must meet the national cooperative soil survey standards and is the type of survey that is made for operational conservation planning by the United States department of agriculture

natural resource conservation service in cooperation with agencies of the state and, in some cases, other federal agencies. If the survey is not available and a permit applicant is required to have a survey made, the map scale must be 1:20,000.

20. "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included.
21. "Cumulative impact area" means the surface and ground water systems which may be affected until final bond release by:
  - a. The proposed operation and all existing surface coal mining and reclamation operations;
  - b. Any operations for which a permit application has been submitted to the regulatory authority; and
  - c. All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.
22. "Developed water resources" means, for land use purposes, land used for storing water for beneficial uses such as stockponds, irrigation, wildlife habitat, fire protection, flood control, and water supply.
23. "Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings, and also means any other arrangement where the employee may benefit from the employee's holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.
24. "Disturbed area" means those areas that have been affected by surface coal mining and reclamation operations. Areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by North Dakota Century Code chapter 38-14.1 and this article is released.
25. "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.
26. "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

27. "Emergency spillway" means the spillway designed to convey excess water through, over, or around a dam.
28. "Employee" means, for purposes of restrictions on financial interests of employees: any person employed by the commission as a state employee who performs any function or duty under North Dakota Century Code chapter 38-14.1; advisory board, commission members, or consultants who perform any decisionmaking functions for the commission under authority of state law or regulations; and any other state employee who performs any decisionmaking function or duty under a cooperative agreement with the commission. This definition does not include: the public service commissioners, who file annually with the director of the office of surface mining reclamation and enforcement, United States department of the interior; and members of advisory boards or commissions established in accordance with state laws or regulations to represent multiple interests, such as the North Dakota reclamation advisory committee.
29. "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.
30. "Essential hydrologic functions" means with respect to alluvial valley floors, the role of the valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, usefully available for agricultural activities, by reason of its position in the landscape and the characteristics of its underlying material. A combination of those functions provides a water supply during extended periods of low precipitation.
- a. The role of the valley floor in collecting water includes accumulating runoff and discharge from aquifers in sufficient amounts to make the water available at the alluvial valley floor greater than the amount available from direct precipitation.
  - b. The role of the alluvial valley floor in storing water involves limiting the rate of discharge of surface water, holding moisture in soils, and holding ground water in porous materials.
  - c. The role of the alluvial valley floor in regulating the natural flow of surface water results from the characteristic configuration of the channel floodplain and adjacent low terraces.
  - d. The role of the alluvial valley floor in regulating the natural flow of ground water results from the properties of the aquifers which control inflow and outflow.

- e. The role of the alluvial valley floor in making water usefully available for agricultural activities results from the existence of floodplains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the presence of earth materials suitable for the growth of agriculturally useful plants, from the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation, from the natural control of alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for growth of agriculturally useful plants.
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- 31. "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction began prior to August 1, 1980.
  - 32. "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable government-financed construction to be accomplished. Only that coal extracted from within the right of way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right of way or boundary of the area directly affected by the construction shall be subject to the requirements of North Dakota Century Code chapter 38-14.1 and this article.
  - 33. "Fish and wildlife habitat" means lands or waters used partially or wholly for the maintenance, production, protection, or management of species of fish or wildlife.
  - 34. "Flood irrigation" means, with respect to alluvial valley floors, supplying water to plants by natural overflow, or the diversion of flows in which the surface of the soil is largely covered by a sheet of water.
  - 35. "Fragile lands" means geographic areas containing natural, ecologic, scientific, paleontologic, or aesthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, state and national natural landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and aesthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under North Dakota Century Code section 38-14.1-07.

36. "Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.
37. "Government financing agency" means a federal, state, county, municipal, or local unit of government, or a department, bureau, agency, or office of the unit which, directly or through another unit of government, finances construction.
38. "Government-financed construction" means construction funded fifty percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or other equivalent, or in-kind payments.
39. "Ground cover" means the area of ground covered by vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.
40. "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water-saturated.
41. "Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.
42. "Historic lands" means areas containing historic, cultural, or scientific resources. Examples include archaeological sites, national historic landmarks, places listed on or eligible for listing on the state historic sites registry or the national register of historic places, places having religious or cultural significance to native Americans or religious groups or places for which historic designation is pending.
43. "Historically used for cropland" means:
- a. Lands that have been used for cropland for any five years or more out of the ten years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations;
  - b. Lands that the commission determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls

outside the specific five-years-in-ten criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

- C. Lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.
- 44. "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.
- 45. "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.
- 46. "Impounding structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semiliquid materials.
- 47. "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.
- 48. "Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by the employee's spouse, minor child, and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest.
- 49. "Industrial and commercial" means, for land use purposes, land used for:
  - a. Extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products. This includes all heavy and light manufacturing facilities such as chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation

is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.

- b. Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage, or shipping facilities.
- 50. "Intermittent stream" means a stream or part of a stream that flows continuously for at least one month of the calendar year as a result of ground water discharge or surface runoff.
  - 51. "Irreparable damage to the environment" means any damage to the environment that cannot be corrected by action of the permit applicant or the operator.
  - 52. "Knowingly" means, with respect to individual civil penalties, that an individual knew or had reason to know in authorizing, ordering, or carrying out an act or omission on the part of a corporate permittee that the act or omission constituted a violation, failure, or refusal.
  - 53. "Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur.
  - 54. "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.
  - 55. "Materially damage the quantity or quality of water" means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.
  - 56. "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.
  - 57. "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for the germination and growth of plants.
  - 58. "Native grassland" means land on which the natural potential plant cover is principally composed of native grasses, grasslike plants, forbs,



and shrubs valuable for forage and is used for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which is adjacent to or an integral part of these operations is also included.

59. "Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.
60. "Noxious plants" means species as defined in North Dakota Century Code section 63-01.1-02 that have been included on the official state list of noxious weeds.
61. "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.
62. "Operation plan" means a plan submitted by a permit applicant which sets forth a detailed description of the surface coal mining operations proposed to be conducted during the term of the permit within the proposed permit area.
63. "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.
64. "Owned or controlled" and "owns or controls" mean any one or a combination of the relationships specified in subdivisions a and b:
  - a. Being a permittee of a surface coal mining operation; based on instrument of ownership or voting securities, owning of record in excess of fifty percent of an entity; or having any other relationship which gives one person authority, directly or indirectly, to determine the manner in which an applicant, operator, or other entity conducts surface coal mining operations.
  - b. The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority, directly or indirectly, to determine the manner in which the relevant surface coal mining operation is conducted:
    - (1) Being an officer or director of an entity;
    - (2) Being the operator of a surface coal mining operation;

- (3) Having the ability to commit the financial or real property assets or working resources of an entity;
  - (4) Being a general partner in a partnership;
  - (5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten through fifty percent of the entity; or
  - (6) Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.
65. "Partial inspection" means an onsite review of a permittee's or operator's compliance with some of the permit conditions and requirements imposed under North Dakota Century Code chapter 38-14.1 and this article and includes the collection of evidence of any violation of those conditions or requirements.
66. "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.
67. "Performing any function or duty" means those decisions or actions which, if performed or not performed by an employee, affect surface coal mining and reclamation operations under North Dakota Century Code chapter 38-14.1.
68. "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations which has been approved for retention by the commission and other appropriate state agencies.
69. "Permanent impoundment" means an impoundment requested for retention as part of the postmining land use by the surface owner and approved by the commission and, if required, by other state and federal agencies.
70. "Person having an interest which is or may be adversely affected or person with a valid legal interest" includes:
- a. Any person who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by surface coal mining and reclamation operations or any related action of the commission.

- b. Any person whose property is or may be adversely affected by surface coal mining and reclamation operations or any related action of the commission.
  - c. Any federal, state, or local governmental agency.
- 71. "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. "Precipitation event" also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.
  - 72. "Prime farmland" means those lands defined by the secretary of agriculture in 7 CFR 657 and historically used for cropland. Prime farmlands are identified based on cooperative soil surveys and soil mapping units designated as prime farmland by the natural resource conservation service.
  - 73. "Principal shareholder" means any person who is the record or beneficial owner of ten percent or more of any class of voting stock.
  - 74. "Principal spillway" means an ungated pipe conduit with minimum diameter of twelve inches [30.48 centimeters] constructed for the purpose of conducting water through the embankment back to streambed elevation without erosion.
  - 75. "Probable cumulative impacts" means the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regime.
  - 76. "Probable hydrologic consequence" means the projected result of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing, and pattern; the stream channel conditions; and the aquatic habitat on the permit area and adjacent areas.
  - 77. "Productivity" means the vegetative yield produced by a unit area for a unit of time.
  - 78. "Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.
  - 79. "Public building" means any structure that is owned by a public agency or used principally for public business, meetings, or other group gatherings.

80. "Public office" means a facility under the direction and control of a governmental entity which is open to the public on a regular basis during reasonable business hours.
81. "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.
82. "Public road" means a public way for purposes of vehicular travel, including the entire area within the right of way, all public ways acquired by prescription as provided by statute, and all land located within two rods [10.06 meters] on each side of all section lines. This definition does not include those public ways or section lines which have been vacated as permitted by statute or abandoned as provided by statute.
83. "Qualified laboratory" means a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination or statement under the small operator assistance program.
84. "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.
85. "Recreation" means, for land use purposes, land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.
86. "Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the ten-year, twenty-four-hour precipitation event would be that twenty-four-hour precipitation event expected to occur on the average once in ten years. Magnitude of such events are as defined by the national weather service technical paper no. 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.
87. "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the commission. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

88. "Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semiliquid material.
89. "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.
90. "Replacement of water supply" means, with respect to protected water supplies contaminated, diminished, or interrupted by surface mining activities, providing a water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes providing an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for the premining water supplies.
- a. Upon agreement by the permittee and the water supply owner, the obligation to pay such excess operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.
  - b. If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If this approach is selected:
    - (1) Written concurrence must be obtained from the water supply owner; and
    - (2) When final bond release is requested for the tract of land that contained the premine water supply, the newspaper notice and the letters sent to property owners and governmental agencies pursuant to subsection 1 of North Dakota Century Code section 38-14.1-17 must identify the approximate location of the premine water supply and clearly state that the permittee does not intend to replace the water delivery system.

Based on comments that are received on the final bond release application, the commission will determine whether or not a replacement water delivery system is needed to protect the public interest. If the commission determines that a replacement water delivery system is needed, the permittee must install the water delivery system before final bond release will be granted.

91. "Residential" means, for land use purposes, single-family and multiple-family housing, mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.
92. "Return on investment" means the relation of net profit for the last yearly period to ending net worth.
93. "Road" means a surface right of way used, constructed, reconstructed, improved, or maintained for travel by land vehicles for use in surface coal mining and reclamation operations. The term includes access and haul roads used in surface coal mining and reclamation operations, including use by coal hauling vehicles to and from transfer, processing, or storage areas. A road consists of the entire area within the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.
94. "Safety factor" means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.
95. "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with this article and including, but not limited to, a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.
96. "Shelterbelt" means a strip or belt of trees or shrubs planted by man in or adjacent to a field or next to a farmstead, feedlot, or road. Shelterbelt is synonymous with windbreak.
97. "Significant, imminent environmental harm to land, air, or water resources" is determined as follows:
  - a. An environmental harm is any adverse impact on land, air, or water resources, including, but not limited to, plant and animal life.
  - b. An environmental harm is imminent if a condition, practice, or violation exists which is causing such harm or may reasonably be expected to cause such harm at any time before the end of the

reasonable abatement time that would be set under North Dakota Century Code section 38-14.1-28.

- c. An environmental harm is significant if that harm is appreciable and not immediately reparable.
98. "Significant recreational, economic, or other values incompatible with surface coal mining operations" means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on offsite areas which could be affected by mining. Those values to be evaluated for their importance include:
- a. Recreation, including hiking, boating, camping, skiing, or other related outdoor activities.
  - b. Agriculture, aquaculture, or production of other natural, processed, or manufactured products which enter commerce.
  - c. Scenic, historic, archaeologic, aesthetic, fish, wildlife, plants, or cultural interests.
99. "Slope" means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance, e.g., 1v to 5h = 20 percent = 11.3 degrees.
100. "Soil horizons" means contrasting layers of soil lying one below the other, parallel, or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:
- a. A horizon. The uppermost layer in the soil profile, often called the surface soil. It is the part of the soil in which organic matter is most abundant and where leaching of soluble or suspended particles is the greatest.
  - b. B horizon. The layer immediately beneath the A horizon. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizon.
  - c. C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.
101. "Spoil" means overburden that has been disturbed during surface coal mining operations.

102. "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties such as by providing a protective surface coating.
103. "Subirrigation" means, with respect to alluvial valley floors, the supplying of water to plants from a semisaturated or saturated subsurface zone where water is available for use by vegetation. Subirrigation may be identified by:
- a. Diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;
  - b. Increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;
  - c. Mottling of the soils in the root zones;
  - d. Existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or
  - e. An increase in streamflow or a rise in ground water levels, shortly after the first killing frost on the valley floor.
104. "Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal handling, preparation, extraction or storage facilities, and other capital-intensive activities.
105. "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.
106. "Surety bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee or permit applicant which is supported by the performance guarantee of a corporate surety licensed to do business in the state of North Dakota.
107. "Surface coal mining operations which exist on the date of enactment" means all surface coal mining operations which were being conducted on July 1, 1979.
108. "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, or by recovery of coal from a deposit that is not in its original geologic location.



109. "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a forty-five hundredths micron filter.
110. "Tame pastureland" means land used for the long-term production of predominantly adapted, domesticated species of forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.
111. "Temporary diversion" means a diversion of a stream or overland flow which is used during surface coal mining and reclamation operations and not approved by the commission to remain after reclamation as part of the approved postmining land use.
112. "Temporary impoundment" means an impoundment used during surface coal mining and reclamation operations, but not approved by the commission to remain as part of the postmining land use.
113. "Ton" means two thousand pounds avoirdupois [0.90718 metric ton].
114. "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.
115. "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.
116. "Transfer, assignment, or sale of rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the commission.
117. "Unconsolidated streamlaid deposits holding streams" means, with respect to alluvial valley floors, all floodplains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than three feet [0.91 meter] in bankfull width and greater than six inches [15.24 centimeters] in bankfull depth.
118. "Undeveloped rangeland" means, for purposes of alluvial valley floors, lands generally used for livestock grazing where such use is not specifically controlled and managed.
119. "Upland areas" means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace

complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

120. "Valid existing rights" means: a set of circumstances under which a person, subject to commission approval, may conduct surface coal mining operations on lands where North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 would otherwise prohibit such operations. Possession of valid existing rights confers an exception from these prohibitions. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of North Dakota Century Code chapter 38-14.1 and this article.

a. ~~Except for roads:~~

- ~~(1) Those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which authorizes the permit applicant to produce coal by a surface coal mining operation; and~~
- ~~(2) The person proposing to conduct surface coal mining operations on such lands either:~~
  - ~~(a) Had been validly issued or had made a good faith attempt to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct such operations on those lands; or~~
  - ~~(b) Can demonstrate to the commission that the coal is both needed for, and is immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.~~

b. ~~For roads:~~

- ~~(1) A recorded right of way, recorded easement, or a permit for a road recorded as of August 3, 1977; or~~
- ~~(2) Any other road in existence as of August 3, 1977.~~

- c. ~~Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon applicable North Dakota case law concerning interpretation of documents conveying mineral rights or, where no applicable North Dakota case law exists, upon the usage and custom at the time and place where it came into existence, and upon a showing by the applicant~~

~~that the parties to the document actually contemplated a right to conduct the same surface mining activities for which the applicant claims a valid existing right.~~

d. ~~"Valid existing rights" does not mean mere expectation of a right to conduct surface coal mining operations.~~

a. Property rights demonstration. Except as provided in subdivision c, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. Applicable state statutory or case law will govern interpretation of documents relied upon to establish property rights, unless federal law provides otherwise. If no applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

b. Except as provided in subdivision c, a person claiming valid existing rights must also demonstrate compliance with one of the following standards:

(1) All permits or good-faith standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained or a good-faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. At a minimum, an application must have been submitted for the permit required under this article.

(2) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good-faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. Except for operations in existence before August 3, 1977, or for which a good-faith effort to obtain all necessary permits had been made before

August 3, 1977, this standard does not apply to lands already under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 when the commission approved the permit for the original operation or when the good-faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the commission may consider factors such as:

- (a) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 depend upon use of that land for surface coal mining operations.
- (b) The extent to which plans used to obtain financing for the operation before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 rely upon use of that land for surface coal mining operations.
- (c) The extent to which investments in the operation before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 rely upon use of that land for surface coal mining operations.
- (d) Whether the land lies within the area identified on the life-of-mine map submitted under chapter 69-05.2-07 before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.

c. Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in subsection 33 of North Dakota Century Code section 38-14.1-02:

- (1) The road existed when the land upon which it is located came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 and the person has a legal right to use the road for surface coal mining operations.
- (2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of

North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.

(3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.

(4) Valid existing rights exist under subdivisions a and b.

121. "Viable economic unit" means, with respect to prime farmland, any tract of land identified as prime farmland by the state conservationist of the natural resource conservation service that has been historically used for cropland.
122. "Violation, failure, or refusal" means, with respect to individual civil penalties:
  - a. A violation of a condition of a permit issued by the commission; or
  - b. A failure or refusal to comply with any order issued under North Dakota Century Code section 38-14.1-28, or any order incorporated in a final decision issued by the commission under North Dakota Century Code chapter 38-14.1, except an order incorporated in a decision issued under subsection 1 of North Dakota Century Code section 38-14.1-29.
123. "Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.
124. "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.
125. "Willful violation" means an act or omission which violates North Dakota Century Code chapter 38-14.1, this article, or individual permit conditions committed by a person who intends the result which actually occurs.
126. "Willfully" means, with respect to individual civil penalties, that an individual acted:
  - a. Either intentionally, voluntarily, or consciously; and

- b. With intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action or omission that constituted a violation, failure, or refusal.

127. "Woodland" means land where the primary premining natural vegetation is trees or shrubs.

128. "Woody plants" means trees, shrubs, half-shrubs, and woody vines.

**History:** Effective August 1, 1980; amended effective June 1, 1983; April 1, 1985; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1997; May 1, 1999; March 1, 2004.

**General Authority:** NDCC 38-14.1-03, 38-14.1-38

**Law Implemented:** NDCC 38-14.1-02, 38-14.1-03, 38-14.1-21, 38-14.1-38

## CHAPTER 69-05.2-04

### **69-05.2-04-01. Areas unsuitable for mining - Permit application review procedures. Repealed effective March 1, 2004.**

- ~~1. The commission will review the complete permit application to determine whether the proposed operations are limited or prohibited under North Dakota Century Code section 38-14.1-07.~~
- ~~2. Where the proposed operation would be located on any lands listed in subsections 1 through 5 of North Dakota Century Code section 38-14.1-07, the commission will reject the application if the applicant had no valid existing rights for the area on August 3, 1977, or if the operation did not exist on that date. The national park service or the United States fish and wildlife service will be notified of requests for a determination of valid existing rights pertaining to areas under their jurisdiction and shall have thirty days from receipt of notification to respond. A further thirty days will be granted upon request. If no timely response is received, the commission may make the necessary determinations based on available information.~~
- ~~3. Applications for mining federal lands within a national forest must also be submitted to the office of surface mining reclamation and enforcement for processing under 30 CFR subchapter D to determine if mining is permissible under subsection 2 of North Dakota Century Code section 38-14.1-07.~~
- ~~4. Where the proposed operation will be conducted within one hundred feet [30.48 meters] measured horizontally of the outside right-of-way line of any public road (except where mine access roads or haulage roads join such right-of-way line) or where the applicant proposes to relocate any public road, the commission will:~~
  - ~~a. Require the applicant to obtain necessary approvals of the road authority.~~
  - ~~b. Provide, if not included in the road authority's approval process:~~
    - ~~(1) Opportunity for a public hearing in the locality of the proposed operations to determine whether the interests of the public and affected landowners will be protected.~~
    - ~~(2) Notice of a public hearing and publication of it in a newspaper of general circulation in the affected locale at least two weeks before the hearing.~~
    - ~~(3) Its written findings within thirty days after the hearing on whether the interests of the public and affected landowners will be protected.~~

- 5- The applicant shall also submit the following, if applicable:
- a- ~~If proposed operations are to be conducted within five hundred feet [152.40 meters] of any occupied dwelling, a written waiver from the owner, consenting to operations within a closer distance as specified in the waiver and stating that the owner and signator had the legal right to deny mining and waived that right. The waiver must be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver.~~
    - (1) ~~Where the applicant for a permit after August 3, 1977, had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within five hundred feet [152.40 meters] of the dwelling, a new waiver is not required.~~
    - (2) ~~Where the applicant for a permit after August 3, 1977, had obtained a valid waiver as required under this subsection from the owner of an occupied dwelling, that waiver is effective against subsequent purchasers who had actual knowledge or constructive notice of the existing waiver at the time of purchase.~~
  - b- ~~If proposed coal removal areas are within five hundred feet [152.40 meters] of a farm building, documentation showing compliance with North Dakota Century Code chapter 38-18.~~
- 6- ~~Where the operation is proposed to come within three hundred feet [91.44 meters] of any public park or any places listed on the national register of historic places or the state historic sites registry, the commission will transmit to the appropriate federal, state, or local agencies a copy of the completed permit application containing:~~
- a- ~~A request for agency approval or disapproval of the operations.~~
  - b- ~~A notice requiring agency response within thirty days from receipt of the request.~~
- 7- ~~A commission determination that a person holds or does not hold a valid existing right or that surface coal mining operations did or did not exist on August 3, 1977, is subject to review under North Dakota Century Code sections 38-14.1-30 and 38-14.1-35.~~

~~History: Effective August 1, 1980; amended effective June 1, 1986; May 1, 1990; May 1, 1992.~~

~~General Authority: NDCC 38-14.1-03~~

~~Law Implemented: NDCC 38-14.1-04, 38-14.1-07~~

**69-05.2-04-01.1. Areas unsuitable for mining - Areas where surface coal mining operations are prohibited or limited.**



1. Unless the permit applicant has valid existing rights as determined under section 69-05.2-04-01.5 or qualifies for the exception for existing operations under section 69-05.2-04-01.2, surface coal mining operations must not be located:
  - a. On any lands listed in subsections 1 through 5 of North Dakota Century Code section 38-14.1-07.
  - b. Within the boundaries of study rivers or study river corridors established in any guidelines issued under the Wild and Scenic Rivers Act [16 U.S.C. 1276(a)].
2. The commission will not issue a permit or approve an incidental boundary revision for mining on federal lands within a national forest before the secretary of the United States department of the interior, under 30 CFR 761, finds that:
  - a. There are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations; and
  - b. With respect to lands that do not have significant forest cover within national forests west of the one hundredth meridian, the secretary of the United States department of agriculture has determined that surface mining is in compliance with the Surface Mining Reclamation and Control Act of 1977 [30 U.S.C. 1201 et seq.]; the Multiple-Use Sustained Yield Act of 1960 [16 U.S.C. 528-531]; the Federal Coal Leasing Amendments Act of 1975 [30 U.S.C. 181 et seq.]; and the National Forest Management Act of 1976 [16 U.S.C. 1600 et seq.].
3. The prohibition on surface coal mining activities being within one hundred feet [30.48 meters], measured horizontally, of the outside right-of-way line of any public road does not apply:
  - a. Where a mine access or haul road joins a public road; or
  - b. When, as provided by section 69-05.2-04-01.3, the commission or the appropriate public road authority with jurisdiction over the road allows the road to be relocated or closed, or the area within the protected zone to be affected by the surface coal mining operation.
4. The prohibition on surface coal mining activities being within five hundred feet [152.40 meters], measured horizontally, of any occupied dwelling does not apply if the owner of the dwelling has provided a written waiver consenting to surface coal mining operations within the protected zone as provided in section 69-05.2-04-01.4.

5. The prohibition on surface coal mining activities within one hundred feet [30.48 meters], measured horizontally, of a cemetery does not apply if the cemetery is relocated in accordance with all applicable laws and rules.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-04, 38-14.1-07

**69-05.2-04-01.2. Areas unsuitable for mining - Exception for existing operations from areas where mining is prohibited.** The prohibitions and limitations of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 do not apply to coal mining operations for which a valid permit existed when the land came under these protections. This exception applies only to lands that were permitted for mining on August 3, 1977.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-04, 38-14.1-07

**69-05.2-04-01.3. Areas unsuitable for mining - Procedures for relocating or closing a public road or waiving the buffer zone for a public road.**

1. This section does not apply to:
  - a. Lands for which a person has valid existing rights, as determined under section 69-05.2-04-01.5.
  - b. Lands within the scope of the exception for existing operations in section 69-05.2-04-01.2.
  - c. Access or haul roads that join a public road.
2. The applicant must obtain any necessary approvals from the authority with jurisdiction over the road before:
  - a. Relocating a public road;
  - b. Closing a public road; or
  - c. Conducting surface coal mining operations within one hundred feet [30.48 meters], measured horizontally, of the outside right-of-way line of a public road.
3. Before approving an action proposed under subsection 2, the commission, or the public road authority with jurisdiction over the road, must determine that the interests of the public and affected landowners

will be protected. Before making this determination, the commission will, if not included in the road authority's approval process:

- a. Provide a public comment period and opportunity to request a public hearing in the locality of the proposed operation.
  - b. If a public hearing is requested, publish appropriate advance notice at least two weeks before the hearing in a newspaper of general circulation in the affected locality.
  - c. Based upon information received from the public, make a written finding as to whether the interests of the public and affected landowners will be protected. If the commission holds a hearing, this finding will be made within thirty days after the hearing. However, if no public hearing is held and the commission makes this written finding, it may be delayed until the permit is issued.
4. Copies of the road authority's approval documents, including the written finding, must be provided to the commission.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-04, 38-14.1-07

**69-05.2-04-01.4. Areas unsuitable for mining - Procedures for waiving the prohibition on mining within the buffer zone around an occupied dwelling.**

1. This section does not apply to:
  - a. Lands for which a person has valid existing rights, as determined under section 69-05.2-04-01.5.
  - b. Lands within the scope of the exception for existing operations in section 69-05.2-04-01.2.
2. If the applicant proposes to conduct surface coal mining operations within five hundred feet [152.40 meters], measured horizontally, of any occupied dwelling, the permit application must include a written waiver by lease, deed, or other conveyance from the owner of the dwelling. The waiver must clarify that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver will act as consent to surface coal mining operations within a closer distance of the dwelling as specified.
3. If the applicant obtained a valid waiver before August 3, 1977, from the owner of an occupied dwelling to conduct operations within five hundred feet [152.40 meters] of the dwelling, a new waiver is not needed.

4. If the applicant obtains a valid waiver from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed with the recorder in the county where the dwelling is located or if surface coal mining operations have occurred within the five-hundred-foot [152.40-meter] zone before the date of purchase.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-04, 38-14.1-07

**69-05.2-04-01.5. Areas unsuitable for mining - Submission of requests for valid existing rights determinations.**

1. Except for certain federal lands, the commission is responsible for making valid existing rights determinations based on the definition of valid existing rights in section 69-05.2-01-02. The office of surface mining reclamation and enforcement must make the determination on federal lands within:
  - a. The national park system.
  - b. The national wildlife refuge systems.
  - c. The national system of trails.
  - d. The national wilderness preservation system.
  - e. The national wild and scenic rivers system, including study rivers and corridors.
  - f. National recreation areas.
  - g. A national forest.
2. A request for a valid existing rights determination may be submitted before preparing and submitting an application for a permit or incidental boundary revision for the land. The request must include the following:
  - a. A property rights demonstration under subdivision a of the definition of valid existing rights in section 69-05.2-01-02 if the request relies upon the "all permits or good-faith standard" or the "needed for and adjacent standard" in subdivision b of that definition. The demonstration must include the following items:

- (1) A legal description of the land to which the request pertains.
- (2) Complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which the request pertains.
- (3) A complete chain of title for the surface and mineral estates of the land to which the request pertains.
- (4) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities.
- (5) A description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with state property law.
- (6) Complete documentation of the nature and ownership, as of the date that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1, of all property rights for the surface and mineral estates of the land to which the request pertains.
- (7) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains.
- (8) If the coal interests have been severed from other property interests, documentation that the applicant has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of claimed property rights.
- (9) Any comments that the applicant receives in response to the notification provided under paragraph 8.

- b. If the request relies upon the all permits or good-faith standard in paragraph 1 of subdivision b of the definition of valid existing rights in section 69-05.2-01-02, the information required under

subdivision a must be submitted. In addition, the following must be provided:

- (1) Approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the applicant or a predecessor in interest obtained before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.
- (2) Application dates and identification numbers for any permits, licenses, and authorizations for which the applicant or a predecessor in interest submitted an application before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.
- (3) An explanation of any other good-faith effort that the applicant or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.

c. If the request relies upon the "needed for and adjacent standard" in paragraph 2 of subdivision b of the definition of valid existing rights in section 69-05.2-01-02, the information required under subdivision a must be submitted. In addition, an explanation must be provided to explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.

d. If the request relies upon one of the standards for roads in paragraphs 1, 2, and 3 of subdivision c of the definition of valid existing rights in section 69-05.2-01-02, satisfactory documentation must be submitted to show that:

- (1) The road existed when the land upon which it is located came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 and the applicant has a legal right to use the road for surface coal mining operations;
- (2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 and, under the document creating the right of way or easement and under any subsequent conveyances,

the applicant has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or

- (3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-02, 38-14.1-04, 38-14.1-07

**69-05.2-04-01.6. Areas unsuitable for mining - Processing requests for valid existing rights determinations.**

1. The commission will conduct an initial review to determine whether the request includes all applicable components of the submission requirements of section 69-05.2-04-01.5. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.
2. If the request does not include all applicable components of the submission requirements of section 69-05.2-04-01.5, the commission will notify the applicant and establish a reasonable time for submission of the missing information.
3. When the request includes all applicable components of the submission requirements of section 69-05.2-04-01.5, the commission will notify the applicant and implement the notice and comment requirements of subsection 5. Upon receipt of that notice, the applicant must file a copy of the request in the office of the county auditor of the county in which the land is located.
4. If the applicant does not provide information that the commission requests under subsection 2 within the time specified or as subsequently extended, the commission will issue a determination that valid existing rights have not been demonstrated, as provided by subdivision d of subsection 6.
5. Notice and comment requirements and procedures.
  - a. When the request satisfies the completeness requirements of subsection 3, the commission will notify the applicant to publish a notice in a newspaper of general circulation in the county in which the land is located. This notice must invite comment on the merits of the request. A copy of the published notice must be provided to the commission. The notice must include:

- (1) The location of the land to which the request pertains.
- (2) A description of the type of surface coal mining operations planned.
- (3) A reference to and brief description of the applicable standards under the definition of valid existing rights in subsection 120 of section 69-05.2-01-02.
  - (a) If the request relies upon the all permits or good-faith standard or the needed for and adjacent standard in the definition of valid existing rights, the notice also must include a description of the property rights that are claimed by the applicant and the basis of that claim.
  - (b) If the request relies upon the standard in paragraph 1 of subdivision c of the definition of valid existing rights in section 69-05.2-01-02, the notice also must include a description of the basis for the claim that the road existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. In addition, the notice must include a description of the basis for the applicant's claim to a legal right to use that road for surface coal mining operations.
  - (c) If the request relies upon the standard in paragraph 2 of subdivision c of the definition of valid existing rights in section 69-05.2-01-02, the notice also must include a description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. In addition, the notice must include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.
- (4) If the request relies upon one or more of the standards in subdivision b and paragraphs 1 and 2 of subdivision c of the definition of valid existing rights in section 69-05.2-01-02, a statement that the commission will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required by subdivision c, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences



concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the valid existing rights claim.

- (5) A description of the procedures that the commission will follow in processing the request as required by this section.
- (6) The closing date of the comment period, which must be a minimum of thirty days after the publication date of the notice.
- (7) A statement that interested persons may obtain a thirty-day extension of the comment period upon request.
- (8) The name and address of the commission and county auditor's office where copies of the request are available for public inspection and that comments and requests for extension of the comment period be sent to the commission.

b. The commission will promptly provide a copy of the notice required under subdivision a to:

- (1) All reasonably locatable owners of surface and mineral estates in the land included in the request.
- (2) The owner of the feature causing the land to come under the protection of North Dakota Century Code section 38-14.1-07, and, when applicable, the agency with primary jurisdiction over that feature. For example, both the landowner and the state historic preservation officer must be notified if surface coal mining operations would adversely impact any site listed on the national register of historic places.

c. The letter transmitting the notice required under subdivision b must provide a thirty-day comment period, starting from the date of service of the letter, and specify that another thirty days is available upon request. At its discretion, the commission may grant additional time for good cause upon request; however, comments received after the closing date of the comment period do not necessarily have to be considered.

## 6. Commission decision process.

a. The commission will review the materials submitted under subsection 2 of section 69-05.2-04-01.5, comments received under subsection 5, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the commission will notify the applicant in writing, explaining the inadequacy of the record and requesting submittal, within a

specified reasonable time, of any additional information that it deems necessary to remedy the inadequacy.

- b. Once the record is complete and adequate, the commission will determine if valid existing rights have been demonstrated. The decision document will explain whether or not all applicable elements of the definition of valid existing rights have been satisfied. It will contain findings of fact and conclusions and specify the reasons for the conclusions.
- c. The following apply only when the request relies upon one or more of the standards in subdivision b and paragraphs 1 and 2 of subdivision c of the definition of valid existing rights in section 69-05.2-01-02.

  - (1) The commission will issue a determination that valid existing rights have not been demonstrated if the property rights claimed in the request are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The commission will make this determination without prejudice, meaning that the applicant may refile the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under subdivisions a and c of subsection 5.
  - (2) If the record indicates disagreement as to the accuracy of the property rights claimed, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the commission will evaluate the merits of the information in the record and determine whether the requisite property rights that have been demonstrated exist under subdivision a and paragraphs 1 and 2 of subdivision c of the definition of valid existing rights in section 69-05.2-01-02, as appropriate. The commission will then proceed with the decision process under subdivision b.
- d. The commission will issue a determination that valid existing rights have not been demonstrated if information requested under subsection 2 or subdivision a is not submitted within the time specified or as subsequently extended. The commission will make this determination without prejudice, meaning that the applicant may refile a revised request at any time.
- e. After making a determination, the commission will:

- (1) Provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant, surface and mineral owners of the land to which the determination applies, owner of the feature causing the land to come under the protection, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection.
  - (2) Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. This notice will include an explanation of appeal rights under subsection 7.
7. A valid existing rights determination is subject to administrative and judicial review under North Dakota Century Code sections 38-14.1-30 and 38-14.1-35.
8. Except as provided by subsection 6 of section 69-05.2-10-01, the commission will make the valid existing rights request and all related records available to the public as required by subsection 3 of North Dakota Century Code section 38-14.1-13 and provide copies of records to the appropriate county auditor as required by subsection 5 of North Dakota Century Code section 38-14.1-27.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-02, 38-14.1-04, 38-14.1-07

**69-05.2-04-01.7. Areas unsuitable for mining - Commission obligations at time of permit application review.**

1. Upon receipt of an administratively complete permit application or revision application that proposes to add acreage to the permit, the commission will review the application to determine whether the proposed surface coal mining operation would be located on any lands protected under North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.
2. The commission will reject any portion of the application that would locate surface coal mining operations on land protected under North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 unless:
  - a. The site qualifies for the exception for existing operations under section 69-05.2-04-01.2;
  - b. A person has valid existing rights for the land, as determined under section 69-05.2-04-01.6;

- c. The applicant obtains a waiver or exception from certain prohibitions in accordance with sections 69-05.2-04-01.3 and 69-05.2-04-01.4; or
    - d. For lands protected by subsection 3 of North Dakota Century Code section 38-14.1-07, both the commission and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with subsection 4.
  - 3. If the commission has difficulty determining whether an application includes land within an area specified in subsection 1 of North Dakota Century Code section 38-14.1-07, subdivision b of subsection 1 of section 69-05.1-04-01.1, or within the specified distance from a structure or feature listed in subsection 5 of North Dakota Century Code section 38-14.1-07, the commission will request that any federal, state, or local governmental agency with jurisdiction over the protected land, structure, or feature verify the location.
    - a. The request for location verification must:
      - (1) Include relevant portions of the permit application.
      - (2) Provide the agency with thirty days after receipt to respond, with a notice that another thirty days is available upon request.
      - (3) Specify that the commission will not necessarily consider a response received after the comment period in paragraph 2.
    - b. If the agency does not respond in a timely manner, the commission may make the necessary determination based on available information.
  - 4. The following are procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places.
    - a. If the commission determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the national register of historic places, the commission will request that the federal, state, or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The request will:
      - (1) Include a copy of applicable parts of the permit application.
      - (2) Provide the agency with thirty days after receipt to respond, with a notice that another thirty days is available upon request.

- (3) State that failure to interpose an objection within the time specified under paragraph 2 will constitute approval of the proposed operation.
- b. The commission may not issue a permit for a proposed operation subject to subdivision a unless all affected agencies jointly approve.
- c. Subdivisions a and b do not apply to:
  - (1) Lands for which a person has valid existing rights, as determined under section 69-05.2-04-01.6.
  - (2) Lands within the scope of the exception for existing operations in section 69-05.2-04-01.2.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-04, 38-14.1-07

## CHAPTER 69-05.2-05

### 69-05.2-05-01. Permit application filing - Completeness review - Review period.

#### 1. General.

- a. Each operator or permittee who conducts or expects to conduct surface coal mining and reclamation operations shall file a complete permit application. For purposes of North Dakota Century Code section 38-14.1-18, the time of filing means the date on which the commission notifies the applicant the application is complete.
- b. Each applicant shall submit four copies of the complete application and all required materials to the commission. When federal lands are in the permit area, three copies shall be submitted to the commission and additional copies, as required, submitted to the office of surface mining reclamation and enforcement and bureau of land management. Each applicant shall also submit additional copies or portions of copies as necessary for reclamation advisory committee review. Applications may be submitted in an electronic format that has been approved by the commission.

#### 2. Completeness review. The commission will determine whether the application is complete and acceptable for further review. The commission will notify the applicant in writing, within thirty days after the application is filed, as to whether the application is complete and whether public notice required by North Dakota Century Code section 38-14.1-18 may be initiated or specify deficiencies which must be corrected in order to make the application complete and acceptable for further review. The thirty-day completeness review period is counted as a part of the one hundred twenty-day period specified in subsection 3. If the application is substantially deficient, it will be rejected and returned.

#### 3. Review period. The commission will have one hundred twenty days after the filing date to review and approve or disapprove the application and notify the applicant of the decision.

- a. The review period will be suspended until application deficiencies are corrected. The commission will advise the applicant, in writing, of its decision to suspend the period, reasons for suspension, the number of days remaining in the period, and what must be done for the review to continue.
- b. The commission will not issue a decision if an informal conference or formal hearing has been requested under chapter 69-05.2-10 and North Dakota Century Code section 38-14.1-30, and those

proceedings cannot be conducted and a decision issued within the normal review period.

4. **Extension of review period.** The commission may extend the period not to exceed an additional one hundred twenty days if:
  - a. The commission requires additional time to conduct an informal conference or a formal hearing or complete the decision process under chapter 69-05.2-10 and North Dakota Century Code section 38-14.1-30.
  - b. Significant changes are submitted that in the commission's judgment require additional time to review. The commission may require additional public notification and advisory committee review of the amended application under chapter 69-05.2-10.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-10, 38-14.1-20, 38-14.1-21

## CHAPTER 69-05.2-09

**69-05.2-09-01. Permit applications - Operation plans - General requirements.** Each application must contain a detailed description of the proposed mining operations, including:

1. A narrative of mining procedures and engineering techniques, anticipated annual and total coal production, and major equipment.
2. A plan stating the anticipated or actual starting and termination date of each phase of mining activities and the amount of land to be affected for each phase over the life of the permit.
3. A narrative for each operations plan explaining the plan in detail and the construction, modification, use, and maintenance of each mine facility, water and air pollution control facilities or structures, transportation and coal handling facilities, and other structures required for implementing the plans.
4. A plan for each support facility to be constructed, used, or maintained within the permit area, including maps, appropriate cross sections, design drawings, and specifications of each facility sufficient to demonstrate compliance with section 69-05.2-24-08 or 69-05.2-24-09 as applicable.
5. If coal removal areas are proposed within five hundred feet [152.40 meters] of any farm building, the applicant must provide documentation showing compliance or plans to comply with North Dakota Century Code section 38-18-07.

**History:** Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; June 1, 1994; March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-14



## **CHAPTER 69-05.2-12**

### **69-05.2-12-01. Performance bond - General requirements.**

1. Permit applicants shall submit an estimate of bond for the entire permit area or that area specified in subsection 5.
2. The commission will review the estimated bond amount, approve or modify the required amount and notify the applicant.
3. Liability on the bond must cover all surface coal mining and reclamation operations to be conducted within the legally described area attached to the bond.
4. The applicant may file either the entire bond for the permit term or an incremental bond schedule and bond required for the first scheduled increment. Increments must be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary under section 69-05.2-12-18.
5. When the permittee elects to increment the amount of the bond, the permittee shall:
  - a. Furnish a legal description of each incremental area.
  - b. Furnish a schedule when each increment will require bond.
  - c. Furnish with the application the estimated costs for the commission to complete the reclamation plan for the initial increment.
  - d. Provide the estimated cost to complete the reclamation plan for the next increment at least ninety days prior to the expected starting date of mining.
6. The permittee will be notified of the commission's bond determination within thirty days of receipt of the permittee's reclamation cost estimate for the next bond increment.
7. The permittee shall not disturb the bond area prior to commission approval of the entire bond or incremental bond covering the area to be affected.
8. Once surface coal mining operations have begun within the bond area, adequate bond coverage must be in effect at all times. Except as provided by subsection 3 of section 69-05.2-12-03, operating without a bond is a violation of a permit condition.
9. The indemnity agreement for a collateral bond or self-bond must be executed according to the following:

- a. If a corporation or rural electric cooperative:
    - (1) By two officers authorized to sign the agreement by a resolution of the board of directors, a copy of which must be provided; and
    - (2) To the extent the history or assets of a parent organization are relied upon to make the required showings for a collateral bond or self-bond, by every parent organization at any tier.
  - b. If a partnership, each general partner and each parent organization or principal investor. "Principal investor" or "parent organization" means anyone with a ten percent or more beneficial ownership interest, directly or indirectly, in the applicant.
  - c. If married, the permit applicant's spouse, if directly involved as part of the business on a regular basis or as an officer of the organization.
- 10. The name of each person who signs the indemnity agreement must be typed or printed beneath the signature. The agreement is binding jointly and severally on all who execute it.
  - 11. The commission may allow the posting of more than one bond to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under sections 69-05.2-12-07 and 69-05.2-12-08. The scope of work to be guaranteed and the liability assumed under each phase bond must be specified in detail and approved by the commission before posting the bonds.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1992; January 1, 1993; March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-16

**69-05.2-12-04. Performance bond - Collateral bond.** The guarantor of a collateral bond may be the permit applicant or a qualified third party.

- 1. Collateral bonds are subject to the following conditions:
  - a. All collateral must be kept in the commission's custody until authorized for release or replacement.
  - b. Collateral must be valued at market value.
  - c. Certificates of deposit must be assigned to the state, in writing, and upon the books of the issuer.

- d. Except for certificates issued by the Bank of North Dakota, the commission will not accept an individual certificate in excess of one hundred thousand dollars, or the maximum amount insured by the federal deposit insurance corporation and the federal savings and loan insurance corporation, whichever is greater.
  - e. An issuer shall waive all rights of setoff or lien against the certificate.
  - f. The commission will accept only automatically renewable certificates of deposit.
  - g. The permit applicant shall deposit sufficient collateral to assure the commission will be able to liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond.
2. A collateral bond pledging a letter of credit may be approved by the commission subject to the following conditions:
- a. The permit applicant has obtained prior commission approval for the bank issuing the letter of credit.
  - b. The commission may accept a letter of credit which is irrevocable for a term of at least one year if:
    - (1) The letter of credit is automatically renewable for additional terms unless the bank gives at least ninety days prior written notice to the commission and the permittee of its intent to terminate the letter of credit at the end of the current term.
    - (2) The commission has the right to draw upon the letter of credit before the end of its term and convert it into a cash collateral bond if the permittee fails to replace the letter of credit with other acceptable bond within thirty days of the bank's notice to terminate the credit.
  - c. The letter of credit must be payable to the commission in part or in full upon demand and receipt from the commission of a notice of forfeiture issued in accordance with sections 69-05.2-12-16 and 69-05.2-12-18 or demand for payment under paragraph 2 of subdivision b.
  - d. The commission will not accept letters of credit from a bank for a permittee, on permits held by that permittee, in excess of ten percent of the bank's total equity (stock, surplus capital, and retained earnings) as shown on a balance sheet certified by a certified public accountant. A copy of the bank's most recent balance sheet must be provided with the letter of credit and updated balance sheets must be submitted annually to the

commission within ninety days after the close of the bank's fiscal year.

e. A letter of credit is governed by:

(1) The laws of the state of North Dakota.

(2) The current version of the uniform customs and practices for documentary credits, published by the international chamber of commerce.

f. Letters of credit shall provide that the bank will give prompt notice to the permittee and the commission of notices received or actions filed alleging the insolvency or bankruptcy of the bank or alleging violations of regulatory requirements that could result in suspension or revocation of the bank's charter or license to do business. In the event of actions which could result in suspension or revocation of the bank's charter or license, the commission has the right to draw upon the letter of credit before the end of its term and convert it into a cash collateral bond if the permittee fails to replace the letter of credit with a substitute bond within thirty days after receipt of such a notice from the commission. If a substitute bond is not filed and the commission is unable to draw on the letter of credit, the commission will suspend the permit and the operator shall cease surface coal mining activities and comply with section 69-05.2-13-11.

3. For a collateral bond the guarantor shall execute an indemnity agreement according to subsections 9 and 10 of section 69-05.2-12-01.

3- 4. Persons with an interest in collateral posted as a bond, who desire notice of actions relating to the bond, shall request the notice in writing to the commission when collateral is offered.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990; March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-16

**69-05.2-12-12. Release of performance bond - Bond release application.**

1. The permittee may request the commission release all or part of a bond for lands disturbed after July 1, 1975, as follows:

a. For lands disturbed between July 1, 1975, and June 30, 1979, the application must comply with subsection 1 of North Dakota Century Code section 38-14.1-17 and subsections 3 and 4 ~~of this section~~. The criteria for release of all or part of the bond will be

according to the reclamation requirements in effect at the time of the disturbance.

- b. For lands disturbed after June 30, 1979, the application must comply with the requirements of this section and section 69-05.2-12-11.
2. The permittee may file bond release applications only at times and seasons that allow the commission to properly evaluate the completed reclamation operations. Each application for bond release shall include a notarized statement by the permittee which certifies that all applicable reclamation activities have been accomplished in accordance with this article, North Dakota Century Code chapter 38-14.1, and the approved reclamation plan.
3. Within thirty days after filing a request for bond release, the permittee shall submit proof of the publication required by North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.
4. Lands for which the permittee requests final bond release must be legally described and delineated on maps of the permit area. Lands requested for partial bond release may be either legally described or otherwise clearly depicted and identified on maps of the permit area so the bond release tracts can be distinguished from other lands.
5. When the permittee requests a partial release of bond after regrading under subdivision a of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must, unless waived by the commission, include surface profiles or topographic maps in accordance with section 69-05.2-21-06.
6. When the permittee requests a partial release of bond after resspreading suitable plant growth material under subdivision b of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include the thickness of the resspread first lift and second lift suitable plant growth materials.
7. When the permittee requests a partial release of bond after vegetation has been established under subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:
  - a. The data collected, analyses conducted, and a narrative demonstrating vegetation establishment as required by subsection 3 of section 69-05.2-22-07.
  - b. Documentation that the lands to which the release would be applicable are not contributing suspended solids to streamflow or

runoff outside the permit area in excess of the requirements set by section 69-05.2-16-04.

- c. A discussion of how the provisions of a plan approved by the commission for the sound future management of any permanent impoundment by the permittee or landowner have been implemented.
- 8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:
  - a. The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
  - b. The history of initial and subsequent seedings and fertilization, including mixtures and rates, appropriate soil tests, supplemental irrigation, or other management practices employed.
  - c. Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.
- 9. When the permittee requests release of bond for any combination of release stages detailed in subsection 7 of North Dakota Century Code section 38-14.1-17, the application must contain all the information required at each bond release stage.
- 10. Requests for a reduction in bond amount for reclamation work performed according to subsection 4 of section 69-05.2-12-08 must include a detailed description of the work performed and a new reclamation cost estimate.
- 11. The commission may request any additional information necessary to evaluate the bond release application.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1992; January 1, 1993; May 1, 2001; March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-17

## CHAPTER 69-05.2-16

### 69-05.2-16-04. Performance standards - Hydrologic balance - Water quality standards and effluent limitations.

1. The operator ~~shall~~ must comply with the following ~~water quality standards and effluent limitations requirements~~:
  - a. All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, must be passed through a sedimentation pond, a series of sedimentation ponds, or other ~~treatment facility~~ sediment control measures before leaving the permit area.
  - b. Sedimentation ponds and other ~~treatment facilities~~ sediment control measures must be maintained until removal is authorized by the commission and the disturbed area has been stabilized and revegetated. The ~~structure ponds or other sediment control measures~~ may not be removed sooner than two years after the last augmented seeding unless the last augmented seeding is a supplemental seeding into an established vegetation stand that is effectively controlling erosion.
  - c. The commission may ~~grant exemptions from these requirements only when~~ allow the use of other sediment control measures for primary sediment control if:
    - (1) The disturbed drainage area within the total disturbed area is small, the disturbed areas have been regraded, respread with topsoil, and stabilized against erosion, or the state department of health has approved the use of best management practices as the effluent limitation; and
    - (2) The permittee or operator demonstrates that sedimentation ponds and ~~treatment facilities~~ are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations referenced in subdivision g and the applicable state water quality standards for downstream receiving waters.
  - d. For the purposes of this chapter only, "disturbed area" shall not include areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this article and the upstream area is not otherwise disturbed by the operator.
  - e. Sedimentation ponds and other sediment control measures must be constructed and installed according to the plans in the approved permit before beginning surface mining activities in the drainage area to be affected.

- f. Mixed drainage from disturbed and undisturbed land must meet effluent limitations before it leaves the permit area.
  - g. Discharges of water from areas disturbed by surface mining activities must comply with all applicable state laws and rules and with the state department of health effluent limitations authorized by North Dakota Century Code chapter 61-28.
  - h. For the purposes of this chapter, "other sediment control measures" means the use of the best technology currently available to meet applicable effluent limitations and, to the extent possible, minimize erosion and prevent additional contributions of sediment to streamflow or to runoff outside the permit area. These include sumps, check dams, berms, silt fences, bale dikes, sediment filters, riprap, mulches, and other measures to reduce runoff, trap sediment, or treat runoff water.
2. Adequate facilities must be installed, operated, and maintained to treat any water discharged from the disturbed area so that it complies with all state laws and rules and the effluent limitations of this section.

**History:** Effective August 1, 1980; amended effective September 1, 1984; January 1, 1987; May 1, 1990; January 1, 1993; June 1, 1997; March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-16-05. Performance standards - Hydrologic balance - Surface water monitoring.**

- 1. Surface water monitoring must be conducted in accordance with the monitoring program and based on the probable hydrologic consequences determination submitted under section 69-05.2-08-04. The commission will approve the nature of data that relate to the hydrologic reclamation plan in section 69-05.2-09-12, frequency of collection, and determine reporting requirements.
  - a. For locations in surface water bodies, such as streams, lakes, and impoundments, monitoring must:
    - (1) Be adequate to measure accurately and record quantity and quality of discharges from the permit area and identify the extent to which mining affects water quality and quantity in the adjacent area. Water samples taken from all monitoring sites must be analyzed for the parameters specified in subdivision b of subsection 3 of section 69-05.2-08-07. Results must be submitted quarterly to the commission.
    - (2) Be conducted to assure reliable test data according to existing standard procedures and analytical methods.



b. For point source discharges, monitoring must:

- (1) Be conducted according to state department of health standards.
  - (2) Result in notifying the commission within five days in any cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard. Where a North Dakota pollutant discharge elimination system permit effluent limitation noncompliance has occurred, the operator or permittee shall forward the analytical results concurrently with the written notice of noncompliance.
  - (3) ~~Result in quarterly periodic reports to the commission, to include analytical results from each sample taken during the quarter. The operator or permittee shall submit to the commission a copy of the completed North Dakota pollutant discharge elimination system report form along with analytical results from each sample taken during the reporting period. The reports must be filed on the same time schedule as that required by the North Dakota pollutant discharge elimination system permit. Any sample results which that indicate a permit violation must be reported to the commission as specified in paragraph 2. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a North Dakota pollutant discharge elimination system (NDPDES) permit and where that permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety days or less of sample collection, the operator or permittee shall submit to the commission on the same time schedule as required by the North Dakota pollutant discharge elimination system permit or within ninety days following sample collection, whichever is earlier, a copy of the completed North Dakota pollutant discharge elimination system reporting form along with analytical results from each sample taken during the quarter.~~
2. If violation of a permit condition occurs, the operator shall, if appropriate, immediately take the actions provided for in subdivision a of subsection 3 of section 69-05.2-10-05 and subsection 2 of section 69-05.2-09-12.
  3. After disturbed areas have been regraded and stabilized, the permittee shall continue to monitor surface water flow and quality within the permit and adjacent areas. Data from this monitoring may be used to demonstrate that the quality and quantity of runoff without treatment is consistent with the requirements to minimize disturbance to the

prevailing hydrologic balance and attain the approved postmining land use. These data may also provide a basis for commission approval to remove water quality or flow control systems.

4. Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area must be properly installed, maintained, and operated and must be removed when no longer required.

**History:** Effective August 1, 1980; amended effective May 1, 1990; June 1, 1997; May 1, 2001; March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-27

**69-05.2-16-09. Performance standards - Hydrologic balance - Sedimentation ponds.**

1. General requirements. Sedimentation ponds must be used individually or in series and:
  - a. Be constructed before any disturbance of the undisturbed area to be drained into the pond.
  - b. Be located as near as possible to the disturbed area and out of perennial streams, unless approved by the commission.
  - c. Meet all the criteria of this section.
2. Sediment storage volume. Sedimentation ponds must provide adequate sediment storage volume. Sediment storage volume must be determined using the universal soil loss equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods derived from regional sediment pond studies if approved by the commission.
3. Detention time. Sedimentation ponds must provide the required theoretical detention time for the water inflow or runoff entering the pond from a ten-year, twenty-four-hour precipitation event (design event). The theoretical detention time must be sufficient to achieve and maintain applicable effluent standards. The calculated theoretical detention time and all supporting materials must be included in the permit application.
4. Dewatering. The stored water must be removed by a nonclogging dewatering device or a conduit spillway approved by the commission, and have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device may not be lower than the maximum elevation of the sediment storage volume.

5. Each operator shall design, construct, and maintain sedimentation ponds to prevent short circuiting to the extent possible.
6. The design, construction, and maintenance of a sedimentation pond or other sediment control measures do not relieve the operator from compliance with applicable effluent limitations.
7. For sedimentation ponds designed to contain the runoff from a ten-year, twenty-four-hour precipitation event (design event), there must be no spillway outflow as a result of runoff from the design event or lesser runoff events, unless multiple runoff events occur before the pond can be dewatered in accordance with approved plans in the permit.
8. Sediment must be removed from sedimentation ponds on a periodic basis in order to maintain an adequate storage volume for the design event.
9. An appropriate combination of principal and emergency spillways or a single spillway must be provided to safely discharge the runoff from a twenty-five-year, six-hour precipitation event for a temporary impoundment, a fifty-year, six-hour precipitation event for a permanent impoundment, or a larger event specified by the commission. The spillways must be capable of safely discharging the required event when the impoundment is at high water elevation. Commission approval of open channel spillway grades and allowable velocities must be obtained and velocities must be nonerosive. Earth or grass lined spillways may be used only where sustained flows are not expected.
10. The minimum elevation at the top of the settled embankment must be one foot [30.48 centimeters] above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this minimum elevation requirement applies at all times.
11. The constructed height of the dam must be increased a minimum of five percent over the design height to allow for settlement, unless it has been demonstrated to the commission that the material used and the design will ensure against settlement.
12. The minimum top width of the embankment may not be less than the quotient of  $(H+35)/5$ , where H is the height, in feet, or  $(H+10.7)/5$ , where H is the height, in meters, of the embankment as measured from the upstream toe of the embankment.
13. The upstream side slope of the settled embankment may not be steeper than a horizontal to vertical ~~ratio~~ ratio of 3:1 and the downstream side slope of the settled embankment may not be steeper than a horizontal to vertical ~~ratio~~ ratio of 2:1.

14. The foundation area must be cleared of all organic matter, all surfaces sloped to no steeper than a horizontal to vertical ~~ratio~~ ratio of 1:1, and the entire foundation surface scarified. Cutoff trenches must be installed if necessary to ensure stability.
15. The fill material must be free of sod, large roots, other large pieces of vegetative matter, and frozen soil, and in no case shall coal processing waste be used.
16. The placing and spreading of fill material must be started at the lowest point of the foundation. The fill must be brought up in horizontal layers in the thicknesses required to facilitate compaction and meet the design requirements of this section. Fill adjacent to structures, pipe conduits, and drainfill or antiseep collars must be compacted to a density equal to that of the surrounding fill by hand tamping or by using manually directed power tampers or plate vibrators. Compaction must be conducted as specified in the approved design. In lieu of the specific design requirements of this subsection and subsections 11 through 14, the operator may demonstrate that the design of the structure has a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.
17. If a proposed impoundment can meet the size and other criteria of 30 CFR 77.216, the following additional requirements must be met:
  - a. An appropriate combination of principal and emergency spillways must be provided to safely discharge the runoff from a one-hundred-year, six-hour precipitation event, or a larger event as specified by the commission.
  - b. The embankment must be designed and constructed with a seismic safety factor of 1.2 and a static safety factor of at least 1.5 for a normal pool with steady state seepage saturation conditions, or a higher safety factor as designated by the commission.
  - c. Appropriate barriers must be provided to control seepage along conduits that extend through the embankment.
  - d. The criteria of the mine safety and health administration as published in 30 CFR 77.216 must be met.
18. If an impoundment meets the class B or C criteria for dams (those located where failure would be expected to cause loss of life or serious property damage) in the United States department of agriculture, natural resource conservation service technical release no. 60 (TR-60), Earth Dams and Reservoirs, 1985, the following apply:
  - a. The emergency spillway must comply with freeboard hydrograph criteria found in the minimum emergency spillway hydrologic

criteria table in TR-60, or greater event specified by the commission.

- b. The embankment must be designed and constructed with a seismic safety factor of 1.2 and a static safety factor of at least 1.5 for a normal pool with steady state seepage saturation conditions, or a higher safety factor as designated by the commission.
- c. Foundation testing, as well as any necessary laboratory testing of foundation material, must be performed to determine design requirements for foundation stability.
- d. Appropriate barriers must be provided to control seepage along conduits that extend through the embankment.

19. Impoundment inspections.

- a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b. The registered professional engineer and specialist must be experienced in the construction of impoundments.
- b. Inspections must be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.
- c. After each inspection the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been constructed or maintained as designed and according to the approved plan and this chapter. The report must include discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.
- d. A copy of the inspection reports must be maintained at or near the minesite.

20. The embankment, including the surrounding areas and diversion ditches disturbed or created by construction, must be stabilized with respect to erosion and sudden drawdown by a vegetative cover or other means immediately after the embankment is completed. The active upstream face where water will be impounded may be riprapped or otherwise stabilized to protect the embankment from erosion and sudden drawdown. Areas where the reestablishment of vegetation is not successful or where rills and gullies develop must be repaired and revegetated according to section 69-05.2-15-06.

21. In addition to the requirements of subsection 19, all impoundments meeting the criteria of subsections 17 and 18 must be examined according to 30 CFR 77.216-3. Other impoundments must be examined at least quarterly by a qualified person for appearance of erosion, structural weakness, and other hazardous conditions. The annual inspection required by subsection 19 will be considered one of the examinations required by this subsection.
22. Plans for any enlargement, reduction, reconstruction, or other modification of dams or impoundments must be submitted to the commission. Commission approval of these plans is required before modification begins, unless a modification is necessary to eliminate a hazard to public health, safety, or the environment.
23. Sedimentation ponds or other sediment control measures may not be removed until authorized by the commission and the disturbed area has been stabilized and revegetated. The ~~structure ponds or other measures~~ may not be removed sooner than two years after the last augmented seeding unless the last augmented seeding is a supplemental seeding into an established vegetation stand that is effectively controlling erosion. When the pond is removed, the affected land must be reclaimed, unless the pond has been approved by the commission for retention. If the commission approves retention, the pond must meet all the requirements for permanent impoundments of section 69-05.2-16-12.

**History:** Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; May 1, 1999; March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

## CHAPTER 69-05.2-17

**69-05.2-17-07. Performance standards - Use of explosives - Records of blasting operations.** A log of each blast, including any seismograph reports, must be retained at the minesite under subsection 13 of North Dakota Century Code section 38-14.1-24. The log must contain:

1. Name of the operator.
2. Location, date, and time of blast.
3. Name, signature, and certificate number of blaster-in-charge.
4. Direction and distance, in feet [meters], to nearest dwelling, school, church, ~~or~~ commercial or institutional building, or other protected structure:
  - a. Not located in the permit area; or
  - b. Not owned or leased by the person who conducts the surface mining activities.
5. Weather conditions, including temperature, wind direction, and approximate velocity.
6. Type of material blasted.
7. Diameter and depth of holes.
8. Types of explosives used.
9. Total weight of explosives used per hole.
10. Maximum weight of explosives detonated within any eight-millisecond period.
11. Maximum number of holes detonated within any eight-millisecond period.
12. Initiation system.
13. Type and length of stemming.
14. Mats or other protections used.
15. Sketch of the blast pattern, including number of holes, burden, spacing, decks, and delay pattern.
16. Seismograph and airblast records, where required, including:

- a. The calibration signal of the gain setting.
  - b. Seismographic reading, including exact location of seismograph, its distance from the blast, the date and time of the blast, and the vibration levels recorded.
  - c. Name of the person taking the seismograph reading.
  - d. Airblast levels recorded.
  - e. Name of the person and firm analyzing the seismograph report.
17. Reasons and conditions for each unscheduled blast.

**History:** Effective August 1, 1980; amended effective May 1, 1990; March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24



## **CHAPTER 69-05.2-22**

### **69-05.2-22-07. Performance standards - Revegetation - Standards for success.**

1. Success of revegetation must be measured by using statistically valid techniques approved by the commission. Comparison of ground cover and productivity may be made on the basis of reference areas, through the use of standards in technical guides published by the United States department of agriculture, or through the use of other approved standards. If reference areas are used, the management of the reference area during the responsibility period required in subsection 2 must be comparable to that required for the approved postmining land use of the permit area. If standards are used, they must be approved by the commission and the office of surface mining reclamation and enforcement. Approved standards are contained in the commission's Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.
2. The period of responsibility under the performance bond requirements of section 69-05.2-12-09 will begin following augmented seeding, planting, fertilization, irrigation, or other work, except for cropland and prime farmland where the period of responsibility begins at the date of initial planting of the crop being grown or a precropland mixture of grasses and legumes, and must continue for not less than ten years.
3. Vegetation establishment, for the purpose of the third stage bond release provided for in subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, will be determined for each postmining land use according to the following procedures:
  - a. For native grassland, tame pastureland, and fish and wildlife habitat where the vegetation type is grassland, ground cover on the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence. All species used in determining ground cover must be perennial species not detrimental to the approved postmining land use.
  - b. For cropland, vegetation will be considered established after the successful seeding of the crop being grown or a precropland mixture of grasses and legumes.
  - c. For prime farmland, annual average crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for a minimum of three crop years.

- d. For woodland, shelterbelts, and fish and wildlife habitat where the vegetation type is woodland, the number of trees and shrubs must be equal to or greater than the approved standard. Understory growth must be controlled. Erosion must be adequately controlled by mulch or site characteristics.
  - e. For fish and wildlife habitat where the vegetation type is wetland, the basin must exhibit the capacity to hold water and support wetland vegetation. Ground cover of the contiguous areas must be adequate to control erosion.
4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
- a. For native grassland, the following must be achieved for the last two consecutive years of the responsibility period:
    - (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and
    - (2) Diversity, seasonality, and permanence of the vegetation of the permit area must be ~~be equivalent to that of~~ equal or exceed the approved standard.
  - b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for the last two consecutive growing seasons of the responsibility period.
  - c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for the last two consecutive growing seasons of the responsibility period.
  - d. For prime farmlands, a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed.
  - e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the last two consecutive years of the responsibility period:
    - (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved standard with ninety percent statistical confidence. Trees, shrubs,

half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:

- (a) Be healthy;
    - (b) Be in place for at least two growing seasons; and
    - (c) At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period;
  - (2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and
  - (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.
- f. For shelterbelts, the following must be achieved during the last two consecutive years of the responsibility period:
- (1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
    - (a) Be healthy;
    - (b) Be in place for at least two growing seasons; and
    - (c) At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period;
  - (2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and
  - (3) Erosion must be adequately controlled.
- g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those

of the approved standard the last two consecutive years of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.

- h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the last two consecutive years of the responsibility period:
  - (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.
  - (2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet or exceed the approved standard.
- i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.
- j. For areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover on these areas may not be less than required to control erosion.
- k. For areas to be developed for recreation, woody plants must meet or exceed the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use.
- l. As an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period. This alternative does not pertain to success standards for prime farmlands unless a reclaimed tract contains both prime and nonprime farmlands. If a reclaimed tract contains a mixture of prime and nonprime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and nonprime areas prior to mining. The operator must

provide a detailed description and comparison of the soil mapping units, acreages, and yield calculations in the reclamation plan as required by subsection 8 of section 69-05.2-09-15. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period. If this option is approved, the operator must also meet the applicable requirements of section 69-05.2-26-05 for the entire tract.

5. Throughout the liability period the permittee ~~shall~~ must:
  - a. Maintain any necessary fences and use proper management practices; and
  - b. Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the commission.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993; June 1, 1997; May 1, 1999; May 1, 2001; March 1, 2004.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**TITLE 70**  
**REAL ESTATE COMMISSION**



## **FEBRUARY 2004**

### **CHAPTER 70-02-01**

#### **70-02-01-02. Application for license.**

1. No application for either a ~~broker~~ broker's or salesperson's license will be accepted from a person under the age of eighteen years.
2. All applications must be filed with the commission ~~at least twenty days before an examination date,~~ complete in every detail and with every question answered and correct fees sent with the application ~~before the deadline date.~~
3. It shall be incumbent upon the applicant for a real estate broker's license to submit the applicant's proofs of qualification pursuant to subsection 2 of North Dakota Century Code section 43-23-08. Broker applicants wishing to qualify under the two-year experience requirement shall be required to submit to the commission a letter from said applicant's broker or brokers that the applicant has been actively engaged in the real estate business as a salesperson for at least two years.

"Actively engaged" means that the applicant must have devoted the applicant's full time as a licensed real estate salesperson. The foregoing shall be certified by a licensed real estate broker.
4. Each application for license shall be made on application forms provided by the real estate commission and are to be filled in personally by, or under the supervision of, the applicant.
5. After an application is filed ~~and examination scheduled,~~ no refund of application fee will be made to any applicant in the event of withdrawal.
6. The commission may deny any application for license when one or more of the following conditions are present:
  - a. The application contains any false statement.



- b. An investigation fails to show affirmatively that the applicant possesses in every instance the necessary qualifications.
- c. The applicant has acted or attempted to act in violation of North Dakota Century Code chapter 43-23 or this title.
- d. The applicant has had a license suspended or revoked in another state.
- e. The check used in paying an examination or license fee shall not, for any reason, be honored by the financial institution upon which it is written.
- f. The applicant has issued one or more checks or drafts which have been dishonored by a payor bank because:
  - (1) No account exists;
  - (2) The account was closed; or
  - (3) The account did not contain sufficient funds to pay the check or draft in full upon its presentment.
- 9. The applicant's credit history shows the existence of unpaid and overdue judgments, liens, or other debt obligations which, for the protection of the public, requires that the application be denied.
- 7. If the application and supporting documents on their face show that the applicant is qualified, but from complaints and information received or from investigation it shall appear to the commission at any time before the initial license is delivered, that there may be cause to deny a license, the commission may order a hearing to be held to consider such complaints or information.
- 8. The commission may require such other proof as may be deemed advisable of the honesty, truthfulness, and good reputation of any applicant, including the officers and directors of any corporation, or the members of any copartnership or association making such application, before accepting an application for license.
- 9. Inquiry and investigation may be made by the commission as to the financial responsibility of each applicant.
- 10. When a corporation submits its application for a broker's license, the application must be accompanied by a copy of the articles of incorporation and a certificate of authority issued by the secretary of state.

11. When a partnership submits its application for a ~~broker's~~ license, the application must be accompanied by a copy of the partnership agreement.
12. An applicant for licensure in another state may request the commission to certify to such other state that the applicant is a licensee of this state. ~~A fee of ten dollars~~ as set by the commission shall accompany the request.

**History:** Amended effective August 1, 1981; May 1, 1986; January 1, 1992; February 1, 2004.

**General Authority:** NDCC 28-32-02, 43-23-08(7)

**Law Implemented:** NDCC 43-23-05, 43-23-08, 43-23-09, 43-23-11.1

### **70-02-01-03. Examinations.**

- ~~1. All examinations for real estate broker's and salesperson's licenses will be given periodically as designated by the commission and the applicant will be notified of the scheduled dates and places upon receipt of the application. This notification to all applicants will be accompanied with an identification card and such card must be in the applicant's possession and surrendered to a representative of the commission when appearing for the written examination.~~
- ~~2.~~ An applicant will not be permitted to take the written examination until and unless the applicant has been authorized in writing to appear for the examination.
- ~~3. Neither broker nor salesperson examinations will be given during the month of December of any year unless the commission determines that it is practicable to do so.~~
- ~~4.~~ 2. If an applicant should fail to appear for examination within four months after notification by the commission that the applicant is qualified to take the examination, an applicant must reapply for examination as in the first instance and pay the required fee.
- ~~5.~~ 3. Broker or salesperson applicants who fail an examination and wish to rewrite the examination must submit a rewrite application and fee. ~~Each rewrite of an examination will be permitted only upon submission of a notice of intention to rewrite and submission of an examination rewrite fee on or before twenty days prior to the next examination.~~
- ~~6.~~ 4. During the examination the use or possession of any unfair methods or notes, the giving or receiving of aid of any kind, or the failure to obey instructions will result in a denial of the application and license.
- ~~7.~~ 5. If the broker or salesperson applicant ~~fails the third examination, no subsequent examination will be given the applicant for at least twelve~~

months after failure of the third examination and applicant passes one portion of the examination, national or state, the applicant shall not be required to repeat that portion of the examination if the applicant passes the remaining portion within twelve months. Applicant must submit a new application in complete detail together with the statutory fees if the examination has not been passed within the same twelve-month period.

**History:** Amended effective January 1, 1992; February 1, 2004.

**General Authority:** NDCC 43-23-11.1(3)

**Law Implemented:** NDCC 43-23-08(1), 43-23-13(9) 43-23-13(4)

**70-02-01-05. Inactive licenses.**

1. A qualified licensed salesperson desiring to place the salesperson's license on an inactive status may do so by having the broker with whom the salesperson is associated surrender the salesperson's license ~~and pocket card~~ to the commission, with a written request from the salesperson that the salesperson's license be placed on an inactive status. The salesperson may keep the salesperson's license on an inactive status for an indefinite period from the date the license is surrendered. The salesperson placing the salesperson's license on inactive status shall pay the required fee for such salesperson's license each year. A salesperson whose license is in an inactive status shall not engage in any manner in any of the activities described under North Dakota Century Code chapters 43-23 and 43-23.1, until the salesperson shall first request that the salesperson's license be reactivated by the commission. During the time that a salesperson's license is on an inactive status educational requirements do not need to be met. However, if any applicable education requirements are unsatisfied, proof of fulfillment must be submitted before the license can be reissued on an active status.
2. A qualified licensed broker who withdraws from the real estate business entirely and who desires to place the broker's license on an inactive status may do so by surrendering the broker's license ~~and pocket card~~ to the commission, with a written request that the license be placed on an inactive status. The broker may keep the broker's license on an inactive status for an indefinite period from the date of expiration of the license surrendered. The broker placing the broker's license on inactive status shall pay the required fee for such broker's license each year. During the time that a broker's license is on an inactive status educational requirements do not need to be met. However, if any applicable education requirements are unsatisfied, proof of fulfillment must be submitted before the license can be reissued on an active status.
3. While a license is on inactive status it is not necessary, in the case of a broker, to maintain an active trust account.

4. Applicable education requirements for the reactivation of a license shall consist of ~~the requirements of subsection 5 of North Dakota Century Code section 43-23-08~~ and eight hours for each year of inactive status, but not to exceed ~~twenty-four~~ sixteen hours as required by North Dakota Century Code section 43-23-08.2. The requirements of North Dakota Century Code section 43-23-08.2 must have been fulfilled within the ~~three~~ two years immediately preceding the return to active status.

**History:** Amended effective May 1, 1986; January 1, 1992; February 1, 2004.

**General Authority:** NDCC 28-32-02, 43-23-08(7)

**Law Implemented:** NDCC 43-23-08, 43-23-08.2

**70-02-01-07. Licensee's duties upon surrender, suspension, or revocation of license.** A broker or salesperson, upon surrendering the broker's or salesperson's license or upon notice of suspension or revocation of the broker's or salesperson's license, shall forward the same, ~~together with the pocket card,~~ at once to the commission. If the license is that of a broker, the broker shall also forward to the commission with the broker's license ~~and pocket card~~ all salesperson's licenses ~~and pocket cards~~ in the broker's possession or in the broker's office and shall be responsible for all missing licenses of the broker's salesperson. No refund will be made upon any license when surrendered, suspended, or revoked.

**History:** Amended effective January 1, 1992; February 1, 2004.

**General Authority:** NDCC 43-23-11.1(3)

**Law Implemented:** NDCC 43-23-11.1

**70-02-01-10. Salesperson.** A salesperson shall not commence work until the ~~salesperson receives the salesperson's pocket card (identification card) from the salesperson's employing broker, either on original application or transfer~~ receives the appropriate license. Any salesperson leaving the employment of a broker shall not take nor use any ~~listings of properties~~ agreements (listing/buyer broker agreements, management contracts, etc.) secured through the office or through salespersons of the former employing broker unless specifically authorized by the broker. All ~~plats of property, "for sale" signs, notebooks, listing cards, or records of any kind that have been used in connection with the listing or selling of property~~ materials and records that belong to the former broker shall be returned to the former broker ~~in person by the departing salesperson.~~

**History:** Amended effective January 1, 1992; February 1, 2004.

**General Authority:** NDCC 43-23-11.1(3)

**Law Implemented:** NDCC 43-23-12(2)

## CHAPTER 70-02-03

### 70-02-03-02.1. Advertising.

1. ~~All advertising of real property, or any interest therein, for sale, purchase, trade, lease, exchange, or mortgage for which a fee, commission, or other consideration is expected to be received by a real estate broker must be advertised only under the exact name of the broker as licensed or under the broker's trade name as registered with the commission. No advertisement may be permitted which sets forth only a post-office box number, telephone number, or street address, or any combination thereof. A real estate broker may advertise, in the licensee's own name, property which is owned by the licensee, provided that immediately following the licensee's name where it appears in the advertisement, the words "Owner/Licensed Broker" must also appear. The provisions of this subsection apply both to active broker licensees and licensees whose license is on an inactive status. Disclosure of the individual's status as a broker is required on all promotional and advertising materials in which the licensee's name appears.~~
2. ~~A real estate salesperson may not advertise under the licensee's own name any real property, or any interest therein, for which that person expects to receive a fee, commission, or other consideration for the sale, purchase, trade, lease, exchange, or mortgage of such real property. All advertising by a real estate salesperson must be advertised only under the exact name of the licensee as licensed.~~ A real estate salesperson may advertise in that person's own name property which is owned by the salesperson, provided that immediately following the name where it appears in the advertisement, the words "Owner/Licensed Salesperson" must also appear. The provisions of this subsection apply both to active salesperson licensees and licensees whose license is on an inactive status. Disclosure of the individual's status as a salesperson is required on all promotional and advertising material in which that person's name appears.

**History:** Effective January 1, 1992; amended effective February 1, 2004.

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

**Law Implemented:** NDCC 43-23-11.1(1)

**TITLE 72**  
**SECRETARY OF STATE**



**MARCH 2004**

**ARTICLE 72-06**

**ELECTIONS**

<u>Chapter</u>	
<u>72-06-01</u>	<u>Certifying and Decertifying Electronic Counting Machines and Voting Systems</u>
<u>72-06-02</u>	<u>Notification to Military and Overseas Voter of Rejection of Absentee Ballot Request</u>

**CHAPTER 72-06-01**  
**CERTIFYING AND DECERTIFYING ELECTRONIC COUNTING MACHINES AND VOTING SYSTEMS**

<u>Section</u>	
<u>72-06-01-01</u>	<u>Definitions</u>
<u>72-06-01-02</u>	<u>Certification by Secretary of State of Electronic Counting Machines and Voting Systems</u>
<u>72-06-01-03</u>	<u>Decertification by Secretary of State of Electronic Counting Machines and Voting Systems</u>
<u>72-06-01-04</u>	<u>Criteria for Approving Direct Recording Electronic Voting Systems</u>
<u>72-06-01-05</u>	<u>Defining a Vote on Optical Scan Ballots Used as a Part of an Electronic Counting Machine or Electronic Voting System</u>
<u>72-06-01-06</u>	<u>Defining a Vote on Direct Recording Electronic Voting Systems</u>
<u>72-06-01-07</u>	<u>Temporarily Defining a Vote on New Electronic Counting Machines and Electronic Voting System, not Otherwise Addressed in Section 72-06-01-05 or 72-06-01-06</u>

**72-06-01-01. Definitions.**

1. "Company" means any company, corporation, limited liability company, or other entity engaged in the business of supplying electronic counting machines and electronic voting systems.



2. "EAC" means the federal election assistance commission or any entity or agency succeeding to its function or role.
3. "FEC" means the federal election commission or any entity or agency succeeding to its function or role.
4. "NASED" means the national association of state election directors or any entity succeeding to its function or role.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 16.1-06-26

**Law Implemented:** NDCC 16.1-06-26

**72-06-01-02. Certification by secretary of state of electronic counting machines and voting systems.** Prior to use and procurement in this state, a company supplying electronic counting machines and electronic voting systems which, for purposes of this chapter, includes any software, hardware, and firmware components used as a part of an electronic voting system or electronic counting machine, shall give written notice to the secretary of state and provide a demonstration certifying that its machine or system complies with applicable laws and is certified as fulfilling the requirements of the FEC voting system standards by an independent test authority accredited by the NASED. Upon the creation of voting system standards by the EAC according to the Help America Vote Act of 2002 [Pub. L. 107-252; 42 U.S.C. 15301-15545], a company supplying electronic counting machines and electronic voting systems shall give written notice to the secretary of state and provide a demonstration certifying that its machine or system complies with applicable laws and is certified as fulfilling the requirements of the EAC voting system standards by an independent test authority accredited by the EAC. If the secretary of state approves the machine or system, the secretary of state shall issue a certificate of approval.

Any changes or modifications in electronic counting machines and electronic voting systems may be certified by the secretary of state with or without the demonstration described in this section for initial approval provided that the modified machine or system has been certified as fulfilling the requirements of the FEC voting system standards by an independent test authority accredited by the NASED. Upon the creation of voting system standards by the EAC, any changes or modifications in electronic counting machines and electronic voting systems may be certified by the secretary of state with or without the demonstration described in this section for initial approval provided that the modified machine or system has been certified as fulfilling the requirements of the EAC voting system standards by an independent test authority accredited by the EAC.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 16.1-06-26

**Law Implemented:** NDCC 16.1-06-10.1, 16.1-06-11, 16.1-06-14, 16.1-06-26

**72-06-01-03. Decertification by secretary of state of electronic counting machines and voting systems.** The secretary of state may decertify and revoke

a certificate of approval of any electronic counting machine or electronic voting system previously certified according to section 72-06-01-02 if the secretary of state becomes aware that:

1. Any substantial modification was made to the electronic counting machine or electronic voting system that was not certified according to section 72-06-01-02; or
2. Documented evidence exists showing malfunctioning by the electronic counting machine or electronic voting system that cannot be explained by user or operator error, and which the company cannot adequately or chooses not to account for.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 16.1-06-26

**Law Implemented:** NDCC 16.1-06-14, 16.1-06-26

**72-06-01-04. Criteria for approving direct recording electronic voting systems.** Before the secretary of state grants a certificate of approval, the following capabilities or features of a direct recording electronic voting system must be demonstrated to the secretary of state or the secretary of state's designee upon such official's request. As used in this section, the term system means direct recording electronic voting system. The secretary of state may grant a certificate of approval for a system if the system fulfills the requirements of North Dakota Century Code section 16.1-06-14 and is approved or certified by the FEC or EAC. The secretary of state may also require that one or more of the following capabilities or features also be included in a system prior to its approval:

1. Presents the entire ballot to the voter in a series of sequential screens that include methods to ensure the voter sees all ballot options on all screens before completing the vote and allows the voter to review all ballot choices before casting a ballot;
2. Alerts the voter on the screen if the voter attempts to overvote or cross-party vote and provides information on how to correct the overvote or cross-party vote;
3. Is an electronic computer-controlled voting system that provides for direct recording and tabulating of votes cast;
4. Has a battery backup system that, at a minimum, allows voting to continue uninterrupted for two hours without external power;
5. Along with any activating and vote recording devices and components, has a unique embedded internal serial number for audit purposes;
6. Is designed to accommodate multiple ballot styles in each election precinct and multiple precincts;

7. Has a real-time clock capable of recording and documenting the total time polls are open in a precinct and capable of documenting the opening and closing of polls;
8. Complies with the disability voting requirements of the Help America Vote Act [Pub. L. 107-252; 42 U.S.C. 15301-15545];
9. For security purposes, along with each associated activating and recording device and component, employs a unique, electronically implanted election-specific internal security code such that the absence of the security code prevents substitution of any unauthorized system or related component;
10. Has a color touch-screen that is at least fifteen inches [38.1 centimeters] in diagonal measure;
11. Has an option to accommodate a wheelchair voter without intervention of the poll worker other than a minor adjustment such as the angle of the display, and the voter must be able to vote in a face-first position so that privacy is maintained with the ballot surface adjusted to a vertical position;
12. Has wheels so that the system may be easily rolled by one person on rough pavement and rolled through a standard thirty-inch [76.2-centimeter] doorframe if the net weight of the system, or aggregate of voting device parts, is over twenty pounds [9.07 kilograms];
13. Has a smart card-type device to activate the system for each individual voter. The election worker or voters shall be able to activate the card at the poll table with an activation device and hand the card to the voter to use on any open voting system. The card shall be rendered unusable by the voting system after the voter has cast a ballot and after a period of time has expired. There shall be a manual solution available in the event the smart card activation device or the smart card reading unit on the machine fails;
14. Prints and alphanumeric printout of the contest, candidates, position numbers, and vote totals when the polls are open so that the election workers may verify that the counters for each candidate are on zero. These printouts shall contain the system serial number and the counter total. The election worker must be able to request as many copies as needed. The system shall include a feature to allow reports to be sent to a printer or to an excel-compatible file;
15. The system central processing unit is designed so that no executable code may be launched from random access memory. If the operating system is open or widely used, it must be an embedded system;

16. Provides an electronic, redundant storage of both the vote totals and the randomized individual ballot images. These randomized images must be able to be printed after the polls close;
17. Allows a comparison of the multiple locations of totals and ballot images to detect any errors or discrepancies. In the event of a data discrepancy, an appropriate error message shall be displayed in a text format, in order to either correct the data error or prohibit voting from continuing;
18. Has a programmable memory device that plugs into the system. This programmable memory device shall contain the ballot control information, the summary vote totals, maintenance log, operator log, and the randomized ballot images;
19. Maintains all vote totals, counter totals, audit trail ballot images, and the internal clock time in both the main memory and the removable programmable memory devices in the event the main power and battery backup power fail;
20. Has a self-contained, internal backup battery that powers all components of the system that are powered by alternating current power. In the event of a power outage in the precinct, the self-contained, internal backup battery power shall engage with no disruption of operation or loss of data. The system shall maintain all vote totals, counter totals, audit trail ballot images, and the internal clock time in both the main memory and the removable programmable memory devices in the event the main power and battery backup fail;
21. Has software that is able to run in a networked or stand-alone environment and support early voting;
22. Has a standard or as an option, software and hardware provisions for remote transmission of election results to a central location;
23. Has internal operating system software or firmware that:
  - a. Is specifically designed and engineered for the election application;
  - b. Is contained within each touch-screen voting device;
  - c. Is stored in a nonvolatile memory within each terminal;
  - d. Includes internal quality checks such as parity or error detection and correction codes; and
  - e. Includes comprehensive diagnostics to ensure that failures do not go undetected;

24. Has a mandatory preelection testing of the ballot control logic and accuracy. The logic and accuracy test results must be stored into the memory of the main processor (central processing unit) and into the same programmable memory device that is used on election day for future reference. The test results must be stored by vote total summaries and by each individual ballot image randomly. The system must be capable of printing a zero-results printout prior to these tests and results printout after the tests; and
25. Stores tabulation of votes, ballot by ballot, in two or more memory locations on separate integrated circuit chips and shall be electronically compared throughout the election. Any differences between votes tabulated and votes stored in multiple storage locations shall be detected immediately and generate an error message defining required maintenance on the electronic voting system before the system continues to be used in the election.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 16.1-06-26

**Law Implemented:** NDCC 16.1-06-14, 16.1-06-26

**72-06-01-05. Defining a vote on optical scan ballots used as a part of an electronic counting machine or electronic voting system.** A voting mark that touches the oval or arrow on an optical scan ballot used as a part of an electronic counting machine or electronic voting device shall be counted as if it were on or in the oval or arrow. Except as provided in North Dakota Century Code sections 16.1-13-25 and 16.1-13-26, if the voting mark does not touch the oval or arrow and is not on or in the oval or arrow, the vote may not be counted.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 16.1-06-26

**Law Implemented:** NDCC 16.1-06-26

**72-06-01-06. Defining a vote on direct recording electronic voting systems.** A vote on a direct recording electronic voting system is one that is directly recorded and tabulated on an electronic computer-controlled voting system by a method that ensures a voter sees all ballot options on all screens before completing the vote and allows the voter to review all ballot choices before casting a ballot.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 16.1-06-26

**Law Implemented:** NDCC 16.1-06-26

**72-06-01-07. Temporarily defining a vote on new electronic counting machines and electronic voting system, not otherwise addressed in section 72-06-01-05 or 72-06-01-06.** After certifying a new electronic counting machine or electronic voting system according to section 72-06-01-01 which is not otherwise addressed in section 72-06-01-05 or 72-06-01-06, and within sixty days following

the issue of a certificate of approval by the secretary of state, the secretary of state shall temporarily define and publicize what constitutes a vote on the newly certified electronic counting machine or electronic voting system, which will govern until a permanent definition is adopted by rule.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 16.1-06-26

**Law Implemented:** NDCC 16.1-06-26

**CHAPTER 72-06-02**  
**NOTIFICATION TO MILITARY AND OVERSEAS VOTER OF REJECTION OF**  
**ABSENTEE BALLOT REQUEST**

Section

72-06-02-01

Absentee Ballot Request Rejection Notice

**72-06-02-01. Absentee ballot request rejection notice.** The secretary of state shall provide county auditors with a procedure and a form to utilize when notifying a military or overseas voter that the voter's request for an absentee ballot was rejected and the reason for the rejection.

**History:** Effective March 1, 2004.

**General Authority:** NDCC 16.1-01-01(3)

**Law Implemented:** NDCC 16.1-01-01(3); Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 1973ff-1

**TITLE 75**  
**DEPARTMENT OF HUMAN SERVICES**





**MARCH 2004**

**CHAPTER 75-02-06**

**75-02-06-01. Definitions.** In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.
3. "Adjustment factor" means the appropriate composite economic change index.
4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.
5. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by medical assistance regulations.
6. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's-length transaction. It does not include:
  - a. A purchase of shares in a corporation that owns, operates, or controls a facility except as provided under subsection 3 of section 75-02-06-07;
  - b. A sale and leaseback to the same licensee;
  - c. A transfer of an interest to a trust;
  - d. Gifts or other transfers for nominal or no consideration;
  - e. A merger of two or more related organizations;

- f. A change in the legal form of doing business;
  - g. The addition or deletion of a partner, owner, or shareholder; or
  - h. A sale, merger, reorganization, or any other transfer of interest between related organizations.
- 7. "Building" means the physical plant, including building components and building services equipment, licensed as a facility, and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings located on the site used directly for resident care.
- 8. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.
- 9. "Certified nurse aide" means:
  - a. An individual who has satisfactorily completed a nurse aide training and competency evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154 and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or who has been deemed or determined competent as provided in 42 CFR 483.151(a) and (b) and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or
  - b. An individual who has worked less than four months as a nurse aide and is enrolled in a training and evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154.
- 10. "Chain organization" means a group of two or more health care facilities owned, leased, or, through any other device, controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to health care.
- 11. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.
- 12. "Community contribution" means a contribution to a civic organization or sponsorship of community activities. It does not include a donation to a charity.

13. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, the determination of cost limitations, and determination of rates.
14. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a facility are divided for purposes of cost assignment and allocations.
15. "Cost 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 an asset over its estimated useful life.
19. "Depreciation guidelines" means the American hospital association's guidelines as published by American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 1998 2003 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 nursing and therapy 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 nursing facility premises.
24. "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.
25. "Established rate" means the rate paid for services.
26. "Facility" means a nursing facility not owned or administered by state government or a nursing facility, owned or administered by state government, which agrees to accept a rate established under this

chapter. It does not mean an intermediate care facility for the mentally retarded.

27. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
28. "Final decision rate" means the amount, if any, determined on a per day basis, by which a rate otherwise set under this chapter is increased as a result of a request for reconsideration, a request for an administrative appeal, or a request for judicial appeal taken from a decision on an administrative appeal.
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 nursing facility which does not share basic services with a hospital-based provider.
32. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, uniform allowances, and medical services furnished at nursing facility expense.
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. "Hospice general inpatient care" means short-term inpatient care necessary for pain control or acute or chronic symptom management that cannot feasibly be provided in other settings. It does not mean care provided to an individual residing in a nursing facility.
36. "Hospice inpatient respite care" means short-term inpatient care provided to an individual when necessary to relieve family members or other persons caring for the individual at home. Care may be provided for no more than five consecutive days. For purposes of the definition, home does not include nursing facility.

37. "Hospital leave day" means any day that a resident is not in the facility, but is in an acute care setting as an inpatient or has been identified in a resident assessment instrument as "discharged anticipated to return".
38. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
39. "In-house resident day" for nursing facilities means a day that a resident was actually residing in the facility and was not on therapeutic leave or in the hospital. "In-house resident day" for hospitals means an inpatient day.
40. "Institutional leave day" means any day that a resident is not in the facility, but is in another nursing facility, intermediate care facility for the mentally retarded, or basic care facility.
41. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
42. "Limit rate" means the rate established as the maximum allowable rate for a cost category.
43. "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.
44. "Managed care organization" means a medicaid managed care organization as that term is defined in section 1903(m) of the Social Security Act [42 U.S.C. 1396b(m)].
45. "Medical assistance program" means the program which pays the cost of health care provided to eligible recipients pursuant to North Dakota Century Code chapter 50-24.1.
46. "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.
47. "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.
48. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.

- 49. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act (FICA) taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
- 50. "Pending decision rate" means the amount, determined on a per day basis, by which a rate otherwise set under this chapter would increase if a facility prevails on a request for reconsideration, on a request for an administrative appeal, or on a request for a judicial appeal taken from a decision on an administrative appeal; however, the amount may not cause any component of the rate to exceed rate limits established under this chapter.
- 51. "Private-pay resident" means a nursing facility resident on whose behalf the facility is not receiving medical assistance payments and whose payment rate is not established by any governmental entity with ratesetting authority, including veterans' administration or medicare, or whose payment rate is not negotiated by any managed care organization contracting with a facility to provide services to the resident.
- 52. "Private room" means a room equipped for use by only one resident.
- 53. "Property costs" means the cost category for allowable real property costs and other costs which are passed through.
- 54. "Provider" means the organization or individual who has executed a provider agreement with the department.
- 55. "Rate year" means the calendar year from January first through December thirty-first.
- 56. "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.
- 57. "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.

- 58. "Report year" means the fiscal year from July first through June thirtieth of the year immediately preceding the rate year.
- 59. "Resident" means a person who has been admitted to the facility, but not discharged.
- 60. "Resident day" in a nursing facility means all days for which service is provided or for which payment is ordinarily sought, including hospital leave days and therapeutic leave days. The day of admission and the day of death are resident days. The day of discharge is not a resident day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought.
- 61. "Respite care" means short-term care provided to an individual when necessary to relieve family members or other persons caring for the individual at home.
- 62. "Routine hair care" means hair hygiene which includes grooming, shampooing, cutting, and setting.
- 63. "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater; but does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds, and does not mean an increase in a nursing facility's licensed capacity resulting from converting beds formerly licensed as basic care beds.
- 64. "Standardized resident day" means a resident day times the classification weight for the resident.
- 65. "Therapeutic leave day" means any day that a resident is not in the facility, another nursing facility, an intermediate care facility for the mentally retarded, a basic care facility, or an acute care setting, or, if not in an institutional setting, is not receiving home and community-based waived services.
- 66. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
- 67. "Working capital debt" means debt incurred to finance nursing facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

**History:** Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985; September 1, 1987; January 1, 1990; January 1, 1992; November 22,



1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; July 2, 2002; July 2, 2003.

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

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

#### **75-02-06-03. Depreciation.**

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

- (1) A composite useful life of ten years for all equipment except automobiles and five years for automobiles; or
    - (2) The useful lives for all equipment identified in the depreciation guidelines and a useful life of ten years for all equipment not identified in the depreciation guidelines.
  - c. A provider acquiring assets as an ongoing operation shall use as a basis for determining depreciation:
    - (1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and
    - (2) A composite remaining useful life for movable equipment, determined from the seller's records.
- 3. Acquisitions.
  - a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars, its cost must be capitalized and depreciated over the estimated useful life of the asset. Cost incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest, must be capitalized as a part of the cost of the asset.
  - b. All repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building repaired or maintained, or one-half of the original estimated useful life, whichever is greater.
- 4. Proper records must provide accountability for the fixed assets and provide adequate means by which depreciation can be computed and established as an allowable resident-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.
- 5. Donated assets, excluding assets acquired as an ongoing operation, may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal may be made. The appraisal must be made by a recognized appraisal expert and may be accepted for depreciation purposes. The useful life of a donated asset must be determined in accordance with subsection 2. The facility may elect to forego depreciation on a donated asset thereby negating the need for a fair market value determination.

6. Basis for depreciation of assets acquired as an ongoing operation. Determination of the cost basis of a facility and its depreciable assets of an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.
- a. The cost basis of a facility and its depreciable assets acquired in a bona fide sale after July 1, 1985, is limited to the lowest of:
    - (1) Purchase price paid by the purchaser;
    - (2) Fair market value at the time of the sale; or
    - (3) The seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers, United States city average, all items, from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes; ~~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;~~
  - b. In a sale not bona fide, the cost basis of an acquired facility and its depreciable assets is the seller's cost basis, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer.
  - c. The cost basis of a facility and its depreciable assets acquired by donation or for a nominal amount is the cost basis of the seller or donor, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer or donee.
  - d. In order to calculate the increase over the seller's cost basis, an increase may be allowed, under subdivision a, only for assets with a historical cost basis established separately and distinctly in the seller's depreciable asset records.
  - e. An adjustment may not subsequently be allowed for any depreciable cost that ~~exceeded the basis in effect for~~ dissallowed in rate periods prior to January 1, ~~1996~~ 2006.

- f. For purposes of this subsection, "date of acquisition" means the date when ownership of the depreciable asset transfers from the transferor to the transferee such that both are bound by the transaction. For purposes of transfers of real property, the date of acquisition is the date of delivery of the instrument transferring ownership. For purposes of titled personal property, the date of acquisition is the date the transferee receives a title acceptable for registration. For purposes of all other capital assets, the date of acquisition is the date the transferee possesses both the asset and an instrument, describing the asset, which conveys the property to the transferee.
  - g. For rate years beginning on or after January 1, 2006, the limitations of paragraph 3 of subdivision a shall not apply to the valuation basis of assets acquired as an ongoing operation between July 1, 1985, and July 1, 2000.
7. A per bed cost limitation based on single and double occupancy must be used to determine the total allowable cost basis of buildings and fixed equipment for a facility with construction, renovation, or remodeling.
- a. The per bed limitation basis for double occupancy must be calculated averaging the cost basis reported on the June 30, 1994, cost report, as adjusted by the consumer price index for all urban consumers, United States city average, all items, to June 30, 1995, for nonstate-owned facilities with construction of new occupancy space completed on or after January 1, 1990, and before July 1, 1994.
  - b. The per bed limitation basis for single occupancy must be calculated using the limitation determined in subdivision a, multiplied by 1.34.
  - c. The double and single occupancy per bed limitation must be adjusted annually on July first, using the increase, if any, in the consumer price index for all urban consumers, United States city average, all items, for the twelve-month period ending the preceding May thirty-first.
  - d. The per bed limitation in effect at the time a construction, renovation, or remodeling project is put in service must be multiplied times the number of beds in double and single occupancy rooms to establish the maximum allowable cost basis of buildings and fixed equipment.
  - e. The cost basis of a facility's buildings and fixed equipment must be limited to the lower of the recorded cost of total facility buildings and fixed equipment or the per bed limitation.

- f. The per bed limitation is not applicable to projects started or approved by the state health council before July 1, 1994.

**History:** Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; July 2, 2003.

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

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

#### **75-02-06-16. Rate determinations.**

1. For each cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 4 divided by standardized resident days for the direct care cost category and resident days for other direct care, indirect care, and property cost categories. The actual rate as calculated is compared to the limit rate for each cost category to determine the lesser of the actual rate or the limit rate. The lesser rate is given the rate weight of one. The rate weight of one for direct care is then multiplied times the weight for each classification in subsection 5 of section 75-02-06-17 to establish the direct care rate for that classification. The lesser of the actual rate or the limit rate for other direct care, indirect care, and property costs, and the adjustments provided for in subsection 2 and 3 are then added to the direct care rate for each classification to arrive at the established rate for a given classification.
2.
  - a. For a facility with an actual rate below the limit rate for indirect care costs, an incentive amount equal to seventy percent times the difference between the actual rate, exclusive of the adjustment factor, and the limit rate in effect at the end of the year immediately preceding the rate year, up to a maximum of two dollars and sixty cents or the difference between the actual rate, inclusive of the adjustment factor and the limit rate for indirect care costs, whichever is less, must be included as part of the indirect care cost rate.
  - b. A facility shall receive an operating margin of three percent based on the lesser of the actual direct care and other direct care rates, exclusive of the adjustment factor, or the limit rate in effect at the end of the year immediately preceding the rate year. The three percent operating margin must be added to the rate for the direct care and other direct care cost categories.
3. Limitations.
  - a. The department shall accumulate and analyze statistics on costs incurred by facilities. Statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of

operations necessary for efficient delivery of needed services. Limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. The department may implement ceilings at any time based upon information available.

- b. The department shall review, on an ongoing basis, aggregate payments to facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under medicare payment principles. If aggregate payments to facilities exceed estimated payments under medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under medicare payment principles.
- c. All facilities except those nongeriatric facilities for individuals with physical disabilities or units within a nursing facility providing geropsychiatric services described in North Dakota Century Code section 50-24.4-13 must be used to establish a limit rate for the direct care, other direct care, and indirect care cost categories. The base year is the report year ended June 30, 1999. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection.
- d. The limit rate for each of the cost categories must be established as follows:
  - (1) Historical costs for the report year ended June 30, 1999, as adjusted, must be used to establish rates for all facilities in the direct care, other direct care, and indirect care cost categories. The rates as established must be ranked from low to high for each cost category.
  - (2) For the ~~rate year period beginning January 1, 2002~~ July 1, 2003, the limit rate for each cost category is calculated based on:
    - (a) For the direct care cost category, ~~seventy-six eighty-five dollars and seventy-six cents multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4;~~
    - (b) For the other direct care cost category, ~~thirteen fourteen~~ fourteen dollars and ~~thirty-three eighty-nine cents multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4;~~ and

- (c) For the indirect care cost category, ~~thirty-two~~ thirty-six dollars ~~multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4~~ and fifty-four cents.
  - (3) For rate years beginning on or after January 1, ~~2003~~ 2004, the limit rate for each cost category is calculated based on:
    - (a) For the direct care cost category, ~~eighty-three~~ eighty-five dollars ~~and thirty-two cents~~ multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4;
    - (b) For the other direct care cost category, fourteen dollars and ~~fifteen~~ eighty-nine cents multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4; and
    - (c) For the indirect care cost category, ~~thirty-four~~ thirty-six dollars and ~~seventy-two~~ fifty-four cents multiplied by the adjustment factor determined under subparagraph b of paragraph 3 of subdivision b of subsection 4.
- e. A facility with an actual rate that exceeds the limit rate for a cost category shall receive the limit rate.
- f. The actual rate for indirect care costs and property costs must be the lesser of the rate established using:
  - (1) Actual census for the report year; or
  - (2) Ninety percent of licensed bed capacity available for occupancy as of June thirtieth of the report year:
    - (a) Multiplied times three hundred sixty-five; and
    - (b) Reduced by the number of affected beds, for each day any bed is not in service during the report year, due to a remodeling, renovation, or construction project.
- 9. The department may waive or reduce the application of subdivision f if the facility demonstrates that occupancy below ninety percent of licensed capacity results from the use of alternative home and community services by individuals who would otherwise be eligible for admission to the facility and:
  - (1) The facility has reduced licensed capacity; or

- (2) The facility's governing board has approved a capacity decrease to occur no later than the end of the rate year which would be affected by subdivision f.
4. Adjustment factors for direct care, other direct care, and indirect care costs.
  - a. An appropriate composite economic change index may be used for purposes of adjusting historical costs for direct care, other direct care, and indirect care under subsection 1 and for purposes of adjusting limitations of direct care costs, other direct care costs, and indirect care costs under subsection 3, but may not be used to adjust property costs under either subsection 1 or 3.
  - b. For purposes of this section:
    - (1) "Appropriate composite economic change index" means one-half of the increase, if any, in the consumer price index, plus one-half of the increase, if any, in the data resources, incorporated, North Dakota specific nursing home input price index.
    - (2) The "consumer price index increase" means the percentage (rounded to the nearest one-tenth of one percent) by which consumer price index for urban wage earners and clerical workers (CPI-W), all items, United States city average for the quarter ending September thirtieth of the year immediately preceding the rate year (as prepared by the United States department of labor) exceeds that index for the quarter ending September thirtieth of the second year preceding the rate year.
    - (3) "Data resources, incorporated, North Dakota specific nursing home input price index" means:
      - (a) For purposes of determining the adjustment factor applicable to historical costs under subsection 1, for direct care, other direct care, and indirect care, the composite index for the eighteen-month period beginning immediately after the report year ends; and
      - (b) For purposes of determining the adjustment factor applicable to the limit rates for direct care, other direct care, and indirect care under subsection 3, the composite index for the period beginning January 1, ~~2002~~ 2004, and ending at the end of the rate year.
5. Rate adjustments.



a. Desk audit rate.

- (1) The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by 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 should not be made. The department shall review the information and make appropriate adjustments.
- (2) The desk audit rate must be effective January first of each rate year unless the department specifically identifies an alternative effective date and must continue in effect until a final rate is established.
- (3) Until a final rate is effective, pursuant to paragraph 3 of subdivision b, private-pay rates may not exceed the desk audit rate except as provided for in section 75-02-06-22 or subdivision c.
- (4) The facility may request a reconsideration of the desk rate for purposes of establishing a pending decision rate. The request for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification and must contain the information required in subsection 1 of section 75-02-06-26. No decision on the request for reconsideration of the desk rate may be made by the department unless, after the facility has been notified that the desk rate is the final rate, the facility requests, in writing within thirty days of the rate notification, the department to issue a decision on that request for reconsideration.
- (5) The desk rate may be adjusted for special rates or one-time adjustments provided for in this section.
- (6) The desk rate may be adjusted to reflect errors, adjustments, or omissions for the report year that result in a change of at least ten cents per day for the rate weight of one.

b. Final rate.

- (1) The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective January first of each rate year unless the department specifically identifies an alternative effective date.

- (2) The final rate must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of at least ten cents per day for the rate weight of one that are found during a field audit or are reported by the facility within twelve months of the rate yearend.
- (3) The private-pay rate must be adjusted to the final rate no later than the first day of the second month following receipt of notification by the department of the final rate and is not retroactive except as provided for in subdivision c.
- (4) The final rate may be revised at any time for special rates or one-time adjustments provided for in this section.
- (5) If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:
  - (a) Adjustments, errors, or omissions found within twelve months of establishment of the final rate, not including subsequent revisions, resulting in a change of at least ten cents per day for the rate weight of one must result in a change to the final rate. The change must be applied retroactively as provided for in this section.
  - (b) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate, not including subsequent revisions, that would have resulted in a change of at least ten cents per day for the rate weight of one had they been included, must be included as an adjustment in the report year that the adjustment, error, or omission was found.
  - (c) Adjustments resulting from an audit of home office costs, that result in a change of at least ten cents per day for the rate weight of one, must be included as an adjustment in the report year in which the costs were incurred.
  - (d) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.

c. Pending decision rates for private-pay residents.

- (1) If a facility has made a request for reconsideration, taken an administrative appeal, or taken a judicial appeal from a decision on an administrative appeal, and has provided

information sufficient to allow the department to accurately calculate, on a per day basis, the effect of each of the disputed issues on the facility's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.

- (2) The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding North Dakota Century Code section 50-24.4-19, the total must be the rate chargeable to private-pay residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal. The pending decision rate is subject to any rate limitation that may apply.
  - (3) The facility shall establish and maintain records that reflect the amount of any pending decision rate paid by each private-pay resident from the date the facility charges a private-pay resident the pending decision rate.
  - (4) If the pending decision rate paid by a private-pay resident exceeds the final decision rate, the facility shall refund the difference, plus interest accrued at the legal rate from the date of notification of the pending decision rate, within sixty days after the final decision is no longer subject to appeal. If a facility fails to provide a timely refund to a living resident or former resident, the facility shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the facility shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully administering the estate or lawfully acting as a successor, the facility may make any disposition of the refund permitted by law. Interest paid under this subsection is not an allowable cost.
- d. The final rate as established must be retroactive to the effective date of the desk rate, except with respect to rates paid by private-pay residents. A rate paid by a private-pay resident must be retroactively adjusted and the difference refunded to the resident, if the rate paid by the private-pay resident exceeds the final rate by at least twenty-five cents per day, except that a

pending decision rate is not subject to adjustment or refund until a decision on the disputed amount is made.

6. Rate payments.

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

7. Partial year.

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

- (1) The rates established for direct care, other direct care, indirect care, operating margins, and incentives for the previous owner must be retained through the end of the rate period and the rates for the next rate period following the change in ownership must be established:
  - (a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and
  - (b) For a facility with less than four months of operation under the new ownership during the report year, by indexing the rates established for the previous owner forward using the adjustment factor in subsection 4; or if the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.
- (2) Unless a facility elects to have a property rate established under paragraph 3, the rate established for property for the previous owner must be retained through the end of the rate period and the property rate for the next rate period following the change in ownership must be established:
  - (a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and
  - (b) For a facility with less than four months of operation under the new ownership during the report year, by using the rate established for the previous owner for the previous rate year; or if the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.
- (3) A facility may choose to have a property rate established, during the remainder of the rate year and the subsequent rate year, based on interest and principal payments on the allowable portion of debt to be expended during the rate years. The property rate must go into effect on the first of the month following notification by the department. The difference between a property rate established based on the facility's election and a property rate established based on paragraph 2, multiplied by actual census for the period, must

be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using this paragraph, may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.

- b. For a new facility, the department shall establish an interim rate equal to the limit rates for direct care, other direct care, and indirect care in effect for the rate year in which the facility begins operation, plus the property rate. The property rate must be calculated using projected property costs and projected census. The interim rate must be in effect for no less than ten months and no more than eighteen months. Costs for the period in which the interim rate is effective must be used to establish a final rate. If the final rates for direct care, other direct care, and indirect care costs are less than the interim rates for those costs, a retroactive adjustment as provided for in subsection 5 must be made. A retroactive adjustment to the property rate must be made to adjust projected property costs to actual property costs. For the rate period following submission of any partial year cost report by a facility, census used to establish rates for property and indirect care costs must be the greater of actual census, projected census, or census imputed at ninety-five percent of licensed beds.
  - (1) If the effective date of the interim rate is on or after March first and on or before June thirtieth, the interim rate must be effective for the remainder of that rate year and must continue through June thirtieth of the subsequent rate year. The facility shall file by March first an interim cost report for the period ending December thirty-first of the year in which the facility first provides services. The interim cost report is used to establish the actual rate effective July first of the subsequent rate year. The partial year rate established based on the interim cost report must include applicable incentives, margins, phase-ins, and adjustment factors and may not be subject to any cost settle-up. The cost reports for the report year ending June thirtieth of the current and subsequent rate years must be used to determine the final rate for the periods that the interim rate was in effect.
  - (2) If the effective date of the interim rate is on or after July first and on or before December thirty-first, 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 June thirtieth of the subsequent rate year. This cost report must be used to establish the rate for the next subsequent rate year. The facility shall file by March first an interim cost report for the period July first through December thirty-first of the subsequent rate year. The interim cost report

is used, along with the report year cost report, to determine the final rate for the periods the interim rate was in effect.

- (3) If the effective date of the interim rate is on or after January first and on or before February twenty-ninth, 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 June thirtieth of the current rate year. This cost report must be used to establish the rate for the subsequent rate year. The facility shall file by March first an interim cost report for the period July first through December thirty-first of the current rate year. The interim cost report is used, along with the report year cost report, to determine the final rate for the period that the interim rate was in effect.
  - (4) The final rate for direct care, other direct care, and indirect care costs established under this subdivision must be limited to the lesser of the limit rate for the current rate year or the actual rate.
- c. For a facility with renovations or replacements in excess of one hundred thousand dollars, and without a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, plus a property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective on the first day of the month beginning after the date the project is completed and placed into service or the first day of the month beginning after the date the request for a projected property rate is received by the department, whichever is later. The property rate for the subsequent rate year must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety-five percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.
- d. For a facility with a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, must be applied to all licensed beds. An interim property rate must

be established based on projected property costs and projected census. The interim property rate must be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the state department of health or the first day of the month beginning after the date when the request for a projected property rate is made to the department, whichever is later, through the end of the rate year. The facility shall file by March first an interim property cost report following the rate year. The interim cost report is used to determine the final rate for property and to establish the amount for a retroactive cost settle-up. The final rate for property is limited to the lesser of the interim property rate or a rate based upon actual property costs. The property rate for the subsequent rate year must be based on projected property costs and census imputed as ninety-five percent of licensed beds, rather than on property costs actually incurred during the report year; and may not be subject to retroactive cost settle-up. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

- e. For a facility with no significant capacity increase and no renovations or replacements in excess of one hundred thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds.
  - f. For a facility terminating its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until medical assistance residents can be relocated to facilities participating in the medical assistance program.
  - 9. At such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate established using subdivision c or d and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using subdivision c or d may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.
8. One-time adjustments.
- a. Adjustments to meet certification standards.
    - (1) The department may provide for an increase in the established rate for additional costs incurred to meet certification standards. The survey conducted by the state



department of health must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs that must be increased to correct the deficiencies cited in the survey process.

- (2) The facility shall submit a written request to the medical services division within thirty days of submitting the plan of correction to the state department of health. The request must:
  - (a) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's certification survey;
  - (b) Identify the number of new staff or additional staff hours and the associated costs required to meet the certification standards; and
  - (c) Provide a detailed list of any other costs necessary to meet survey standards.
- (3) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted to an amount not to exceed the limit rate.
- (4) Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.

b. Adjustments for unforeseeable expenses.

- (1) The department may provide for an increase in the established rate for additional costs incurred to meet major unforeseeable expenses. The expenses must be resident related and must be beyond the control of those responsible for the management of the facility.
- (2) Within sixty days after first incurring the unforeseeable expense, the facility shall submit a written request to the medical services division containing the following information:
  - (a) An explanation as to why the facility believes the expense was unforeseeable;

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

c. Adjustment to historical operating costs.

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

- (c) The facility shall submit a written plan describing how the facility will meet the minimum standard if the adjustment is received, including the number and type of staff to be added to the current staff and the projected cost for salary and fringe benefits for the additional staff.
  - (3) The adjustment must be calculated based on the costs necessary to increase nursing hours to the minimum standards less any operating margins and incentives included when calculating the established rate. The net increase must be divided by standardized resident days and the amount calculated must be added to the rate. This rate is subject to any rate limitations that may apply.
  - (4) If the facility fails to implement the plan to increase nursing hours to one and two-tenths hours per standardized resident day, the amount included as the adjustment must be adjusted in accordance with the methodologies set forth in subsection 5.
  - (5) If the cost of implementing the plan exceeds the amount included as the adjustment, no retroactive settlement may be made.
- d. Adjustments for disaster recovery costs when evacuation of residents occurs.
- (1) A facility may incur certain costs when recovering from a disaster such as a flood, tornado, or fire. If evacuation of residents was necessary because of the disaster, actual recovery costs during the evacuation period, net of insurance recoveries, may be considered as deferred charges and allocated over a number of periods that benefit from the costs.
  - (2) When a facility has evacuated residents and capitalizes recovery costs as a deferred charge, the recovery costs must be recognized as allowable costs amortized over sixty consecutive months beginning with the sixth month after the first resident is readmitted to the facility.
  - (3) Recovery costs must be identified as startup costs and included as passthrough costs for report purposes. Recovery costs are not subject to any limitations except as provided in paragraph 4.
  - (4) If a facility evacuates residents, the ninety percent occupancy limitation may not be applied during the recovery period or for

the first six months following the month the facility readmits the first resident.

- (5) Insurance recoveries relating to the disaster recovery period must be reported as a reduction of recovery costs. Insurance recoveries received after the first month of the sixty-month amortization period must be included as a reduction of deferred charges not yet amortized, except that the reduction for insurance recoveries may occur only at the beginning of a rate year.
9. Under no circumstances, including an appeal or judicial decision to the effect a rate was erroneously established, may a rate adjustment be made to any rate established under this chapter, unless the cumulative impact of all adjustments not already included in the established rate equals or exceeds ten cents per day for the rate weight of one.

**History:** Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984; September 1, 1987; January 1, 1990; April 1, 1991; January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; January 1, 2002; July 2, 2003.

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

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

**75-02-06-16.1. Adjustments for salary and benefit enhancements.**  
Repealed effective July 2, 2003.

- ~~1. The department shall provide for a salary and benefit enhancement rate for July 1, 2001, and January 1, 2002. A facility must submit a plan detailing enhancements for employee salary and benefits at least forty-five days prior to the implementation of the enhancement by the facility.~~
- ~~2. The salary and benefit enhancement rate shall be added to the rate otherwise established under this chapter on or after July 1, 2001. The enhancement rate may not be effective before the implementation date of the enhancement.~~
- ~~3. The salary and benefit enhancement rate may not exceed ten dollars and ten cents for the rate year beginning January 1, 2001. For the rate year beginning January 1, 2002, the salary and benefit enhancement rate established for the prior year shall be increased by one-half of the adjustment factor set forth in subparagraph a of paragraph 3 of subdivision b of subsection 4 of section 75-02-06-16.~~
- ~~4. Any additional funds provided by the salary and benefit enhancement rate must be used to provide the enhancements outlined in the facility's plan and are subject to audit. If the department determines that the~~

~~funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5 of section 75-02-06-16.~~

**History:** ~~Effective July 1, 2001.~~

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

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

## CHAPTER 75-03-34

### 75-03-34-01. Definitions.

1. ~~"Activities of daily living" means bathing, dressing, toileting, transferring, eating, bed mobility, medication management, and personal hygiene.~~
2. "Assisted living facility" means ~~any a~~ building or structure containing a series of living units operated as one business entity to provide services ~~to for~~ five or more individuals who are aged or disabled adults and who ~~are~~ not related by blood or marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that ~~makes available~~ provides or coordinates individualized support services to accommodate ~~an the~~ individual's needs and abilities to maintain as much independence as possible. ~~It An assisted living facility~~ does not include a facility that is a congregate housing facility, licensed as a basic care facility, or a congregate housing facility licensed under North Dakota Century Code chapter 23-16 or 25-16.
3. 2. "Department" means the North Dakota department of human services.
3. "Entity" means an individual, institution, organization, limited liability company, or corporation, whether or not organized for profit.
4. "Individualized support services" means ~~services designed to provide assistance to adults who may have physical or cognitive impairments and who require at least a moderate level of assistance with one or more activities of daily living~~ provided to individuals who may require assistance with the activities of daily living of bathing, dressing, toileting, transferring, eating, medication management, and personal hygiene.
5. "Living unit" means a portion of an assisted living facility occupied as the living quarters of an individual who has entered into a lease agreement with the assisted living facility.
6. "Medication management" means providing assistance to an assisted living facility tenant with prescribed medications.
7. "Related by blood or marriage to the owner or manager" means an individual who is a spouse or former spouse of the owner or manager or is a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of the owner or manager or the owner or manager's spouse or former spouse.

**History:** Effective January 1, 2002; amended effective March 1, 2004.

**General Authority:** NDCC ~~50-24.5-02.1~~ 50-32-03

**Law Implemented:** NDCC ~~50-24.5-01~~ 50-32-01

**75-03-34-02. Registration Licensing.**

1. An assisted living facility shall apply to the department for a ~~certificate of registration~~ license in the form and manner prescribed by the department. The department shall notify a ~~registered~~ licensed assisted living facility of the need to renew its ~~registration~~ license at least thirty days prior to expiration of that ~~registration~~ license. The notice must include the form required to renew ~~registration~~ a license.
2. An application for ~~registration~~ a license is not complete until the applying assisted living facility submits all required information and ~~verifications~~ verification to the department.
3. The department shall approve or deny an application for a ~~registration certificate~~ license within thirty days of the department's receipt of complete application materials from an assisted living facility.
4. In order to receive and maintain a ~~certificate of registration~~ license, an assisted living facility shall:
  - a. Pay a ~~registration~~ licensing fee of seventy-five dollars to the department annually. The ~~registration~~ licensing fee shall not be prorated nor is any part refundable;
  - b. Maintain a written agreement with each tenant that includes the rates for rent and services provided to the tenant, payment terms, refund policies, rate changes, tenancy criteria, and living unit inspections;
  - c. Provide each tenant with written notice of how a tenant may report a complaint regarding the assisted living facility, which includes the telephone number of the department's senior info-line and the address of the aging services division of the department; and
  - d. Certify that operation of its facility is in compliance with all applicable federal, state, and local laws and, upon request, make available to the department copies of current certifications, licenses, permits, and other similar documents evidencing compliance with such laws.
5. A ~~registration certificate~~ license is valid for the calendar year in which it is issued. A ~~registration certificate~~ license is not subject to sale, assignment, or other transfer, voluntary or involuntary. ~~The registration certificate~~ A license is not valid for any premises or entity other than those for which it was originally issued.
6. An assisted living facility must submit to the department an application for ~~registration~~ license renewal thirty days prior to the calendar yearend. An assisted living facility is subject to the same requirements and has

the same responsibility to furnish information for a renewal of its ~~registration certificate~~ license as it did during its initial application.

7. An assisted living facility shall display its ~~registration certificate~~ license in a conspicuous place on its premises.

**History:** Effective January 1, 2002; amended effective March 1, 2004.

**General Authority:** NDCC ~~50-24.5-02.1~~ 50-32-03

**Law Implemented:** NDCC ~~50-24.5-02.1~~ 50-32-02

**75-03-34-03. Revocation of registration license.**

1. The department may deny or revoke an assisted living facility's registration license if:
  - a. The application for ~~registration~~ a license or renewal of ~~registration~~ a license or supporting documents contain fraudulent or untrue representations or if the registration license was otherwise issued based upon bribery or fraudulent or untrue representations;
  - b. The assisted living facility is in violation of this chapter or is unwilling or unable to conform to the requirements of this chapter;
  - c. The assisted living facility, or the premises proposed for the assisted living facility, is not or will not be maintained according to this chapter;
  - d. The assisted living facility is denied any license necessary under federal, state, or local law or such license has been revoked;
  - e. The assisted living facility refuses to allow the department access to any material or information necessary to determine compliance with ~~registration licensing~~ requirements; or
  - f. The assisted living facility demonstrates a pattern of failing to abide by the terms of its contract with tenants.
2. Except when conditions exist that present imminent danger to assisted living facility tenants, the effective date of a revocation of a ~~registration certificate~~ license shall be thirty days from the date the department provides written notification to the assisted living facility of the department's decision to revoke the registration license.
3. The revocation notice to the assisted living facility must include the basis of the department's decision, the effective date of the revocation, and information regarding the assisted living facility's right to request reconsideration by the department.



4. The assisted living facility must notify all tenants and third-party payers of the department's revocation of its ~~registration~~ license within fifteen days from the date of the final revocation notice.

**History:** Effective January 1, 2002; ~~amended effective March 1, 2004.~~

**General Authority:** NDCC ~~50-24.5-02.1~~ 50-32-03

**Law Implemented:** NDCC ~~50-24.5-02.1~~ 50-32-02

#### **75-03-34-05. Enforcement.**

1. The department shall provide written notice of the need to ~~register~~ for a license to any individual, institution, organization, limited liability company, or public or private corporation that provides assisted living services or uses the term assisted living in its marketing which does not have a ~~registration-approved~~ license issued by the department.
2. Sixty days after the written notification of noncompliance with annual ~~registration~~ licensing, the department may assess a fine of up to fifty dollars per day against any individual, institution, organization, limited liability company, or public or private corporation that provides assisted living services or uses the term assisted living in its marketing without a ~~registration-approved~~ license issued by the department.

**History:** Effective January 1, 2002; ~~amended effective March 1, 2004.~~

**General Authority:** NDCC ~~50-24.5-02.1~~ 50-32-03

**Law Implemented:** NDCC ~~50-24.5-02.1~~ 50-32-02

**APRIL 2004**

**CHAPTER 75-02-02.1**

**75-02-02.1-19.1. Family coverage group.**

1. Caretakers, pregnant women, and children who meet the medically needy technical requirements and the requirements of this section are eligible under the family coverage group.
2. Families eligible under the family coverage group must include a child, who may be an unborn child, who is deprived of a biological or adoptive parent's support or care.
  - a. The child described in this subsection must be:
    - (1) Living with a caretaker relative; and
    - (2) Under age eighteen, or age eighteen and a full-time or part-time student in high school or an equivalent level of vocational or technical training if the student can reasonably be expected to complete the high school, general equivalency diploma, or vocational curriculum prior to or during the month the student turns age nineteen. A child who does not meet this age requirement is not included in any eligibility determinations for the family coverage group.
  - b. The parents of a caretaker who is at least age eighteen, or if under age eighteen is married or is not residing with the parents, may not be included in the same family unit as the caretaker.
  - c. If the only deprived child, including a disabled child in receipt of supplemental security income benefits, is age eighteen and is a student anticipated to graduate prior to or during the month of the child's nineteenth birthday, the parent remains eligible under the family coverage group if all other criteria are met.

- d. An individual in receipt of social security or supplemental security income disability or retirement benefits may choose to be eligible as a disabled or aged individual under the medically needy coverage group, or may choose to be considered a caretaker, or child, under the family coverage group. These individuals are included in the unit as follows:
  - (1) An individual in receipt of social security disability or retirement benefits is included in the family unit for determining income eligibility regardless of whether the disabled individual chooses medicaid eligibility under the medically needy coverage group or the family coverage group.
  - (2) A supplemental security income recipient who chooses to be eligible as aged, blind, or disabled is not eligible for coverage under the family coverage group. The supplemental security income recipient is considered part of the family unit.
    - (a) A caretaker receiving supplemental security income benefits is included in the family unit for budget purposes due to the caretaker's financial responsibility for spouse and children; and
    - (b) A child receiving supplemental security income benefits is not included in the family unit for budget purposes.
  - (3) A supplemental security income recipient who chooses to be eligible as a caretaker or child may be eligible under the family coverage group, and the individual's supplemental security income is considered other unearned income.
- 3. A family may establish deprivation, for purposes of the family coverage group, if the family's countable income is within the family coverage income levels and the caretaker who is the primary wage earner is:
  - a. Employed less than one hundred hours per month; or
  - b. Employed more than one hundred hours in the current month, but was employed less than one hundred hours in the previous month and is expected to be employed less than one hundred hours in the following month.
- 4. The primary wage earner is the caretaker with greater current income unless the family or the agency establishes that the other caretaker had the greater total earnings in the twenty-four-month period ending immediately before the month the family establishes eligibility for the family coverage group. A primary wage earner, once established, remains the primary wage earner as long as the family remains eligible.

5. Except as specifically provided in this section, sections 75-02-02.1-34, 75-02-02.1-36, 75-02-02.1-37, 75-02-02.1-38, 75-02-02.1-39, 75-02-02.1-40, and 75-02-02.1-41.2 apply to the family coverage group.
6. When a caretaker does not live with the caretaker's parents, the parents' income is not considered.
7. a. The following deductions are not allowed:
  - (1) The training allowance of up to thirty dollars per week provided under section 75-02-02.1-36; and
  - (2) Any earned income deduction available to applicants or recipients who are not aged, blind, or disabled.
- b. The following disregards and deductions are allowed from earned income:
  - (1) An employment expense allowance equal to ~~the greater of~~ one hundred eighty twenty dollars ~~or twenty-seven percent~~ of earned income is deducted from the gross earned income of each employed member of the medicaid unit.
  - (2) For each employed member of the unit, a time-limited disregard equal to fifty thirty-three and one-third percent of the balance of earned income, after deducting the employment expense allowance, is disregarded ~~for six consecutive months. Then, for each of the next additional three months, thirty-five percent of the balance of earned income is disregarded.~~
  - (3) ~~An earned income disregard of twenty-five percent of the balance of earned income, after deducting the employment expense allowance, is allowed for any employed member of the unit who does not receive one of the time-limited income disregards.~~
- c. ~~(1) If the employed individual does not receive the fifty percent disregard for four consecutive months, the six-month period starts over with the next month in which the individual has earnings to which the disregard may be applied.~~
  - (2) ~~Once the employed individual has received at least four consecutive months of the fifty percent disregard, the remaining months of the fifty percent disregard and the months of the thirty-five percent disregard continue to count regardless of earnings or whether the individual remains eligible for medicaid.~~

- ~~(3) Once an individual has received these time-limited income disregards, the individual may not receive them again regardless of whether the individual remains on assistance or reapplies at a later date.~~
- ~~(4) An applicant who has not previously received at least four consecutive months of the fifty percent disregard, and who has earned income in the three prior months, may receive the fifty percent disregard in each of the prior months and the prior months do not count as one of the four or six consecutive months. An applicant who has previously received the four consecutive months and is reapplying for medicaid may receive the time-limited disregard only if still within the time-limited period.~~
- ~~(5) To count as one of the first four consecutive months, there must be earnings remaining after deducting the one hundred eighty dollar employment expense allowance.~~

~~d. c.~~ The following deductions are allowed from earned or unearned income:

- (1) The cost of an essential service considered necessary for the well-being of a family is allowed as a deduction as needed. The service must be of such nature that the family, because of infirmity, illness, or other extenuating circumstance, may not perform independently. An essential service is intended to refer to such needs as housekeeping duties or child care during a parent's illness or hospitalization, attendant services, and extraordinary costs of accompanying a member of the family unit to a distant medical or rehabilitation facility.
- (2) When the family includes a stepparent who is not eligible, or when a caretaker who is under age eighteen lives at home with both parents and the parents are not eligible under the family coverage group, a deduction is allowed for amounts actually being paid by the stepparent or parents to any other persons not living in the home who are, or could be, claimed by the stepparent or parents as dependents for federal income tax purposes.

**History:** Effective January 1, 2003; amended effective September 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** 42 USC 1396u-1

## CHAPTER 75-03-14

### 75-03-14-02. License.

1. Application for a license must be made in the manner and form prescribed by the department.
2. The foster home licensing process requires completion and documentation of the following items, which must be received by the department in order for the application to be considered complete:
  - a. Application form;
  - b. Compliance with fire and safety requirements;
  - c. Reference letters;
  - d. Medical history self-declaration;
  - e. Background check;
  - f. Home visits; and
  - g. Home assessment.
3. The license is issued for a specific number of children, a specified age group of the children, and the sex of the child or children. The duration of the license is not to exceed a one-year period, ~~but may be for less than one year.~~
- ~~3:~~ 4. The license may be issued with stated limitations, restrictions, and conditions.
- ~~4:~~ 5. The license is not transferable and is valid only for the physical location of the home at the time of issuance, or at another location for a period not to exceed sixty days, provided that the supervising agency performs an onsite visit within seven days of the move, and thereafter approves the temporary location.
- ~~5:~~ 6. After reviewing an individual's application for family foster home licensure, the department may deny a license:
  - a. If the application contains fraudulent information, an untrue representation, or is incomplete;
  - b. If the home is in an unsanitary condition;

- c. If the home is not properly equipped to provide for the health and safety of the children served; or
  - d. If the applicant or applicants are not in compliance with the regulations prescribed by the department for the operation of a family foster home for children.
7. In those cases where the home of a ~~native~~ Native American family, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized Indian reservation in North Dakota, an affidavit from an agent of the tribal child welfare agency or an appropriate tribal officer ~~shall~~ must be accepted in lieu of a licensing procedure if the affidavit represents the following:
- a. An investigation ~~was completed~~ of the home was completed by the tribe's child welfare agency or tribal council; ~~and~~
  - b. The prospective home is in compliance with the standards required by North Dakota Century Code section 50-11-02.

**History:** Effective December 1, 1984; amended effective April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-01, 50-11-02

**75-03-14-03. Minimum physical standards for the home.**

- 1. The home must be a dwelling, mobile home, housing unit, or apartment occupied by an individual or a single family, ~~which may include other relatives of at least second degree of kinship.~~
- 2. The home should have an operational telecommunications device, and must have available to it some means to make immediate contact with authorities in emergencies.
- 3.
  - a. The home shall have sleeping rooms adequate for the foster care family and the foster children.
  - b. All sleeping rooms ~~shall~~ must be outside rooms and have ample window space for light and ventilation.
  - c. ~~A room with a floor more than thirty inches [76.20 centimeters] below ground level on all sides should be considered a basement. Basements can~~ may be used for sleeping accommodations for children twelve years of age and older. Basement bedrooms must be equipped with the appropriate fire alarms and smoke detectors as recommended by the local fire department or state fire marshal. A basement which shall be used for the care of children must be equipped with more than one exit. The One exit may be an accessible window.

4. Exterior doors must be maintained in such a manner which would permit easy exit. Interior doors should be designed to prevent children from being trapped.
5. Every closet door must be one that can be opened from the inside. Any bathroom doors must be designed so that the opening of the locked door can be accomplished from the outside in an emergency.
6. The house and premises must be clean, neat, and free from hazards that jeopardize health and safety. Firearms must be kept in locked storage or trigger locks must be used, and ammunition must be kept separate from firearms.
7. The home must be equipped with adequate light, heat, ventilation, and plumbing for safe and comfortable occupancy. The house and grounds must be in compliance with any applicable state and local zoning requirements.
8. Any source other than an approved municipal water supply must be tested annually for compliance for approved drinking water standards. The sample should be tested and approved by the North Dakota state department of health ~~and consolidated laboratories~~ and the report submitted to the licensing agency.
9. The milk supply must be obtained from an approved source.
10. If required by the department, the home must satisfactorily complete a fire inspection by the local fire inspector or, in the absence of a local fire inspector, the state fire marshal. All deficiencies noted during the inspection must be remedied.
11. The home must be equipped with the approved Underwriters' Laboratories fire extinguishers, smoke detectors, and smoke alarms as recommended by the local fire inspector or state fire marshal. They must be in working condition at all times. In an apartment building, the fire extinguisher, smoke detectors, and smoke alarms must be inside the apartment.

**History:** Effective December 1, 1984; amended effective July 1, 1993; April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-14-04. Qualifications of persons residing in the home.**

1. The persons residing in a home may include only:
  - a. Adults who, if married, are residing with their spouse or persons included in subdivision ~~e or f~~ c, d, e, or f;



- b. Adults who, if unmarried, are residing only with persons included in subdivision ~~c or d~~ c, d, e, or f;
  - c. Persons who are within the third degree of kinship to a resident of the home other than a foster child; ~~or~~
  - d. A foster child- including an individual who was a foster child and remained in the same home when foster care ended;
  - e. A foster child's son or daughter placed in the same home with the foster child; or
  - f. A child who is a ward of the foster parent or parents, pursuant to a guardianship order, including an individual who is a ward and remains in the same home when guardianship ends.
2. ~~No~~ A person residing in the home, except a foster child or ward of the court, may not have a present condition of substance abuse, or emotional instability. No person may smoke, in the foster home, in circumstances which present a hazard to the health of a foster child. All foster parents should be aware of the potential hazards of smoking in the presence of children, particularly infants and children with respiratory or allergic sensitivity. If a condition of substance abuse or emotional instability occurs in a foster home at a time when a foster child is in ~~long-term~~ placement, every effort should be made to keep the placement intact if the resident of the foster home is seeking treatment for the problem. No further placements will be made until successful completion of the treatment has occurred. A resident of a foster home, who has a past condition of substance abuse or emotional instability, should have had no incidents of substance abuse or emotional instability for a period of at least twelve months prior to licensure.
3. ~~No~~ A person residing in the home, except a foster child, may not have been the subject of a ~~probable cause determination that the person has abused or neglected a child~~ abuse or neglect assessment where a services-required decision was made unless the director or foster care supervisor of the regional center, after making ~~appropriation~~ appropriate consultation with persons qualified to evaluate the capabilities of the home's resident, documenting criteria used in making the ~~determination decision~~, and imposing any restrictions deemed necessary, approves the issuance of a license; and
- a. The home's resident can demonstrate the successful completion of an appropriate therapy; or
  - b. The home's resident can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.

4. All foster parents, prior to licensing and annually thereafter, must submit a declaration of good health, including all residents of the home, except any foster child, in a manner and form determined by the department. The department may require a physical examination or psychological testing of any resident of the home as deemed necessary. The cost of any physical examinations required pursuant to ~~the~~ this subsection is the responsibility of the supervising agency. The cost of any psychological testing required pursuant to this subsection is the responsibility of the department.
5. Physical disabilities or age of foster parents do not affect licensing of the home provided that the applicant can show that these factors do not significantly inhibit the ability of the foster parents to efficiently carry on the duties required of them.

**History:** Effective December 1, 1984; amended effective April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-14-04.1. Criminal conviction - Effect on licensure.**

1. A family foster care applicant, family foster care provider, or members of the family foster care home must not have been found guilty of, pled guilty to, or pled no contest to:
  - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion; or 12.1-18, kidnapping; North Dakota Century Code section 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 section 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 determines that the individual has not been sufficiently rehabilitated.
    - (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or

imprisonment, without a subsequent charge or conviction, has elapsed.

- (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of foster care to children.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if fifteen years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction. The department may not be compelled to make such determination.
4. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
  - a. Acknowledged by the individual; or
  - b. Reported to the agency as a result of a background check.

**History:** Effective April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-14-05. Operation of the home.**

1. The foster parents shall admit to the home, at any reasonable time, public officials, such as fire and building inspectors, for the purpose of determining fire and building safety. For the purposes of this subsection, "any reasonable time" means a time mutually convenient to the foster parents and the public official.
2. The foster parents shall admit to the home, at any reasonable time, personnel of the supervising agency. For the purposes of this subsection, "any reasonable time" means a time mutually convenient to the foster parents and the supervising agency's personnel and any time the supervising agency determines that a foster child's health, safety, or welfare require the admittance.

3. The foster parents must cooperate with the supervising agency in that agency's efforts to develop plans for the child, implement those plans, and meet the needs of the child and the child's family. The foster parents must cooperate with the supervising agency in developing plans for the child to visit with the ~~natural~~ parents or guardian. If the foster parents agree, and it is appropriate, these visits may take place in the foster parents' home. Visits between the foster child and ~~natural~~ parents or guardian must be arranged within a plan approved by the agency, foster child where appropriate, foster parents, and the foster child's parents or guardian. The foster parents need not admit a foster child's parent, relative, or guardian who has been using alcohol, drugs, or any other intoxicating substance, or who attempts a visit in a manner that is not in accordance with the approved visitation plan.
4. The foster parents may not accept other foster children or special education boarding care children, or accept children for supplemental parental care, as defined in North Dakota Century Code chapter 50-11.1, into their home without the prior approval of the supervising agency. All changes in the number of persons living in the foster home must be immediately reported to the supervising agency.
5. When a foster child is placed in substitute care during the absence of the foster parents, prior approval of the substitute care must be given by the supervising agency. Prior approval is not required for short periods of substitute care such as a portion of one day. A foster child may not be removed from this state without the prior approval of the supervising agency.
6. The foster parents must make opportunities available for a foster child to attend religious ceremonies chosen by the foster child, or that child's parents, within the community in which the foster family resides. The foster parents must respect and not interfere with the religious belief of the child and the ~~natural~~ child's family.
7. 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.
  - a. No child may be kicked, bitten, punched, spanked, shaken, pinched, roughly handled, or struck with an inanimate object by foster parents or any other adult living in the home.
  - b. Authority to discipline may not be delegated to or be accomplished by children.
  - c. Separation, when used as discipline, must be brief and appropriate to a 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.

- d. No child may be physically ~~punished~~ disciplined for lapses in toilet training.
  - e. Verbal abuse or derogatory remarks about the child, the child's family, race, religion, or cultural background may not be used or permitted.
  - f. No child may be force fed unless medically prescribed and administered under a physician's care.
  - g. Deprivation of means, including food, clothing, shelter, hygiene, and medical care, may not be used as a form of discipline ~~or punishment~~.
8. All information given to the foster parents by the supervising agency or the ~~natural~~ child's family concerning the foster child must remain confidential and may not be disclosed to any person without prior approval of the supervising agency.
9. All foster care payments must be used to meet the needs of the foster child.

**History:** Effective December 1, 1984; amended effective April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

#### **75-03-14-06. Permanency planning.**

- 1. Every county social service board must have a county permanency planning committee that meets not less than once each quarter in which the county social service board acts as a supervising agency to any foster child. If the county social service board acts as supervising agency for five or more children in foster care, the county permanency planning committee must meet at least once each month. The regional supervisor of foster care services shall serve as the chairperson for each county permanency planning committee. The county social service board director or designee shall serve as the vice chairperson for the county permanency planning committee.
- 2. The supervising agency must invite the ~~natural~~ child's parents and the foster parents to participate in the permanency planning meeting for the foster child unless good cause exists to exclude any person from the planning meeting. The good cause basis must be determined by the supervising agency and the basis for the determination must be made a part of the foster child's file.

3. The foster parents shall participate in the permanency planning for the child. The foster parents shall cooperate in carrying out the objectives and goals of the permanency plan for the foster child in their care.
4. The foster parents, when requested by the supervising agency or the juvenile court, shall provide requested information concerning the foster child and the ~~natural~~ child's family.
5. The foster parents and the supervising agency, working in cooperation, must attempt to maintain and improve the relationships between the foster child and the ~~natural~~ child's family whenever appropriate and possible. In no case may the foster parents attempt to diminish the relationship between the foster child and the ~~natural~~ child's parents or between supervising agency staff and the foster child.

**History:** Effective December 1, 1984; amended effective April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-14-07. Background checks required.** Background checks are required:

1. Prior to initial foster home licensure or approval;
2. If there is a lapse of license or approved status of the home of more than thirty days; or
3. In the case of a foster parent grandfathered in as of August 1, 1999, or after the initial background check was completed, whenever a licensed or approved foster care parent or other adult living in the home is known to have been involved, charged, or convicted of an offense.

**History:** Effective April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-14-08. Fingerprints excused.** The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been accepted and rejected. If a person is excused from providing fingerprints, the department may conduct a statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

**History:** Effective April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

## CHAPTER 75-03-15

**75-03-15-04.1. Limitations on ratesetting.** A rate established pursuant to section 75-03-15-04, which has an effective date between June 30, 2003, and July 1, 2005, may not exceed any rate established pursuant to this chapter which is in effect on June 30, 2003.

**History:** Effective April 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2

## CHAPTER 75-03-16

### 75-03-16-03. Organization and administration.

1. Each facility shall have a governing body that is responsible for the operation, policies, activities, and practice of the facility. For purposes of this chapter:
  - a. If the facility is owned by a corporation, the board of directors of the corporation is the governing body;
  - b. If the facility is owned by a partnership, the partners are the governing body;
  - c. If the facility is owned by a sole proprietor, the proprietor is the governing body; and
  - d. If the facility is owned by a limited liability company, the board of governors is the governing body.
2. All partnerships and sole proprietorships must have an advisory committee consisting of no less than five members who are not relatives of the proprietor or any partner. The advisory committee shall meet at least once a year.
3. Each facility shall provide the department with the names and addresses of the members of the governing body and any advisory committee within thirty days after the member's selection.
4. The governing body shall:
  - a. Adopt a written statement of the purpose and philosophy of the facility.
  - b. Adopt written policies for the facility regarding personnel, nondiscrimination, admission and discharge, discipline, program services, and smoking.
  - c. Adopt written policies for the facility regarding the procedures to be followed in the event the facility closes. The policies must indicate that the governing body will:
    - (1) Provide the department with at least sixty days' written notice that the facility will be closing.
    - (2) Provide each child's custodian with at least thirty days' written notice that the facility will be closing.



- (3) Provide for an appropriate North Dakota depository to maintain the facility's case, fiscal, and personnel records.
  - (4) Provide for the retention of all fiscal records for a period of seven years following account settlement.
- 5. The facility shall submit copies of all required policies to the department with the application for license and shall maintain all required policies on file at the facility or other designated location within the state of North Dakota.
- 6. All statements and policies required by this chapter must be in writing.
- 7. Each facility shall identify to the department all employee and nonemployee positions, using the titles and duties described in this chapter. For purposes of internal operations, a facility may use any definition or title for its positions. All employees must be capable of performing assigned duties.
- 8. Each facility shall carry general comprehensive liability insurance.
- 9. Representatives of the facility shall meet on at least an annual basis with the appropriate personnel of the department to discuss the facility, its programs, and any other pertinent issues that concern the needs of the children cared for in the facility.

**History:** Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-07. Program director.** The administrator shall hire or designate a program director for the facility.

- 1. The responsibilities of the program director must be clearly defined in writing by the administrator. The duties of the program director must be devoted to the provision of social services. If supervisory duties are assigned, the program director may only supervise personnel involved in treatment activities.
- 2. The program director must be meet at least one of the following standards:
  - a. A licensed, certified social worker (MSW) with at least one year of clinical experience;
  - b. A doctor of philosophy or master of science degreed psychologist with at least one year of clinical experience;

- c. A licensed addiction counselor who has a bachelor of arts degree in a social or behavioral science with at least three years of clinical experience;
- d. An individual possessing a master's degree in a clinical discipline, such as a behavioral science with a clinical focus, with at least two years of supervised clinical experience;
- e. An individual possessing a bachelor's degree in social work with at least three years' clinical experience in a licensed facility; or
- f. An individual otherwise qualified and serving as that facility's program director prior to August 1, 1998.

**History:** Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-12.1. Criminal conviction - Effect on operation of facility or employment by facility.**

- 1. A facility operator may not be, and a facility may not employ, in any capacity that involves or permits contact between the employee and any child cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
  - a. An offense described in North Dakota Century Code ~~chapters~~ chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion; or 12.1-18, kidnapping; North Dakota Century Code ~~sections~~ section 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~~ section 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 determines that the individual has not been sufficiently rehabilitated.
    - (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or

imprisonment, without subsequent charge or conviction, has elapsed.

(2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.

2. ~~A facility shall establish written policies and engage in practices that conform to those policies, to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.~~
3. ~~For purposes of subdivision b of subsection 1, an offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections, or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.~~
4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of foster care to children.
5. 3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if fifteen years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction. The department may not be compelled to make such determination.
4. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
  - a. Common knowledge in the community;
  - b. Acknowledged by the individual; or
  - c. Reported to the facility as the result of an employee background check.
5. A facility shall establish written policies and engage in practices that conform to those policies, to effectively implement this section. North

Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.

**History:** Effective March 1, 1999; amended effective April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02

**75-03-16-27. Confidentiality.**

1. For purposes of this section, "persons who have a definite interest in the well-being of children" include:
  - a. The parents and legal guardian or custodian, if any, of a child, except to the extent the parental rights have been removed or limited by court order;
  - b. The individual or entity that placed a child in the facility; and
  - c. An individual or entity identified in a child's written individualized plan of care as a provider of services, in the home community of the child's family, for the reunification of the child and the child's family.
2. Except as otherwise provided in this section, facility records concerning children that have received, are receiving, or seek to receive facility services must be safeguarded and may be made available only:
  - a. To staff of the facility, to the extent reasonably necessary for the performance of their duties;
  - b. To persons authorized by a parent, guardian, or custodian who may lawfully review a child's records, to review or receive copies of that child's records;
  - c. In a judicial proceeding;
  - d. To officers of the law or other legally constituted boards and agencies; or
  - e. To persons who have a definite interest in the well-being of the children concerned, who are in a position to serve their interests, and who need to know the contents of the records in order to assure the children's well-being and interests.
3. ~~A facility may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any child or member of a child's immediate family, without first securing the child's written~~

~~consent and the written consent of the child's parent, guardian, or legal custodian. The written consent must apply to an event that occurs no later than ninety days from the date that the consent was signed and must specifically identify the image or information which may be disclosed by reference to dates, locations, and other event-specific information. Consent documents which do not identify a specific event are invalid to confer consent for fundraising, publicity, or illustrative purposes. The duration of an event identified in such a consent document may not exceed fourteen days. A facility may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any child or member of a child's immediate family, without first securing the written consent of the child's parent, guardian, or legal custodian, or the written consent of an adult who was a resident of the facility as a child.~~

- a. Written consent must be informed, including full disclosure of how the image or information will be used, including any future use, and must specifically identify the image or information which may be disclosed by reference to dates, locations, and other event-specific information. Consent documents which do not identify a specific event are invalid to confer consent for fundraising, publicity, or illustrative purposes;
- b. The facility must inform the person signing that the individual is free to either grant or refuse to grant consent;
- c. The facility must provide a seven-day waiting period during which the consent can be withdrawn by the signing party; and
- d. The consent must be time-limited. Open-ended consents are not valid. The written consent must apply to an event that occurs no later than one year from the date the consent was signed.

**History:** Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-06-15, 50-11-02, 50-11-05

**TITLE 75.5**  
**BOARD OF SOCIAL WORK EXAMINERS**



## **FEBRUARY 2004**

### **CHAPTER 75.5-02-01**

**75.5-02-01-02. Accredited college or university.** With regard to the statutory requirement set forth in North Dakota Century Code section 43-41-04, that an applicant for a social work license must earn a degree from a college or university ~~accredited by the council on social work education. The~~ whose social work program has been accredited by an accrediting body approved by the board. ~~the~~ following programs meet the accreditation requirement:

1. Programs currently accredited.
2. Programs in initial accreditation review status.
3. Programs in approved candidacy status.
4. Programs in conditional accreditation status.

**History:** Effective January 1, 1987; amended effective June 1, 1991; April 1, 1998; February 1, 2004.

**General Authority:** NDCC 43-41-09

**Law Implemented:** NDCC 43-41-04

**75.5-02-01-03. Definitions.** As used in this title, unless the context or subject matter otherwise requires:

1. "Clinical social work practice" means the professional application of social work theory and methods to the treatment and prevention of psychosocial dysfunction, disability, or impairment, including emotional and mental disorders. It is based on knowledge of one or more theories of human development. Clinical social work consists of assessment; diagnosis; treatment, including individual, couple, family, and group psychotherapy or counseling; client-centered advocacy; consultation; evaluation; and clinical supervision. The process of clinical social work is undertaken within the objectives of social work and the principles and values contained in the social work code of ethics as adopted by



the board of social work examiners and set forth in the North Dakota Administrative Code.

2. "Face-to-face supervision" means a direct, interactive, live exchange, either in person, by telephone, or by audio or audiovisual electronic device in either individual or group supervision.
3. "Group supervision" means one supervisor and more than one supervisee, including health professionals in related professions. Group supervision is facilitated by the supervisor and involves an exchange among all group members. The size of the group shall be limited to seven, including the supervisor.
4. "Individual supervision" means one supervisor and one supervisee.

**History:** Effective February 1, 2004.

**General Authority:** NDCC 43-41-09

**Law Implemented:** NDCC 43-41-04

## CHAPTER 75.5-02-03

**75.5-02-03-01. Application.** Requests for application forms must be made with the ~~executive secretary board's office~~. The type of license requested must be specified. ~~The application must be completed, signed, notarized, and submitted to the executive secretary, with the following Applications for initial licensure, except licensure of applicants licensed in another jurisdiction, must include:~~

1. ~~Academic social work transcripts or proof of receipt of at least a baccalaureate degree and completion of a social work program. A completed, signed application form.~~
  2. ~~An official transcript showing proof of required degree submitted to the board's office by the academic institution from which the degree was earned.~~
  3. ~~Proof of successful completion of the appropriate examination submitted to the board's office by the administering body of the examination.~~
  4. ~~For applicants for licensed independent clinical social worker, a completed verification of master of social work supervised practice form and verification of master of social work employment form.~~
  5. A minimum of three written references providing evidence of the applicant meeting the requirements for professional conduct and competence required under the licensing act.
    - a. ~~Graduates~~ Applicants never having worked as a social worker must submit one reference from a social work faculty member, one reference from a field placement supervisor, and one reference from a licensed social worker.
    - b. ~~A social worker who has practiced social work in North Dakota or in another state~~ All other applicants must submit three references - two from social workers at the applicant's proposed level of licensure or higher, and one from a work supervisor. All providers of references must be familiar with the applicant's work.
    - c. In appropriate circumstances, the board may waive or change the requirements for references.
- 3- 6. ~~The full amount of the fee proper fees.~~

~~In addition to the completed, notarized application, references, and fees, all applicants for the licensed independent clinical social work level of licensure shall provide the board with a completed clinical practice supervision verification form. It is the applicant's responsibility to distribute the forms to the appropriate individuals.~~

~~The executive secretary may contact previous employers to verify actual social work practice, and may inquire into the existence of ethical or legal violations or other hinderances to practice.~~

**History:** Effective January 1, 1987; amended effective April 1, 1998; February 1, 2004.

**General Authority:** NDCC 43-41-09

**Law Implemented:** NDCC 43-41-04

**75.5-02-03-02. License examination.**

1. The license examination must be approved by the board ~~and administered in North Dakota at least twice yearly.~~ A passing examination score is valid only if the licensure application is postmarked or delivered to the board's office within six months one year from the date of the examination. The board shall certify the eligibility of all applicants and determine uniform passing and failing cutoff points. Students currently enrolled and in good standing in accredited social work programs may apply for and take the appropriate examination during the semester or quarter in which they will graduate. A license may not be granted until proof of graduation is received by the board.
2. With the exception of students in good standing in the last semester or quarter of an accredited social work program, only applicants who meet the educational requirements of a baccalaureate or graduate degree in social work ~~or social welfare~~ from an accredited social work program may ~~be permitted to take the qualifying examination.~~
3. ~~When the board determines an applicant is not eligible for licensure, the board shall provide notice of intent to deny the application. The notice must include the specific reasons for the intended denial and advise the applicant of the right to request reconsideration of the board's decision.~~
4. ~~An applicant may submit a written request for reconsideration to the executive secretary or legal counsel within thirty days of the date of the notice of intent to deny application. A request for reconsideration must specifically state why the applicant believes the board's intent to deny the application is in error. The request may also include additional information or documents. A request for reconsideration is not a prerequisite for requesting an administrative hearing. The applicant shall be notified in writing of the board's decision.~~
5. ~~An applicant may request an administrative hearing within thirty days of the date of the notice of intent to deny application or notice of the board's decision on reconsideration. The hearing must be held pursuant to North Dakota Century Code chapter 28-32.~~
6. An applicant who fails the examination may retake the examination after thirty ninety days from the initial examination date. Failure to retake the

~~examination within six months deactivates the applicant's file unless a written request for an extension is received by the executive secretary and approved by the board chair. An extension may not exceed one year from the initial examination date.~~

7. ~~Licensees who received their license during the grandparenting period or who were registered for private practice and who did not take the licensing examination may take such examination as is appropriate to their level of practice. Licensing status will not be affected by the results of this examination but such results will be filed in the licensee's record.~~

**History:** Effective January 1, 1987; amended effective June 1, 1991; April 1, 1998; February 1, 2004.

**General Authority:** NDCC 43-41-09

**Law Implemented:** NDCC 43-41-04, 43-41-09

**75.5-02-03-03. License fees.** The board adopts the following fee schedule:

Application fee	\$25 (nonrefundable)
<del>License</del> <u>Initial license fee</u>	\$75
Renewals	\$75
Late renewal fee (includes renewal fee)	\$150
<del>Penalty for nonrenewal (includes renewal fee)</del>	<del>\$300</del>
<del>Application for licensure upgrade fee</del>	<del>\$25 (nonrefundable)</del>
<u>Licensure upgrade fee</u>	<u>\$25</u>
<u>Continuing education fees</u>	
<u>Individual licenseholder</u>	<u>\$10</u>
<u>Program approval</u>	<u>\$25</u>
<u>Provider approval</u>	<u>\$100</u>
<u>Administrative fees</u>	
<u>Licensee list</u>	<u>\$100</u>
<u>Nonsufficient funds fee</u>	<u>As permitted by state statute</u>

**History:** Effective January 1, 1987; amended effective June 1, 1991; April 1, 1998; August 1, 2003; February 1, 2004.

**General Authority:** NDCC 43-41-04.1, 43-41-09

**Law Implemented:** NDCC 43-41-04.1, 43-41-09

**75.5-02-03-03.1. Failure to complete licensure requirements.** If the applicant fails to meet the requirements for licensure within one year, the applicant must submit a new application.

**History:** Effective February 1, 2004.

**General Authority:** NDCC 43-41-09

**Law Implemented:** NDCC 43-41-09

**75.5-02-03-04.1. Supervision of applicants for licensure as a licensed independent clinical social worker.**

1. The applicant for licensure as a licensed independent clinical social worker must submit a plan for supervision to the board's office prior to beginning the process of working toward licensed independent clinical social work status, to include the name of the proposed supervisor and a copy of the supervisor's license. Should the supervisor change, a new plan must be submitted to the board's office by the applicant.
2. The applicants must participate in a minimum of one hundred fifty hours of face-to-face clinical supervision with a supervisor approved by the board. Not more than fifty hours of supervision may be group supervision.
3. The applicant must maintain a record of supervision, including dates, time, and content of supervisory sessions, should the board request same for verification purposes.
4. The applicant must complete and document a minimum of three thousand hours of supervised clinical social work experience during the four-year post-master's degree period.
  - a. Initial intakes, individual, couple, family, and group therapy as well as crisis intervention with assessment and stabilization are considered clinical experience.
  - b. Related tasks included in clinical experience would encompass the provision and receipt of clinical supervision and case staffing, consultation related to therapy cases, and case management and paperwork for therapy cases.
  - c. Case management activities and brief assessments completed as part of other job responsibilities, not clients in therapy, will not be considered clinical experience.
5. The clinical supervisor must:
  - a. Evaluate the supervisee's knowledge and document minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment

plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, and implementing a professional and ethical relationship with clients and colleagues.

- b. Provide individual or group, or individual and group, face-to-face supervision.
- c. Maintain documentation of supervision, including date, time, and content of supervisory sessions.

**History:** Effective February 1, 2004.

**General Authority:** NDCC 43-41-09

**Law Implemented:** NDCC 43-41-09

**75.5-02-03-05. License renewal.** ~~All licenses expire every odd-numbered year on the thirty-first day of December. The renewal deadline is November fifteenth of every odd-numbered year. Any applications not postmarked by the United States postal service on or before the renewal deadline date will be assessed a late or a penalty fee. At least thirty days before the renewal deadline date, a licenseholder will be sent written notification to the licensee's address on file of the renewal deadline date, the fees for renewal, continuing education requirements necessary for renewal, and any other information the board deems necessary. Before the date of expiration, the licenseholder shall apply for renewal of the license, pay all applicable fees, and provide documentation of approved continuing education requirements not already on file in the board office.~~

~~If a request for renewal is not postmarked by the United States postal service on or before the expiration date, the applicant will be subject to a penalty fee and may not practice social work until the license is renewed. If a request for renewal is not postmarked by the United States postal service on or before June thirtieth of the even-numbered year any person seeking to be relicensed must reapply for licensing, and must satisfy all current licensure requirements. All licenses expire on December thirty-first of every odd-numbered year. On or before October sixteenth of every odd-numbered year, the board will send a notice of renewal and an application for renewal to each licensee at the last address provided to the board by each licensee. A completed application for renewal must be postmarked or delivered to the board's office on or before November fifteenth of the odd-numbered year. If a completed application is not postmarked or delivered to the board's office on or before November fifteenth of the odd-numbered year, the applicant must pay the late fee.~~

~~If a completed application for renewal is not received by the board's office on or before December thirty-first of the odd-numbered year, the license expires, and the person may not practice social work until a new application for initial licensure is made and license is granted by the board.~~

~~The board may extend the renewal deadline waive the late fee or extend the expiration date for any applicant having proof of medical or other hardship~~



rendering the applicant unable to ~~meet the renewal deadline~~ timely file a completed application. A completed application for renewal must include:

1. Completed and signed renewal application form.
2. The license renewal fee.
3. Verification of required continuing education.

**History:** Effective January 1, 1987; amended effective April 1, 1998; February 1, 2004.

**General Authority:** NDCC 43-41-09

**Law Implemented:** NDCC 43-41-12

**75.5-02-03-07. Continuing education requirements.** ~~A social worker licensed in North Dakota must complete twenty continuing education hours for each licensing period in order to maintain licensure in North Dakota. Documentation for continuing education hours must be received by the executive secretary and postmarked by the United States postal service on or before the licensure expiration date.~~

~~Failure to meet the continuing education requirements by the deadline will result in nonrenewal of the license. Any applicant who does not meet the continuing education requirement on or before the expiration date, will be subject to a penalty fee and may not practice social work until the hours are completed. If the continuing education requirement is not met within six months of the date of expiration, the person seeking to be relicensed shall reapply for licensure and satisfy current licensure requirements. Continuing education hours may only be applied to one licensing period.~~

~~The board may extend the continuing education deadline for applicants with proof of medical or other hardship rendering them unable to meet the deadline. Any social worker licensed between January first and June thirtieth of an odd-numbered year is required to complete ten continuing education hours for that licensing period with twenty continuing education hours for each subsequent licensing period.~~

~~Any social worker licensed on or after July first of an odd-numbered year has no continuing education requirement until the following licensing period when the licensee is required to complete twenty continuing education hours for that and each subsequent licensing period.~~

1. A social work practitioner licensed in North Dakota must complete thirty approved continuing education contact hours for the two-year licensing period to maintain licensure in North Dakota.
  - a. Fifteen approved continuing education hours are required if a social worker is initially licensed between January first and June thirtieth of the odd-numbered year.

- b. No continuing education hours are required if a social worker is initially licensed on or after July first of an odd-numbered year.
  - c. Continuing education hours cannot be earned until after the license effective date and only within the current licensing period.
  - d. Continuing education hours may only be applied to one licensing period.
- 2. Board-approved continuing education course content must enhance the social worker's professional competence and relate to:
  - a. Theories and concepts of human behavior and the social environment;
  - b. Social work knowledge and skills;
  - c. Social work research or practice evaluation;
  - d. Social work ethics; or
  - e. Cross-disciplinary courses directly relevant to social work practice or specialty.
- 3. Approved continuing education may include:
  - a. Workshops, professional conferences, seminars, and educational programs or courses presented by providers approved by the board.
  - b. Formal academic coursework. One semester credit hour class is equal to fifteen contact hours.
  - c. Program presentation by licensee for which the licensee may receive hour-per-hour contact hours but only for one presentation of the same program.

**History:** Effective April 1, 1998; amended effective February 1, 2004.

**General Authority:** NDCC 43-41-09

**Law Implemented:** NDCC 43-41-09, 43-41-12



## CHAPTER 75.5-02-05

### **75.5-02-05-01. ~~Procedure for issuance of licenses by reciprocity~~ Applications for licensure by an applicant licensed in another jurisdiction.**

~~An applicant for a license under the reciprocity provisions of~~ pursuant to North Dakota Century Code section 43-41-07 ~~shall submit the following items to the board must include:~~

1. ~~A photostatic copy of the applicant's current license. A completed, signed application for licensure;~~
2. ~~A copy of the licensure law of the other state or territory at the time the license was issued. Proof, submitted by another jurisdiction, that the applicant holds a current license that is not issued on a temporary or restricted basis, is not encumbered or on probation, and is not suspended or revoked;~~
3. ~~The names and addresses of previous social work employers. A copy of the other jurisdiction's law and rules setting forth the qualifications for licensure in the other jurisdiction at the time the applicant was initially licensed in the other jurisdiction. Under unusual circumstances, this may be waived by the board; and~~
4. ~~The name and address of the licensing board in the other state or territory;~~
5. Any additional information requested by the board.

~~The executive secretary shall verify that the license is in good standing, that at the time the license was issued the licensing state imposes substantially the same requirements as North Dakota currently imposes, and that there is no other reason constituting good cause for refusing to issue such license.~~

**History:** Effective January 1, 1987; amended effective April 1, 1998; February 1, 2004.

**General Authority:** NDCC 43-41-09

**Law Implemented:** NDCC 43-41-09

## CHAPTER 75.5-02-06.1

### 75.5-02-06.1-03. Ethical responsibilities in practice settings.

#### 1. Administration and management.

- a. Social workers shall maintain respect for institutional policies and management functions of the agencies within which services are being performed.
- b. Social workers will take initiative toward improving such policies when it will better serve the interests of the client.

#### 2. **Supervision and consultation.**

- a. Social workers shall not engage in any dual or multiple relationships with supervisees in which there is a risk of exploitation of or potential harm to the supervisee.
- b. Social workers who provide supervision shall evaluate supervisees' performance in a manner that is fair and respectful.

#### ~~2.~~ 3. **Education and training.**

- a. Social workers who function as educators or field instructors for students shall evaluate students' performance in a manner that is fair and respectful.
- b. Social workers who function as educators or field instructors for students shall take reasonable steps to ensure that clients are routinely informed when services are being provided by students.
- c. Social workers who function as educators or field instructors for students shall not engage in any dual or multiple relationships with students in which there is a risk of exploitation or potential harm to the student.

#### ~~3.~~ 4. **Performance evaluation.** Social workers who have responsibility for evaluating the performance of others shall fulfill such responsibility in a fair and considerate manner and on the basis of clearly stated criteria.

#### ~~4.~~ 5. **Client records.** Social workers shall take reasonable steps to ensure documentation in records is accurate, timely, and reflects the services provided.

- ~~5.~~ 6. **Billing.** Social workers shall establish and maintain billing practices that accurately reflect the nature and extent of services provided and that identify who provided the service in the practice setting.

**History:** Effective April 1, 1998; amended effective February 1, 2004.

**General Authority:** NDCC 43-41-09

**Law Implemented:** NDCC 43-41-09

**TITLE 89**

**STATE WATER COMMISSION**





**APRIL 2004**

**CHAPTER 89-02-01**

**89-02-01-05. Exceptions to permit required.**

1. A drainage permit under section 89-02-01-03 is not required for maintenance of a drain.
2. The provisions of section 89-02-01-03, except subsection 3, do not apply to any drain constructed under the direct and comprehensive supervision of the federal or state agencies specified in this section. The agencies deemed capable of providing supervision and analyzing downstream impacts are:
  - a. The state water commission;
  - b. The army corps of engineers;
  - c. The natural resources and conservation service, for projects constructed pursuant to the Watershed Protection and Flood Prevention Act [Pub. L. 83-566; 16 U.S.C. 1001];
  - d. The bureau of reclamation, for projects that are part of the originally authorized Garrison diversion unit authorized in 1965; ~~and~~
  - e. The state department of transportation, for federal aid projects; and
  - f. The public service commission for surface mining projects.

However, these agencies shall notify the state engineer of any proposed drainage projects under their direct supervision during the planning stages.

**History:** Amended effective December 1, 1979; October 1, 1982; February 1, 1997; April 1, 2004.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-15-08, 61-32-03

**89-02-01-09.12. Time within which to begin complete construction of drain.** The recipient of a permit to drain under this chapter shall ~~commence actual~~ complete construction within two years of the date the decision granting the permit is final. The two-year period does not begin until any appeal of the state engineer's decision or board's decision is completed, nor does it run during the course of any other legal action brought to challenge the state engineer's decision or board's decision or halt or modify the project.

~~Once construction has been commenced the permit recipient must make good faith efforts and satisfactory progress, as determined by the board, toward completion of the project. If the permit has been determined to be of statewide or interdistrict significance, the determination must be made jointly by the state engineer and the board.~~

If the two-year period runs before construction is ~~commenced~~ completed, the permit recipient may make a written request for a one-year extension which must be approved by the board. All requests for extensions must be made at least sixty days ~~prior to~~ before the end of the two-year period and must specifically state why construction has not ~~commenced~~ been completed. Upon expiration of any extension, the permit recipient may request a further extension. If the request is for an extension relating to a permit that the state engineer has determined to be of statewide or interdistrict significance, the extension must be approved by both the state engineer and the board.

In the event the two-year period passes without the ~~commencement~~ completion of construction, an extension of the period as provided in this section, or legal process staying construction, the permit is void.

**History:** Effective February 1, 1997; amended effective April 1, 2004.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-03-13, 61-32-03

## CHAPTER 89-03-01

**89-03-01-01.2. Land ~~or~~, property, or other interest requirement for conditional water permit.** An the applicant for a conditional water permit must have an interest or intent and ability to acquire an interest in the land on which the point of diversion and conveyance system will be located ~~and, if or must demonstrate to the satisfaction of the state engineer that the applicant has the capability to put the water to beneficial use.~~ If the applicant is seeking a permit for irrigation, the applicant must also have an interest or intent and ability to acquire an interest in the land to be irrigated. If the applicant is seeking a permit to impound water, the applicant must have an interest or intent and ability to acquire an interest in the land or other property inundated by the impounded water. The state engineer may require the applicant to submit evidence of such an interest. At any time the state engineer may require additional verification of land or property interest or other interest demonstrating the capability to put the water to beneficial use.

**History:** Effective April 1, 1989; amended effective August 1, 1994; April 1, 2004.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-04-03

### **89-03-01-04. Notice of application.**

1. When a proper application is filed, the state engineer shall forward the appropriate number of completed notice of application forms to the applicant. The notice must include the following essential facts: the places and use of appropriation, the amount of and purpose for which the water is to be used, the applicant's name and address, and the newspaper in which the notice of the water permit application will be published. The notice must also state that the notice published in the newspaper will contain a date by which any person having an interest in the application may file written comments regarding the proposed appropriation with the state engineer and that anyone who files written comments will be mailed a copy of the state engineer's recommended decision on the application.
2. Upon receipt of the completed notice forms, the applicant shall send a notice of application by certified mail to the following:
  - a. To the governing body of each city located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion.
  - b. To the governing body of the township or other governing authority of each rural subdivision located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion. A rural subdivision is a subdivision which has lots of ten acres [4.05 hectares] or less and is geographically located outside of a city.



- c. To the governing body of the township or other governing authority for each rural tract of land which is owned by more than ten individuals and is located wholly or in part within a one-mile [1.6-kilometer] radius of the proposed point of diversion.
  - d. Except for record title owners whose land falls within subdivision a, b, or c, each record title owner of real estate within a one-mile [1.6-kilometer] radius of the proposed point of diversion. The determination of title owners must be based on title records on file with the register of deeds of the appropriate county. For land subject to a contract for deed, the contract's grantor and grantee must both be notified.
  - e. To each person holding a water permit for the appropriation of water from an appropriation site located within a radius of one mile [1.61 kilometers] of the location of the proposed water appropriation site. The state engineer shall provide the applicant a list of all persons who must be notified under this subdivision.
  - f. To each municipal or public use water facility ~~in the county in which~~ within a twelve-mile [19.31-kilometer] radius of the proposed water appropriation site is located. The state engineer shall provide the applicant a list of all municipal or public use water facilities that must be notified under this subdivision.
3. After notice of application has been mailed to those required by this section, the applicant shall properly complete an affidavit of notice and return it to the state engineer by certified mail. The affidavit of notice must state how the applicant determined the record title owners and must list the names and addresses of those who were sent notices by certified mail. This affidavit must be mailed to the state engineer within sixty days from the date the state engineer sent the notices of application to the applicant. If a properly completed affidavit of notice is not submitted within sixty days, the priority date of the conditional water permit application will be amended to the date on which the state engineer receives the affidavit of notice. If a properly completed affidavit of notice is not submitted within one hundred twenty days, the application must be considered to have been withdrawn by the applicant.

**History:** Amended effective April 1, 1989; November 1, 1989; February 1, 1994; April 1, 2000; April 1, 2004.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-04-05

## CHAPTER 89-08-02

**89-08-02-01. Construction Determining the capacity of dams, dikes, or other devices exceeding a capacity of twelve and one-half acre-feet.** Any person intending to construct a dam, dike, or other device capable of impounding, obstructing, or diverting more than twelve and one-half acre-feet for any purpose must obtain a construction permit from the state engineer. The impounding capacity of a dam is calculated based upon the top of the settled embankment of the dam. The diverting capacity of a dike or diversion ditch is calculated based upon the area protected as measured from the top of the dike. If the absence of the dike could result in more than fifty acre-feet of water inundating the protected area, a permit is required. The diverting capacity of a diversion ditch is calculated based upon the runoff from a twenty-five year, twenty-four hour, precipitation event. No construction on the dam, dike, or other device can begin until a construction permit is obtained. ~~The state engineer may not authorize construction of any known unsafe or improper dam, dike, or other device. The state engineer may order any changes, conditions, or modifications necessary for safety or protection of property.~~

**History:** Effective November 1, 1989; amended effective April 1, 2004.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

### **89-08-02-02. Contents of application and ~~approval of the application.~~**

- 1- A completed application for a construction permit must be submitted to the state engineer ~~and contain:~~
  - a- ~~A completed application form;~~
  - b- ~~Plans along with plans and specifications for the proposed construction which, in the case of a high-hazard dam, medium-hazard dam, or low-hazard dam over twenty-four feet [7.31 meters] in height, must be prepared by a professional engineer registered in North Dakota;~~
  - c- ~~Evidence; evidence~~ recognized in a court of law sufficient to establish a prima facie case of a property right in the property that will be affected by the construction of the dam, dike, or other device; and
  - d- Any any additional data or information required by the state engineer.
- 2- ~~Within forty-five days after receipt of a completed application by the state engineer, the state engineer shall complete an initial review of the application. In the case of a dam, if the state engineer determines the proposed dam is a high-hazard dam, medium-hazard dam, or low-hazard dam over twenty-four feet [7.31 meters] in height, and the plans and specifications were not prepared by a professional~~



~~engineer registered in North Dakota, the applicant shall submit plans and specifications prepared by an engineer, except for cases of an emergency. The state engineer shall forward the completed application along with any changes, conditions, or modifications to the water resource board of the district where the proposed project is to be located.~~

- ~~3. The board, within forty-five days of receiving the application from the state engineer, shall consider the application and suggest any changes, conditions, or modifications to the state engineer.~~
- ~~4. If the state engineer determines an emergency exists, the state engineer may issue a temporary permit to construct a dam, dike, or other device capable of impounding, obstructing, or diverting more than twelve and one-half acre-feet. A temporary permit shall have a duration of not more than six months unless extended by the state engineer.~~

**History:** Effective November 1, 1989; amended effective June 1, 1998; April 1, 2004.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

**89-08-02-04. Temporary construction permits.** If the state engineer determines an emergency exists, the state engineer may issue a temporary permit to construct a dam, dike, or other device capable of impounding, obstructing, or diverting more than fifty acre-feet. A temporary permit shall have a duration of not more than six months unless extended by the state engineer.

**History:** Effective April 1, 2004.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

## CHAPTER 89-08-03

**89-08-03-01. Inspections and reports during construction of high-hazard dams, medium-hazard dams, and low-hazard dams over ~~twenty-four~~ ten feet [~~7.31~~ 3.05 meters] in height.** In order to protect property and assure safety, the following are conditions to all permits for high-hazard dams, medium-hazard dams, or low-hazard dams over ~~twenty-four~~ ten feet [~~7.31~~ 3.05 meters] in height:

1. An engineer must be in charge of and responsible for inspections during construction.
2. Inspections during construction must be performed at intervals necessary to ensure conformity with the construction permit and the plans and specifications.
3. Within seven days after each inspection, the engineer in charge shall submit a written report to the state engineer specifying the information obtained pursuant to the inspection. The report will specify any changes necessary under this section.

**History:** Effective November 1, 1989; amended effective April 1, 2004.

**General Authority:** NDCC 28-32-02, 61-03-13

**Law Implemented:** NDCC 61-16.1-38

