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Administrative Rules Committee



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TITLE 3
Accountancy, Board of Public

OCTOBER 1983

**3-01-01-01. Organization of the state board of public
accountancy.**

1. **History.** The state board of public accountancy was created in 1913 and originally supervised certified public accountants. The 1975 Public Accountancy Act, codified as North Dakota Century Code chapter 43-02.1, completely revamped the accountancy laws and added licensed public accountants to the board's jurisdiction.
2. **Legislative intent.** The 1975 legislative assembly, in passing the Public Accountancy Act, declared it to be the state's policy to promote the dependability of financial and accounting information used for private or public purposes, and further declared it to be in the public's interest that persons claiming expertness in accountancy meet certain standards and qualifications. A person's ability and fitness to observe and apply the standards of the accounting profession are to be judged by the board of public accountancy.
3. **Board membership.** The board consists of five members appointed by the governor from lists of qualified nominees submitted by the certified public accountants and the licensed public accountants in North Dakota. There are four certified public accountants and one licensed public accountant on the board. If there are fewer than twenty-five licensed public accountants in the state, they shall lose representation on the board. Board terms are five years.
4. **Compensation of board members.** Pursuant to subsection 3 of North Dakota Century Code section 43-02.1-02, each member of the state board of public accountancy shall receive annual compensation determined by the board of **seven hundred**

~~fifty~~ twelve hundred dollars as compensation for the days, or portions thereof, spent in the discharge of the member's duties.

5. **Executive director.** Subsection 6 of North Dakota Century Code section 43-02.1-02 authorizes the board to employ an executive director. The executive director is responsible for keeping the board's records, administering the board's activities, and filing the board's biennial reports.

The board's executive director is:

Mr. Daryl J. Hill
Board of Public Accountancy
Box 8104 University Station
Grand Forks, North Dakota 58202

History: Amended effective August 1, 1981; September 1, 1983; October 1, 1983.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

TITLE 10
Attorney General



AUGUST 1983

10-04-01-01. Definitions.

1. "Equipment" means any device, apparatus, or implement usable in the conduct of games of chance, whether or not specifically designed for the purpose, but excluding tables and chairs normally used in the occupancy of a premise.
2. "Facility" is an entire enclosure which is occupied by one specific identifiable legal entity.
3. 2. "Person" - refer to North Dakota Century Code section 1-01-28.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04-01-03. Games of chance committee.

1. Every eligible organization shall establish as an integral part of its organizational structure, a committee which shall consist of no less than three individuals all of whom shall be bona fide members whose association with the organization is not for purposes of conducting or assisting in games of chance only.
2. The committee shall be the organization's responsible governing board for all phases of gaming activity conducted by the eligible organization including its members, auxiliary components, employees, and agents. Gaming activity includes the use of the net proceeds.
3. The minutes of the organization shall annually reflect the name and address and title of each member of this committee.

4. Members of this committee may not conduct games of chance.
5. In order to preserve the integrity of the administration of the games of chance law, the attorney general may determine that the provisions of North Dakota Century Code section 53-06.1-16 are applicable to this committee or any member thereof.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-17

10-04-01-04. Age limitation. Individuals under the age of twenty-one may not conduct, assist, or play any games of chance being conducted within a facility which has a retail alcoholic beverage licensee therein on premises licensed to sell alcoholic beverages.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04-01-05. Equipment acquisitions.

1. Eligible organizations are prohibited from renting or lending gaming equipment to any person (person includes any entity - refer to North Dakota Century Code ~~section~~ sections 1-01-28 and 53-06.1-01).
2. Eligible organizations are prohibited from exchanging pull tabs, punchboards, sports pools, and twenty-one dealing boxes (shoes). All other gaming equipment may be exchanged when authorized by the attorney general. A request for approval authorization shall be made to the attorney general at least ten days prior to the exchange.
3. An eligible organization anticipating the printing, manufacture, or construction of any equipment for games of chance shall first notify the attorney general of its intention and shall have the finished product approved by the attorney general before being placed in service.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14

10-04-01-07. Credit play prohibited. All playing of games of chance shall be on a cash basis. Cash includes checks. Credit shall not be extended to any player. The consideration to play a game of chance must be collected in full, by cash or check, in advance of any

play. Organizations may establish policy concerning acceptance of checks, and need not accept checks.

History: Effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04-02-01. Definitions.

1. "Blackjack" - see "natural twenty-one".
2. "Deal":
 - a. In pull tabs or jar tickets means each separate serialized package or series of packages of pull tabs or jar tickets with the same serial number purchased from a distributor.
 - b. In twenty-one means the distributing of the playing cards among the participants.
3. "Dealer" in twenty-one is the general term for the eligible organization's representative or employee that the players bet against.
4. "Doubling-down" in twenty-one means the act of a player doubling the amount of the player's original wager on the player's first two cards a two-card eleven count. When the player doubles down the player can draw only must draw one and only one card.
5. "Flare" is the posted display which sets forth the rules of a particular game of pull tabs, punchboard, or sports pool and which is associated with a specific deal, punchboard, or sports pool board.
6. "Insurance bet" in twenty-one means a wager by a player that a dealer holds a natural twenty-one when he has an ace showing.
7. "Natural twenty-one" is the highest ranking hand consisting of an ace and a ten-count card on the first two cards dealt.
8. "Shoe" in twenty-one means a card-dealing box, capable of holding two hundred eight regular playing cards, which is constructed of a transparent material.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04-02-04. Raffles. "Raffle" means a game of chance in which the prize or prizes, ~~other than cash,~~ are won by one or more of numerous persons buying chances. The winner is determined by drawing a number or numbers from a container holding numbers corresponding to all chances sold. The date of the drawing, the prize or prizes to be awarded, the name of the organization, the name of the licensing or authorizing authority, the license or authorizing resolution number, and the price of the chance shall be clearly printed on the raffle tickets which shall be numbered consecutively.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07

10-04-02-05. Pull tabs, jar tickets, and punchboards.

1. A "pull tab" or "jar ticket" is a single-folded or banded ticket or is a card, the face of which is initially covered or otherwise hidden from view to conceal a number, symbol, or set of symbols, some of which numbers or symbols thereon, are winners. A player buys a "pull tab" or "jar ticket" from the eligible organization and opens it to determine if the "pull tab" or "jar ticket" is a winner. The player with a winning "pull tab" or "jar ticket" receives the prize stated on the flare from the eligible organization.
2. A "punchboard" means a board or device containing a number of holes or receptacles of uniform size in which are placed mechanically and at random serially numbered slips of paper or other substance which may be punched or drawn from said hole or receptacle. A player upon payment of a consideration, may punch or draw such numbered slips of paper or other substance from such holes or receptacles and obtain the prize stated on the flare if the number drawn corresponds to a winning number.
3. No deal of pull tabs or jar tickets, and no punchboard, shall be ~~discarded~~ taken out of play once such deal or punchboard has been offered for sale unless all the highest denomination of winners have been sold.
4. Individual deals of pull tabs or jar tickets may be commingled in one receptacle subject to all of the following provisions:
 - a. The deals are identical as to a particular type of games of chance.
 - b. Each deal is identified by its own flare displaying the state identification stamp and manufacturer's serial number.
 - c. The flares applicable to each deal are identical as to:

- (1) Price per ticket;
 - (2) Amount of prizes; and
 - (3) Denominations of prizes.
- d. The receptacle displays the flares for all the deals inserted for which any tickets or tabs remain in play shall be displayed so that the state stamp with the manufacturer's serial number is visible to the players.
 - e. The commingled deals are placed into play and removed from play within one taxable quarter period and the reporting of the results of such games are made in the same quarter period tax returns.
 - f. All of the highest denominations of winning prizes for all deals commingled are awarded within the taxable quarter period.
5. For all single deal games, the flare, with the state stamp attached, for the deal of pull tabs or jar tickets in play shall be affixed to the receptacle containing that deal of pull tabs or jar tickets.
 6. Pull tabs and jar tickets may not be dispensed from any machine or mechanical device.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07

10-04-02-07. Twenty-one.

1. General.

- a. "Twenty-one" means a card game played by a maximum of seven players and one dealer. The object of the game is for a player to obtain a higher total card count than the dealer by reaching twenty-one or as close to twenty-one as possible without exceeding that count. The cards have the following value:
 - (1) Aces count either one or eleven.
 - (2) Kings, queens, and jacks each have a count of ten.
 - (3) All other cards are counted at their face value.
- b. The following rules, either complementing or in addition to those enumerated by law, shall be followed in the playing of twenty-one.

2. **Playing surface.** A layout or diagram which shall permanently and clearly display seven separate and distinct betting spaces and the complete statements:

BLACK JACK PAYS 3 TO 2
and
DEALER MUST STAND ON 17 AND MUST DRAW TO 16

3. **Number of players.**

- a. The eligible organization will never surrender the deal or bank.
- b. One to seven active players, each of whom may bet on no more than two hands depending on the betting spaces available. A player may play two hands if there is a second betting space available and no other nonplaying person requests that available space. The two hands must be adjacent to each other and at the same table. No player may be a member of the dealer's immediate family. Immediate family shall be defined as consisting of the dealer's spouse, child, parent, brother, or sister.
- c. No outsiders may wager on a player's hand.
- d. No player may wager on another player's hand.

4. **Cards.** ~~Four~~ The cards used in the game of twenty-one shall be four standard decks of fifty-two cards each, which shall include {two red-backed decks and two blue-backed decks} shuffled together and used as one, a total of two hundred eight cards dealt as a single packet from a card-dealing box called a shoe.

5. **Shuffle and cut.** The dealer shall, in front of the players, shuffle all two hundred eight cards and any player may insert an indicator card to show where the cards are to be cut. The indicator will then go to the bottom of the deck. The dealer will then insert a second indicator approximately fifty cards or thereabouts from the bottom of the deck. He will then place all the cards in the shoe face down. At a minimum, when the indicator card inserted by the dealer makes its appearance and enough cards have been dealt to complete the hand in progress, the deal ends - and the dealer must begin a new shuffle and again repeat the above-described procedure.

6. **Betting.**

- a. The initial wager for each hand is made by placing chips in a betting space provided on the playing surface before the first card is dealt.

- b. Each separate wager shall not exceed two dollars in the form of chips. A wager of one dollar must be accepted at each table. A wager is the amount bet per hand and is exclusive of splitting, doubling-down, and insuring. Therefore, each split, double-down, or insurance bet is a separate wager limited to a maximum of two dollars.
7. **The deal.** All cards must be dealt from a shoe. The dealer shall bury the first card dealt, that is, place it face down in a discard received pile without showing its face value. All cards used to make a hand are discarded in the same manner. The dealer deals one card face up to each player in order from the dealer's left with the dealer being dealt last, face down. The dealer then deals a second card face up to each player and himself in the same order. If the dealer's up card is an ace or a ten-count card, he ~~then looks~~ must look at his face down card to determine if he has a natural twenty-one. If it is not a natural twenty-one, each player, in order from left to right, can either stand or ask for one or more additional cards to be dealt face up. If the dealer's face up card is not an ace or a ten-count card, the dealer cannot look at the dealer's face down card until all players have completed play.
8. **The play.**
- a. Splitting shall be permitted as follows:
- (1) On any pair or any two ten-count value cards.
 - (2) Only one split may be made. The player's right-hand card in the split shall be played to completion before the adjacent split hand is dealt a second hand.
 - (3) The wager on each hand shall equal one's the player's wager on one's own the player's original hand.
 - (4) Split aces draw only one card each.
 - (5) Two-card twenty-one on a split is not a natural twenty-one. Therefore, a wager is paid off at an equal amount and a twenty-one count tie is a standoff.
- b. Doubling-down shall be permitted on ~~an~~ a two-card eleven count only. A player may double-down after splitting, except on split aces.
- c. The eligible organization may determine whether or not to permit insurance betting. That determination must be posted. The player's wager shall be half the player's

wager on the player's own hand. If the dealer holds a natural twenty-one, the player wins the insurance wager at the rate of two to one, otherwise the dealer wins the insurance wager.

9. **Winning.**

- a. All ties are a standoff, that is, no payoff is made.
 - b. If the dealer has a natural twenty-one, the dealer wins all bets, unless a player also has a natural twenty-one in which case a standoff exists between the dealer and that player's hand. All other players lose.
 - c. If a player has a natural twenty-one, the player wins the player's hand and is paid off at a rate of three to two, unless a standoff exists with the dealer or unless the player chooses to double-down.
 - d. If a player busts, that is, the player's count in course of being dealt cards exceeds a count of twenty-one, the player loses the player's bet and the cards are placed in the discard receiver.
 - e. After all players have played their hands, the dealer turns up the dealer's down card and proceeds as follows:
 - (1) If the count is sixteen or under, the dealer must hit, or take one or more cards, until such time as the count exceeds sixteen.
 - (2) If the count exceeds sixteen but does not exceed twenty-one, the dealer must stay, that is, the dealer's hand has ended. If the dealer's hand contains an ace and a count of seventeen, eighteen, nineteen, or twenty can be obtained by including the ace as an eleven, the dealer shall value the dealer's hand as such and must then stay. Wagers are won or lost on an individual hand basis by comparing each separate hand with the dealer's hand. The dealer wins if the dealer's count exceeds that of the player's hand. If less, the player wins. Wagers are paid off at an equal amount. Ties are a standoff.
 - (3) If the dealer busts, the dealer pays off the remaining players at an amount equal to the wager.
10. **Posting.** The following rules must be posted in a clear, legible manner at each twenty-one table or in such a conspicuous location so that the player at a twenty-one table can readily read such rules.

HOUSE MUST

Use 4 decks of cards (208 cards)

Use last hand indicator

Deal from a shoe

PLAYER RULES

Two hands maximum

\$2.00 maximum wager

No side-bets

No credit

No payoff on tie counts

Splitting on all pairs and 10's

Doubling on 11

Insurance not permitted (Choose one
when posting)

-or-

Insurance permitted - pays 2 to 1

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07

10-04-02-09. House rules. No house rule may conflict with state law or this article. All house rules must be posted in a conspicuous location so that any player of that game to which the rules apply can readily read such rules.

History: Effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04-03-02. Purpose of organization. An organization shall be ineligible to conduct games of chance if the sole purpose of that organization is to conduct such games of chance, whether or not the organization is carrying out that purpose for one or more otherwise eligible organizations. Therefore, every organization desiring to conduct games of chance must manifest itself by veterans, charitable,

educational, religious, fraternal, civic, and service, or other public-spirited programs.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-02

10-04-03-04. Other public-spirited organizations.

1. For the purpose of administering subsection 17 of North Dakota Century Code section 53-06.1-01, the term "other public-spirited organization" does not include veterans, charitable, educational, religious, fraternal organizations, or civic and service clubs. Therefore, "other public-spirited organization" does not include an organization which would satisfy any of the definitions of these terms in North Dakota Century Code section 53-06.1-01, except for its failure to meet a requirement of two years of existence or functioning or its failure to obtain the resolution required under subsection 4 of North Dakota Century Code section 53-06.1-01.
2. For the purpose of administering subsection 17 of North Dakota Century Code section 53-06.1-01, the term "other public-spirited organization" means an organization whose primary purpose is consistent with subdivision c, e, f, g, h, or i of subsection 6 of North Dakota Century Code section 53-06.1-01.
3. An organization whose primary purpose is consistent with subdivision h or i of subsection 6 of North Dakota Century Code section 53-06.1-01 must have one or more individuals affected by a specific event which has transpired as of the time of the application for a license.
4. In order to allow a city or county to protect and promote the public interest, an organization, except one whose primary purpose is consistent with subdivision h or i of subsection 6 of North Dakota Century Code section 53-06.1-01, must have been in existence and maintained its same qualifying primary purpose for a period of time before it can be licensed as an other public-spirited organization. A period of two years shall be ~~sufficient~~ a minimum for this purpose.
5. Before passing a resolution recognizing an organization as a public-spirited organization which is eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1, a city or county governing body shall determine the primary purpose of the organization, the manner in which its purpose has been carried out, and the intended uses of the net proceeds generated by games of chance. The following items shall be examined by the governing body in order to make these determinations:

- a. Statements of receipts and expenditures for at least the two previous years, except for organizations whose primary purpose is consistent with subdivision h or i of subsection 6 of North Dakota Century Code section 53-06.1-01, which specifically outline the projects and other activities to which all of the organization's funds have been devoted and which are attested to by the financial officer and president or other similar officer of the organization.
 - b. A copy of the organization's charter, constitution, bylaws, articles of incorporation, or similar documents which help to establish its primary purpose and its date of origin.
 - c. A copy of the minutes of the organization's meetings which includes a resolution which specifically states the intended uses of funds generated by games of chance and which is attested to by the secretary or other similar officer of the organization.
 - d. Any other relevant materials submitted by the organization or by any other party.
6. The resolution passed by the city or county governing body recognizing an organization as a public-spirited organization which is eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1 shall include the following findings of the governing body:
- a. A statement that the organization is not a veterans, charitable, educational, religious, or fraternal organization, or a civic and service club.
 - b. A statement of the primary purpose of the organization.
 - c. A statement specifying the specific provision of subdivision c, e, f, g, h, or i of subsection 6 of North Dakota Century Code section 53-06.1-01 with which the primary purpose of the organization is consistent.
 - d. A statement which specifically outlines the manner in which this primary purpose has been achieved and how the purpose will be achieved by the granting of the games of chance license.
 - e. A statement which specifically outlines the intended uses of the net proceeds generated by the contemplated games of chance and the conclusion that all of these uses are eligible uses under subdivision c, e, f, g, h, or i of subsection 6 of North Dakota Century Code section 53-06.1-01 and the rules issued hereunder.

- f. A statement that the governing body has examined all of the materials which are required to be examined.
 - g. A clause recognizing the organization as public-spirited and eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1.
7. If the resolution states that the primary purpose of the organization is within subdivision g of subsection 6 of North Dakota Century Code section 53-06.1-01 (lessening the burden of government), it must also state either that the city or county (as applicable) operated and funded the project the organization intends to benefit or that it is a project the city or county wants to undertake but that it cannot do so without receiving financial help from the organization. Copies of city or county records sufficient to establish either of these statements will be sent to the attorney general by the city or county governing body.
 8. Organizations recognized by resolution as public-spirited organizations eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1 shall devote the net proceeds of games of chance only to those eligible uses specifically outlined in the resolution.

History: Effective September 21, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-02, 53-06.1-17

10-04-03-05. Processing of city and county resolutions.

1. A copy of the "civic and service club" or "other public-spirited organization" resolution passed by the city or county governing body, along with copies of all the materials which must be examined by the governing body under section 10-04-03-03 or 10-04-03-04, will be sent directly to the attorney general by the governing body.
2. As the final licensing authority, the attorney general shall review the resolution, the materials submitted with it, the license application, and any other evidence concerning the organization. The attorney general may also examine any other materials concerning an organization which the attorney general determines are necessary in order to process the application. If the attorney general determines that the findings made by the governing body are not supported by the available facts, that the resolution does not meet the requirements of the law or is incorrect or internally inconsistent, that the governing body has failed to undertake a sufficient examination of the organization or has acted in an arbitrary or capricious fashion, or that any other requirement of the law has not been complied with, the

attorney general shall return the resolution to the city or county governing body:

3. If, after the organization has received a license to conduct games of chance, the attorney general determines at any time that the organization's primary purpose is not equivalent to the statement of its primary purpose contained in the resolution or that a use of the net proceeds generated by games of chance is outside the uses outlined in the resolution, the attorney general shall revoke that organization's license.

History: Effective September 21, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-02, 53-06.1-03

10-04-04-02. Licenses.

1. Every ~~eligible~~ organization eligible for a class B license must first receive an authorization for a gaming site or sites within a city from the city governing body or for a gaming site or sites within a county, exclusive of city limits, from the county governing body. The eligible organization must then apply to the attorney general for a separate ~~class A or~~ class B license for each city or county, or both, for which it holds an authorization for a gaming site or sites.
2. A class A organization wishing to obtain a special permit from the attorney general for an alternate location, pursuant to subdivision a of subsection 3 of North Dakota Century Code section 53-06.1-03, must first obtain a site authorization from the governing body of the location of the alternate site. No fee may be charged for this authorization by the governing body.
- 2- 3. Every eligible organization must notify the city chief of police or county sheriff, as appropriate, of the intended site or sites at which games of chance are to be conducted and obtain the chief's or sheriff's acknowledgment that the chief or sheriff has been so informed. Every eligible organization must also consent in advance that local law enforcement officers or the attorney general and the attorney general's agents may, at any time games of chance are being conducted, enter upon the site to observe the playing of games of chance and to enforce the law for any unauthorized game or practice. The acknowledgment by the chief of police or sheriff and the consent by the eligible organization shall be completed on forms provided by the attorney general and returned to the attorney general's office.
4. An "authorization to inspect bank records" of the games of chance account, all other accounts controlled by the

organization, and, for class B organizations, the charitable gaming trust account, shall be completed on forms provided by the attorney general and returned to the attorney general's office.

- ~~3-~~ 5. All class A and class B applications are subject to the approval of the attorney general. At the discretion of the attorney general, temporary permits, revocable on demand, may be issued pending review or investigation, or both, of the application.
- ~~4-~~ 6. Class A and class B licenses shall be effective for a period of one year beginning July first and ending June thirtieth.
- ~~5-~~ 7. There shall be no proration of the fees set out in North Dakota Century Code section 53-06.1-03 for any organization commencing a game of chance after July first.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-06, 53-06.1-11,
53-06.1-15.1

10-04-04-04. Closely connected organizations prohibited.

1. Organizations closely connected to a licensed organization may not be licensed.
2. An otherwise eligible organization shall be determined to be connected to another eligible organization if any one or more of the following conditions are present:
 - a. Membership in one organization automatically qualifies an individual as a member of another organization.
 - b. Membership in one organization is dependent upon membership in another organization; including social memberships.
 - c. The existence of an organization is dependent upon the existence of another organization.
- ~~2-~~ 3. Any affiliation of two or more organizations, contractual or otherwise, the substance of which is the circumvention of North Dakota Century Code chapter 53-06.1, regarding the required use of net proceeds or payment of the tax, or both, is prohibited.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03

10-04-04-05. Raffles - Bingo.

1. In order to protect and promote the public interest, licensure by a city or county governing body for the purpose of conducting raffles or bingo shall apply only when all of the following criteria are met:
 - a. The organization is an eligible organization.
 - b. The organization will conduct only raffles or bingo, or both, throughout the entire fiscal year beginning July first and ending June thirtieth.
 - c. The frequency of the occasions does not exceed once per week each for a raffle and a bingo occasion, unless the license is issued for a single specific occasion which does not last over two weeks.
 - d. The market value of a single prize for each game on each occasion does not exceed one thousand dollars and the total market value of the aggregate of the prizes for each game on each occasion does not exceed two thousand dollars. Raffles are restricted to noncash prizes. Cash prizes may not exceed five hundred dollars in the aggregate during one day.
 - e. The games are conducted within a facility upon premises which does not have a retail alcoholic beverage licensee therein thereon.
2. An applicant failing to comply with any of the subdivisions b through e may not conduct raffles or bingo without first obtaining a class B license.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-10.1, 53-06.1-17

10-04-05-03. Period within which net proceeds to be disbursed devoted - Special rule. Any class B licensed organization which has received a site authorization for a period of three calendar months or less shall devote the entire net proceeds earned during that period with within thirty days from the date the site authorization expires.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06

10-04-05-04. Licensed organizations not to receive funds from donees.

1. No eligible organization Organizations licensed by the attorney general to conduct games of chance shall not accept any payment, gift, or other thing of material value from a recipient or potential recipient of net proceeds of its games of chance whether it be before or after such net proceeds are devoted, nor shall a licensed organization devote funds to a recipient on the condition that the licensed organization receive a payment, gift, or other thing of value from the recipient.
2. A person or organization, whether or not licensed to conduct games of chance, that is a donee or potential donee of net proceeds from a licensed organization shall not give, or offer to give, any payment, gift, or other thing of material value to a donor organization or potential donor organization.
- ~~2-~~ 3. Any eligible organization that devotes net proceeds and, within a period beginning one year before the disbursement and ending one year after the disbursement, sells or enters into an agreement to sell property, real or personal, to that same donee, then such contribution shall be deemed a contribution of property by the nonprofit donor organization and not a devoting of net proceeds.
- ~~3-~~ 4. Contributions of property encumbered by liens, chattels, mortgages, or any other forms of indebtedness shall be considered a sale of property for purposes of subsection ~~2~~ 3.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04-05-05. General guidelines for eligible uses. For the purpose of administering subsection 6 of North Dakota Century Code section 53-06.1-01, the following criteria shall be generally applied to each subdivision enumerated in that subsection:

1. The contribution must be a current irrevocable remittance not contingent upon future occurrences, and specific as to recipient and use.
2. The intended use must be broad in scope affecting an indefinite number of people. No direct benefit can enure to an individual except as permitted under subdivisions h and i of subsection 6 of North Dakota Century Code section 53-06.1-01.
3. Private athletic, social, hobby, trade, business, professional, or other similar clubs or associations generally are not eligible recipients, in and of themselves, unless the specific use of the intended contribution meets the criteria set forth in this section.

4. In applying subdivisions h and i of subsection 6 of North Dakota Century Code section 53-06.1-01, the events causing the eligible use must have occurred and the expense incurred must be uncompensated by insurance. Accumulations for future occurrences are not permitted.
5. A use of funds for the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property owned by an eligible organization is an eligible use only if the eligible organization agrees that, upon abandoning the exclusive use of the property which is stated in subsection 6 of North Dakota Century Code section 53-06.1-01, it will grant its interest in the property to a governmental unit or to an organization which will use it exclusively for the purposes stated in subsection 6 of North Dakota Century Code section 53-06.1-01.
6. In applying subdivisions a and b of subsection 6 of North Dakota Century Code section 53-06.1-01, the devotion of funds must go directly from the "Charitable Gaming Trust Fund Account" to the particular use benefiting that organization. The funds may not go to the general fund of the organization. Gaming expenses or capital costs associated with gaming are not a use benefiting the organization.

History: Effective July 1, 1981; amended effective September 21, 1981; July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-11, 53-06.1-17

10-04-06-03. Promotion of games of chance. Free games, drinks, chips, transportation to the gaming site, or other inducements, given directly or indirectly, to players to participate in games of chance, are prohibited.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04-06-04.1. Lessor of gaming site - Restrictions.

1. Advertising done by the lessor of a gaming site of games of chance at that site must contain a statement identifying the organization licensed to conduct games of chance at that site.
2. The lessor, lessor's spouse, and any employee or agent of the lessor shall not participate in the selling, distributing, conduct, assisting, or playing of games of chance at the site leased. If the site is a public building, this prohibition shall apply to the building manager and staff and all

officials in a position, individually or collectively, to approve or deny the lease.

3. No game of chance shall be set up or otherwise operated in conjunction with the conduct of the lessor's business operations.

History: Effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04-06-05. Rental agreements.

1. Every eligible organization conducting games of chance at a site that is not owned by that organization shall have in writing the conditions under which it is permitted the use and occupancy of that site. Such agreement shall be attested to by both the grantor and grantee.
2. At a minimum, every such agreement entered into pursuant to this section shall contain, by affirmative or negative statement, the following information:
 - a. Name of grantor or lessor, whichever is applicable, who must be the legal owner of the site. If the organization is to be a sublessee, then the lessee name must also be included.
 - b. Name of the eligible organization.
 - c. Term of the agreement.
 - d. Monetary consideration, if any.
 - e. Brief description of the general area being granted or leased within the facility.
 - ~~f. Statement prohibiting advertising of the games of chance by the grantor.~~
 - ~~g.~~ f. The inclusion of the following statement with appropriate selections made for class B licensee applicants: "The (grantor/lessor) does hereby agree that (he/she), (his/her) spouse, and any employee or agent of the (grantor/lessor) shall not participate in the selling, distributing, conducting, assisting, or playing of games of chance at the site herein (granted/leased)."
3. Payment of rent pursuant to the agreement must be for a flat dollar rate per month or other agreed upon duration.
 - a. Graduated rate arrangements are prohibited.

- b. Other remuneration, in lieu of money, is prohibited.
- c. Percentage rates are prohibited.
- d. For purposes of enforcing the maximum rent of one hundred fifty dollars for each table on which the game of twenty-one is played, the phrase "the number of tables on which the game of twenty-one is played" means the maximum number of tables set up and necessary for the playing of the game of twenty-one at that site. If number of tables necessary changes so as to necessitate a change in the maximum rent which may be charged, the appropriate change shall be made in the lease and a copy of the amended lease sent to the attorney general.

4. ~~No game of chance shall be set up or otherwise operated in conjunction with the conduct of the grantor's business operations.~~

5. Renegotiated agreements shall be furnished to the attorney general prior to the effective date of the new agreement.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-06

10-04-07-03. **Specific records.** Every eligible organization shall maintain, at a minimum, the following specific records or information, or both, with regard to individual games for a period of one year:

Bingo: For each bingo occasion, the number in attendance; the total amount wagered; total prizes, cash and noncash, awarded; a copy of the schedule of games and their prizes; and the number and price of cards sold by type.

Raffles: For each raffle, the number of tickets sold and, a sample of the printed ticket, and the ticket stubs of all sold tickets.

Pull tabs, jar tickets, and punchboards: For each deal or punchboard, the flare, with the state gaming stamp affixed, associated together with all opened winning tickets and all unopened and unsold tickets.

Sports pools: The completed, sold board indicating the winning squares.

Twenty-one: Individual records to reflect daily win and loss results for each table.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04-07-04. Internal control. In order to adequately determine its liability for taxes under North Dakota Century Code section 53-06.1-12 and the proper determination of net proceeds to be devoted under subsection 7 of North Dakota Century Code section 53-06.1-06, the games of chance committee of every eligible organization shall establish and have available for review, a system of internal accounting and administrative controls relative to gaming operations. When requested by the attorney general, an organization shall file a copy of its internal accounting and administrative control system with the attorney general.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04-07-06. Games of chance bank account.

1. Every eligible organization shall maintain one checking account at a financial institution, located within the state for each license issued.
2. Every organization shall furnish an "Authorization to Inspect Bank Records" to the attorney general.
3. Interest shall be included in gross proceeds.
4. Class B organizations must also maintain a charitable gaming trust fund account. See section 10-04-07-11.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04-07-07. Expenses.

1. For the purpose of administering subsection 4 of North Dakota Century Code section 53-06.1-11, the following terms found in that subsection shall have the following meaning:
 - a. "The purchase of necessary goods, wares, and merchandise" means the reasonable cost of all equipment for games of chance, except capital costs, for the conduct of any game of chance permitted in accordance with chapter 10-04-02. Items of a minor nature such as pencils, crayons, tickets, envelopes, and paper clips, and coupons necessary to conduct such games and all sales taxes paid herewith are included in this term. Capital cost items which are

leased or rented shall not be expensed but are considered as a capital cost.

- b. "The securing of services reasonably necessary for repair of equipment, and for operating or conducting games of chance" means:
- (1) The reasonable compensation, employer paid benefits and payroll taxes paid for employees directly engaged in conducting or assisting in conducting games of chance. Where the employee performs other services unrelated to gaming activities, an allocation based on hours worked in each activity shall be made.
 - (2) The reasonable labor and material charges for the repair of equipment for games of chance.
- c. "The rent if the premises or equipment are rented, or for janitorial services if premises are not rented" means:
- (1) The rent for a particular site location as shown in the rental agreement, except that rent paid by an organization determined to be closely connected in accordance with section 10-04-04-04.
 - (2) The reasonable rental fee for equipment other than equipment for games of chance but directly attributable to a specific game of chance on a specific occurrence. (For example, tables and chairs at a bingo event.)
- d. "For accountant's fees" means the reasonable accounting and bookkeeping fees, directly attributable to games of chance accounting and administrative functions, ~~that are~~ **separately stated and invoiced by an independent person or firm.**
- e. "For license fees" means the fees paid pursuant to North Dakota Century Code sections 53-06.1-03 and 53-06.1-05.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11

10-04-07-08. Expense limitation.

1. In order to administer subsection 3 of North Dakota Century Code section 53-06.1-11, the following term found in that subsection shall have the following meaning: "Each such occasion" is the period for which a tax return is required under section 10-04-08-02 or 10-04-08-03, whichever is applicable.

2. If the dollar amount of the percentage limitation for expenses is less than the actual expenses for each such occasion, the excess of the actual expenditures shall be required to be reimbursed to the gaming bank account by the general fund of the licensed eligible organization by the due date of the North Dakota gaming tax return. Funds given to the licensed eligible organization by its own gaming operation, or any other gaming operation, may not be used to pay the excess of expenses over the percentage limitation.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04-07-10. Prizes. For purposes of computing adjusted gross proceeds, noncash prizes shall be valued at actual cost to the organization.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04-07-11. Charitable gaming trust fund account - Class B.

- ~~1-~~ In order to ensure that the entire net proceeds are devoted to eligible uses, all class B licensees that file a tax return under the general rule at section 10-04-08-02 shall establish a charitable gaming trust fund account as a separate bank account. This account shall receive the transfers from the special gaming bank account established for each site (section 10-04-07-06). Such transfers shall constitute the devoting of net proceeds (section 10-04-05-02). From this account the disbursements for the actual eligible uses shall be made and in no instance may the balances of this account be used for any other purpose. These disbursements are not subject to any time limitations. Transfers may not be made to the general fund of the organization but must be made to the ultimate use. Gaming expenses or capital costs associated with games are not an eligible use.

- ~~2-~~ Every class B licensee subject to the accounting requirements of this section shall annually file a statement reflecting the activity of the charitable gaming trust fund account to the attorney general. The statement shall cover a calendar year and is due by January thirty-first of the following year. The first statement shall be due January 31, 1982.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-02, 53-06.1-11, 53-06.1-17

10-04-07-12. Use of net proceeds - Reports. Every class A licensee shall file a quarterly report reflecting all contributions of gaming funds made to eligible uses. Every class B licensee shall file a quarterly report reflecting the activity of the charitable gaming trust fund account. These reports shall be filed with the attorney general with the quarterly tax return.

History: Effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-02, 53-06.1-11, 53-06.1-17

10-04-08-02. Due date for filing tax returns - General rule.

1. A North Dakota gaming tax return and payment of the tax due shall be made postmarked, or if hand-delivered, received in the attorney general's office by the last business day of the month following the end of a quarter year. Business days are defined as Monday through Friday not including state holidays.
2. Quarters shall be identified and begin and end as follows:

<u>QUARTER NUMBER</u>	<u>BEGINS</u>	<u>ENDS</u>
1	January 1	March 31
2	April 1	June 30
3	July 1	September 30
4	October 1	December 31

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-12

10-04-08-04. Incomplete tax returns. An incomplete tax return will not be considered timely filed unless corrected and returned by the due date for filing. Delays in mailing, mail pickups, and postmarking shall be the responsibility of the eligible organization.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04-08-07. Attorney general to determine accuracy of return. The attorney general shall have the authority to verify and determine the accuracy of any or all items reported on the return; to ascertain the propriety of any or all prizes, expenses, deductions, and distributions of net proceeds; to determine the current tax liability; and to prepare delinquent returns.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-12, 53-06.1-17

10-04-09-01. Definitions.

1. "Deal" in pull tabs or jar tickets means each separate serialized package or series of packages of pull tabs or jar tickets with the same serial number purchased from a distributor.
2. For purposes of administering North Dakota Century Code section 53-06.1-14, the term "Equipment for games of chance" found in that section means any device, apparatus, or implement usable in the conduct of games of chance, whether or not specifically designed for the purpose, but excluding tables and chairs normally used in the occupancy of a premise.
- ~~2-~~ 3. "Flare" is a posted display which sets forth the rules of a particular game of pull tabs, jar tickets, punchboard, or sports pool and which is associated with a specific deal, punchboard, or sports pool board.

History: Effective July 1, 1981; amended effective July 1, 1983.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04-09-02. Equipment for games of chance. For purposes of administering North Dakota Century Code section 53-06.1-14, the term "equipment for games of chance" found in that section means any device, apparatus, or implement usable in the conduct of games of chance, whether or not specifically designed for the purpose, but excluding tables and chairs normally used in the occupancy of a premise.

History: Effective July 1, 1981.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-14

Repealed effective July 1, 1983.

10-04-09-03. Restrictions on distributorship interests.

1. No organization which is licensed or authorized to conduct games of chance shall be a distributor.
2. No person who is an officer, director, ~~or~~ manager, gaming manager, or member of the games of chance committee of any licensed or authorized eligible organization shall be an officer, director, shareholder, (directly or indirectly)

proprietor, or employee of a distributorship, nor shall such person have any financial interest whatsoever in such distributorship.

3. No person who is an officer, director, shareholder (directly or indirectly), partner, or proprietor of a wholesale alcoholic beverage business shall be an officer, director, shareholder, partner, proprietor, or employee of a distributorship, nor shall such person have any financial interest whatsoever in such distributorship.
4. No distributor or person having a financial interest in a distributorship shall be a lessor of premises, directly or indirectly, to a licensee.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04-09-06. Books and records to be kept. Each distributor shall maintain records that contain the following information relative to the purchase and sale of gaming equipment and material.

1. Purchase invoices for all equipment for games of chance distributed to licensed or authorized organizations.
2. Sales invoices for all equipment for games of chance distributed to licensed or authorized organizations. The sales invoices shall be on a standard form prescribed by the attorney general, and shall have the following information as a minimum:
 - a. Date shipped.
 - b. Invoice number.
 - c. The name and address (city or town) of the licensed or authorized eligible organization.
 - d. License or permit number of the organization.
 - e. Quantity (by deals for pull tabs or jar tickets, by the number of boards for punchboards and sports pools).
 - f. Description of the equipment.
 - g. Gaming stamp numbers.
3. A gaming stamp log in which the gaming stamp numbers and the manufacturer's serial numbers are recorded shall be maintained.

4. The above records shall be kept for a period of three calendar years.

History: Effective July 1, 1981; amended effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14

10-04-09-10.1. Gifts from distributors prohibited. Distributors may not give gifts, trips, prizes, premiums, or other such gratuities to licensed organizations, or their employees.

History: Effective July 1, 1983.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

SEPTEMBER 1983

STAFF COMMENT: Article 10-08 (Chapter 10-08-01) and chapter 10-08-02 contain all new material but are not underscored so as to improve readability.

ARTICLE 10-08
ALCOHOLIC BEVERAGES

Chapter	
10-08-01	Licensing Requirements
10-08-02	Keg Registration

CHAPTER 10-08-01
LICENSING REQUIREMENTS

Section	
10-08-01-01	Qualifications for License
10-08-01-02	Additional Information for Application
10-08-01-03	False Information

10-08-01-01. Qualifications for license. No retail license shall be issued to any person, nor shall any such previously issued license be renewed or retained unless the applicant files a sworn statement upon the application showing the following qualifications:

1. The applicant or manager must not have been convicted (excluding administrative sanctions) within five years prior to the application for the license of any violation of any law

of the United States or this state or of any local ordinance which law or ordinance relates to:

- a. The manufacture, sale, distribution, or possession for sale or distribution of an alcoholic beverage.
- b. Prostitution as set forth in North Dakota Century Code chapter 12.1-29 and applicable federal and local laws.
- c. Obscenity as set forth in North Dakota Century Code chapter 12.1-27.1 and applicable federal and local laws.
- d. Drugs as set forth in North Dakota Century Code chapter 19-03.1 and applicable federal and local laws.
- e. Felony offenses.
- f. The third driving while intoxicated conviction within a two-year period.

The applicant or manager may not be denied a retail license because of prior conviction of the above offenses if the person has been determined sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1.

2. The applicant has secured a local license, a copy of which is attached to the sworn application.
3. The applicant's building in which the business is to be conducted meets the local and state requirements regarding sanitation and safety, and a copy of such local and state reports regarding sanitation and safety is attached to the sworn application.

History: Effective September 1, 1983.

General Authority: NDCC 5-02-09.1

Law Implemented: NDCC 5-02-02(3), 5-02-02(4), 50-02-02(5)

10-08-01-02. Additional information for application.

1. If the applicant is a corporation, the applicant must provide its certificate number which was issued to it by the North Dakota secretary of state's office.
2. If the applicant is a corporation, the names and addresses of the corporate officers, directors, and stockholders must be provided on the sworn application.
3. Any agreements or understandings to obtain an alcoholic beverage license for any other person, partnership, or corporation must be indicated on the sworn application.

4. Any lease agreements to any other person, partnership, or corporation for the sale of alcoholic beverages must be so indicated on the sworn application.
5. Any other interest that the applicant may have, either directly or indirectly, in any other liquor establishment in or out of this state must be indicated upon the sworn application.
6. The applicant must draw a clear and understandable floor plan or include a diagram or blueprint of the premises to be licensed.
7. The applicant, including an individual and manager, or, in the case of a corporation, the officers, directors, and managers, is required to submit a personal information form at the time the initial application is made or when there is a change of corporate officers, directors, and managers. This form is described in the appendix to this chapter and is labeled Personal Information Form.

History: Effective September 1, 1983.

General Authority: NDCC 5-02-09.1

Law Implemented: NDCC 5-02-02(6)

10-08-01-03. False information. False information which is submitted upon a sworn application constitutes grounds for denial of licensure or suspension or revocation of license.

History: Effective September 1, 1983.

General Authority: NDCC 5-02-09.1

Law Implemented: NDCC 5-02-02

CHAPTER 10-08-02 KEG REGISTRATION

Section

10-08-02-01

Keg Information

10-08-02-02

Keg Registration Form

10-08-02-01. Keg information. No alcoholic beverage licensee may sell a beer keg at retail without marking the keg with the following information:

1. The date of the sale.

2. The licensee's state alcoholic beverage retail license number and the number of the keg which has been sold that day, whether it is the first keg sold, second, or third, etc. This then constitutes the keg number.

The marking of the keg must be done by utilizing an invisible, nondefacing marker.

History: Effective September 1, 1983.

General Authority: NDCC 5-02-09.1

Law Implemented: NDCC 5-02-07.2

10-08-02-02. Keg registration form. A retail licensee selling beer in kegs shall fill out a keg registration form which is signed by the purchaser. The form must be in the following format:

KEG REGISTRATION FORM

VALID ID MUST BE SHOWN

Instructions (Please Print):

NAME: _____

ADDRESS: _____

PHONE: _____

TYPE OF ID SHOWN AND NUMBER: _____

KEG NUMBER (To Be Filled In By Retail Licensee): _____

SIGNATURE OF PURCHASER: _____

DATE: _____

History: Effective September 1, 1983.

General Authority: NDCC 5-02-09.1

Law Implemented: NDCC 5-02-07.2

PERSONAL INFORMATION FORM (ALCOHOLIC BEVERAGE LICENSE)

TO: Attorney General's Licensing Division
State Capitol Building
Bismarck, North Dakota 58505

STATE OF NORTH DAKOTA)
)
COUNTY OF _____)

1. Your Name: _____
2. Other names now or previously used: _____
3. Present Address: _____
4. Name of licensed premises: _____
5. Country of Citizenship: _____ Date of Birth: _____
Place of Birth: _____
Name of Spouse: _____

6. List all places of residence during past ten years:

FROM-TO (Years)	STREET ADDRESS	CITY	STATE

7. State your employment (including part-time) for the past ten years:

FROM-TO (Years)	EMPLOYER	BUSINESS ADDRESS	REASON FOR LEAVING

8. Have you ever operated, had a financial interest in, or been employed with an alcoholic beverage establishment? _____ If so, list:

FROM-TO (Years)	NAME OF ESTABLISHMENT	ADDRESS	YOUR INVOLVEMENT
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9. Have you been convicted of a crime (felony or misdemeanor) other than a minor traffic offense within the last five years? _____ If so, list all criminal convictions and the disposition:

DATE	OFFENSE	CITY	STATE	DISPOSITION	FELONY OR MISDEMEANOR
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10. Have you or any entity with which you have been or are associated had any license denied or revoked? _____ If yes, give full details:

11. If business is being taken over or purchased from another person, partnership, or corporation, have all outstanding debts owed to beer and liquor distributors and other providers of supplies and inventory for the licensed premises been paid? _____ If not, explain:

The undersigned swears that the information on this form is true and correct to the best of the undersigned's knowledge, information, and

belief, and acknowledges that false or misleading information is sufficient grounds for denial or revocation of license or authorization.

Signature

Subscribed and sworn to before me this ____ day of _____, 19__.

Notary Public

(SEAL)

My Commission Expires _____

NOVEMBER 1983

STAFF COMMENT: Chapter 10-07-01 contains all new material but is not underscored so as to improve readability.

ARTICLE 10-07

FIRE MARSHAL

Chapter
10-07-01 Fire Prevention

CHAPTER 10-07-01
FIRE PREVENTION

Section	
10-07-01-01	Fire Prevention Rules - Intent
10-07-01-02	Fire Prevention Rules - Scope
10-07-01-03	Definitions
10-07-01-04	Fire Prevention Rules
10-07-01-05	Availability of Standards

10-07-01-01. Fire prevention rules - Intent. It is the intent of this chapter to prescribe regulations consistent with nationally recognized good practice for the safeguarding of life and property from the hazards of fire and explosions.

History: Effective November 1, 1983.
General Authority: NDCC 18-01-04

Law Implemented: NDCC 18-01-02

10-07-01-02. Fire prevention rules - Scope.

1. This chapter supplements all laws defined within the North Dakota Century Code relating to fire safety and applies to all persons without restrictions, unless specifically exempted.
2. This chapter applies to existing conditions, as well as to conditions arising after the adoption of this chapter, except that conditions legally in existence at the time of adoption of this chapter and, not in strict compliance with this chapter, shall be permitted to continue only if, in the opinion of the state fire marshal, they do not constitute a distinct hazard to life or property.
3. Where there is a conflict between this chapter and those provisions of the North Dakota Century Code, the provisions of the North Dakota Century Code shall prevail.

History: Effective November 1, 1983.

General Authority: NDCC 18-01-04, 18-01-33

Law Implemented: NDCC 18-01-02

10-07-01-03. Definitions. The following definitions shall be used when referred to in the content of this chapter:

1. "Bureau of fire prevention", "chief", "chief of the fire department", "chief of the fire prevention bureau", "fire chief", "fire department", "fire marshal", "fire marshal's office", "fire prevention bureau", "fire prevention engineer", "fire prevention inspector", "fire protection engineer", "inspector", or "office of the fire marshal" refers to the state fire marshal or any representative of the state fire marshal's office.
2. "City or "jurisdiction" refers to the state of North Dakota.
3. "Fire prevention code", "fire prevention rules", or "state fire code" refers to the rules provided for within this chapter.
4. "Local jurisdiction" refers to any agency of local or state government which has a defined responsibility for any population, group of persons, land area, occupancy type, class of persons, or municipality located within this state which is less than the entire land area, population or geographical makeup of this state.

History: Effective November 1, 1983.

General Authority: NDCC 18-01-04, 18-01-33

Law Implemented: NDCC 18-01-04, 18-01-33

10-07-01-04. Fire prevention rules. The fire prevention rules for this state include, but are not limited to, the following:

1. **Fire code.** The State Fire Code includes:
 - a. The provisions of the present State Building Code providing for fire-safe construction and operation, as provided for in North Dakota Century Code section 54-21.3-03.
 - b. The provisions of the Uniform Fire Code and its appendices, International Conference of Building Officials, edition to correspond to the year presently in use with the State Building Code, with the following exceptions:
 - (1) Article 4 - Permits and Certificates
 - (2) Appendix VI-B - Model Citation Program
2. **Fire protection equipment.** The applicable standards of the national fire protection association shall be utilized for planning, installation, maintenance, and testing of all fire protection, alarm, extinguishing, and fire extinguishers in all instances.
3. **Explosives.** The standards, as defined within the regulations of the bureau of alcohol, tobacco and firearms under federal statutes and all standards for explosives as published by the national fire protection association shall be utilized in all applicable situations involving explosives or defined components.
4. **Fireworks.** The rules for public fireworks displays as defined in National Fire Protection Association Standard No. 1123 shall be used.
5. **Liquified petroleum gases.** Regulations for the storage and handling of liquified petroleum gases as defined within national fire protection standards shall be utilized in all applicable situations.
6. **Flammable and combustible liquids.** The standards for storage and handling of flammable and combustible liquids as defined within national fire protection association standards shall be utilized in all applicable situations.

History: Effective November 1, 1983.

General Authority: NDCC 18-01-04, 18-01-33, 18-09-02, 23-15-03

Law Implemented: NDCC 18-01-02, 18-01-04, 18-01-33, 18-09-02, 23-15-03

10-07-01-05. Availability of standards. The standards listed in section 10-07-01-04 are available from:

1. National Fire Protection Association
Batterymarch Park
Quincy, Massachusetts 02269
(617) 328-9290
2. International Conference of Building Officials
5360 South Workman Mill Road
Whittier, California 90601
(213) 699-0541
3. Bureau of Alcohol, Tobacco and Firearms
c/o Department of Treasury
Washington, D.C. 20226

History: Effective November 1, 1983.

General Authority: NDCC 18-01-04, 18-01-33, 18-09-02, 23-15-03

Law Implemented: NDCC 18-01-02, 18-01-04, 18-01-33, 18-09-02, 23-15-03

TITLE 13

Banking and Financial Institutions, Department of

SEPTEMBER 1983

STAFF COMMENT: Chapter 13-02-08 contains all new material but is not underscored so as to improve readability.

CHAPTER 13-02-08
LOANS TO EXECUTIVE OFFICERS
AND CLOSELY HELD INTERESTS

Section	
13-02-08-01	Definitions
13-02-08-02	Restrictions on Loans to Executive Officers
13-02-08-03	Restrictions on Loans to Closely Held Interests

13-02-08-01. **Definitions.** Unless the context otherwise requires, terms used in this chapter have the following meanings:

1. "Closely held interest" means any corporation or company in which twenty-five percent or more of the issued and outstanding stock is held by the executive officer.
2. "Executive officer" means the chairman of the board, the president, each vice president, the cashier, the secretary, and the treasurer of a bank or company, unless such officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company, from participation, other than in the capacity of a director, in major policymaking functions of the bank or company, and the officer does not actually participate in major policymaking functions of the bank or company.

History: Effective September 1, 1983.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-03-59, 6-03-60

13-02-08-02. Restrictions on loans to executive officers. A banking association is authorized to extend credit to any executive officer of the bank:

1. In any amount to finance the education of the executive officer's children;
2. In any amount to finance the purchase, construction, maintenance, or improvement of a residence of the executive officer, if the extension of credit is secured by a first lien on the residence and the residence is owned (or expected to be owned after the extension of credit) by the executive officer; and
3. In an aggregate amount not to exceed twenty-five thousand dollars, or two and one-half percent of the total of capital stock, surplus, and undivided profits up to but not exceeding one hundred thousand dollars outstanding at any one time, for a purpose not otherwise authorized under this section.

History: Effective September 1, 1983.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-03-59, 6-03-60

13-02-08-03. Restrictions on loans to closely held interests. A banking association is authorized to extend credit to any closely held interest of any executive officer of the bank in an amount not to exceed the loan limits as recited in North Dakota Century Code section 6-03-59, in the aggregate of any personal and closely held corporate interest borrowings of the executive officer of the bank.

History: Effective September 1, 1983.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-03-59, 6-03-60

DECEMBER 1983

CHAPTER 13-03-01
CHECK CASHING FUNDS

[Repealed effective December 1, 1983]

Section

13-03-01-01	Authorization - Compliance with Chapter
13-03-01-02	Directors to Prescribe and Limit Funds - Limitation
13-03-01-03	Segregation of Funds
13-03-01-04	Limitations on Use of Funds

~~13-03-01-01. Authorization - Compliance with chapter. Any state-chartered credit union desiring to engage in the business of cashing checks for the public, or which is now engaged in such business, shall follow and comply with this chapter.~~

General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-01-01, 6-01-04

~~13-03-01-02. Directors to prescribe and limit funds - Limitation. The board of directors shall by a regularly adopted resolution prescribe and limit the amount of credit union funds which shall be used for the purpose of cashing checks, which amount shall not be in excess of the amount of robbery and burglary insurance maintained by the credit union.~~

General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-01-01, 6-01-04

13-03-01-03. Segregation of funds. The amount so designated, or so much thereof as may be necessary, shall be segregated and set up in a separate account on the books of the credit union and all transactions in connection with and relating to such check cashing business shall be handled through this check cashing fund and shall not be mingled in any way with the regular receipts, disbursements, or funds of the credit union.

General Authority: NDEC 6-01-04
Law Implemented: NDEC 6-01-01, 6-01-04

13-03-01-04. Limitations on use of funds. The fund so segregated shall at all times be kept intact and be represented either by cash on hand or items for deposit, and no loans or advances of any nature, other than the cashing of current checks, drafts, or other items of exchange, shall be made from such funds.

General Authority: NDEC 6-01-04
Law Implemented: NDEC 6-01-01, 6-01-04

FEBRUARY 1984

STAFF COMMENT: Article 13-05 contains all new material but is not underscored so as to improve readability.

ARTICLE 13-05
MONEY BROKERS

Chapter
13-05-01 Money Brokers

CHAPTER 13-05-01
MONEY BROKERS

Section	
13-05-01-01	No Advance Fee
13-05-01-02	Contracts To Be in Writing
13-05-01-03	Full Disclosure Required
13-05-01-04	Contents of Loan Disclosure Statement
13-05-01-05	Restrictions on Chargeable Costs and Expenses
13-05-01-06	Filing of Annual Reports
13-05-01-07	Availability of Records
13-05-01-08	Statements to Borrowers
13-05-01-09	Notice to Borrower Regarding Regulation by the Department of Banking and Financial Institutions
13-05-01-10	Copy of Written Contracts to the Potential Borrower
13-05-01-11	Unprofessional Conduct and Grounds for Revocation of License

13-05-01-01. No advance fee. No money broker may accept any type of fee in advance, to include expense deposits, from a potential borrower for the procurement of a loan.

History: Effective February 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-06

13-05-01-02. Contracts to be in writing. Before a money broker performs any services for a potential borrower, the money broker and the borrower shall enter into a written contract specifying the duties and conditions under which the money broker shall perform the broker's services. The contract must fully disclose estimated commissions and fees, must have a definite expiration date, and must indicate costs to be paid if the loan is not closed. A provision must be made designating the timing of fee payments (i.e., on commitment, on closing, on funding).

History: Effective February 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-06

13-05-01-03. Full disclosure required. In all dealings between a borrower and a money broker, the money broker is charged with a duty to fully and fairly inform the prospective borrower of all liabilities, costs, and other financial obligations that can or will be incurred by the borrower if the borrower uses the services of the money broker.

History: Effective February 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-06

13-05-01-04. Contents of loan disclosure statement. Whenever a money broker arranges a loan for a borrower, the following loan disclosure statement must be prepared by the money broker for the borrower:

1. **Summary of loan terms.**
 - a. Principal amount of loan.
 - b. Estimated deductions from principal amount.
 - (1) Costs and expenses.
 - (2) Brokerage commission.

(3) Liens and other amounts to be paid on authorization of borrower.

(4) Any other deductions.

c. Estimated cash payable to borrower.

2. General information concerning loans.

a. The amount of principle and interest payable, the interest rate, the number of payments and whether they are monthly or quarterly, and whether there is a final or balloon payment to pay off the loan in full. If there is a balloon payment, the following cautionary instructions must be printed in bold type on the contract: **CAUTION TO BORROWER: IF YOU DO NOT HAVE THE FUNDS TO PAY THE BALLOON PAYMENT WHEN DUE, IT MAY BE NECESSARY FOR YOU TO OBTAIN A NEW LOAN AGAINST YOUR PROPERTY FOR THIS PURPOSE AND YOU MAY BE REQUIRED TO AGAIN PAY COMMISSION AND EXPENSES FOR ARRANGING THE LOAN. KEEP THIS IN MIND IN DECIDING UPON THE AMOUNT AND TERMS OF THE LOAN THAT YOU OBTAIN AT THIS TIME.**

b. Other information necessary including the land description, types of instruments to be executed and type of lien that will be against the property if the instruments are executed.

c. Any prepayment penalty on full disclosure of the terms thereof.

d. Whether credit life or credit disability will be required of the borrower as a condition of making the loan.

3. Deductions from loan proceeds.

a. Estimated costs and expenses to be paid by the borrower out of the principal amount of the loan including appraisal fees, escrow fees, abstract or title insurance fees, notary fees, attorney's fees, recording fees, credit investigation fees, and other costs and expenses.

b. An estimate of the liens and other amounts to be paid out of the principal amount of the loan, on authorization of the borrower, including fire or other property insurance premiums, credit life or disability insurance premiums, beneficiary statement fees, reconveyance or similar fees, or liens against property securing the loan or other fees.

4. Estimated figures. All figures which are estimates must be clearly identified as such and a statement must be included specifying whether or not the borrower may refuse to accept the commitment if the estimates are exceeded by a specified

percent, and, if so, the contract must set forth the specified percent.

Disclosures must be made in plain English and set forth in meaningful order.

History: Effective February 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-06

13-05-01-05. Restrictions on chargeable costs and expenses. In addition to the initial written contract, the money broker shall give to the potential borrower an estimate of the amount of chargeable costs and expenses that will be collected by the money broker in case no loan is found for the borrower. An estimated total cost to the borrower under these conditions must be itemized and stated to the borrower. All of these costs and expenses, if actually expended and chargeable to the borrower, must have been actually and reasonably expended for the potential borrower's benefit.

History: Effective February 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-06

13-05-01-06. Filing of annual reports. Every money broker licensee operating as a money broker shall file an annual report with the department of banking and financial institutions. This must be done at the time of submitting the application for renewal of license on the forms supplied with the renewal application. If the department of banking and financial institutions deems that further inquiry is necessary, the money broker shall give specific details on any transaction to the department of banking and financial institutions.

History: Effective February 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-05

13-05-01-07. Availability of records. The money broker shall maintain all records of its transactions at its office for at least six years and these records must be subject to examination by the department of banking and financial institutions.

History: Effective February 1, 1984.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-07

13-05-01-08. Statements to borrowers. Where loan funds are not provided or arranged for a borrower, any statement from the money broker to the potential borrower whereby the money broker seeks reimbursement

of any costs and expenses must contain an itemized listing of costs and expenses chargeable to the potential borrower.

History: Effective February 1, 1984.
General Authority: NDCC 13-04.1-01
Law Implemented: NDCC 13-04.1-06

13-05-01-09. Notice to borrower regarding regulation by the department of banking and financial institutions. The written contract as provided in section 13-05-01-03 of these regulations must contain the following notice in capital letters: NOTICE: MONEY BROKERS ARE LICENSED AND REGULATED BY THE DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS, STATE CAPITOL, BISMARCK, NORTH DAKOTA 58505. THE DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS HAS NOT PASSED ON THE MERITS OF THE CONTRACT AND LICENSING DOES NOT CONSTITUTE AN APPROVAL OF THE TERMS OR OF THE BROKER'S ABILITY TO ARRANGE ANY LOAN. COMPLAINTS REGARDING THE SERVICES OF MONEY BROKERS SHOULD BE DIRECTED TO THE DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS.

History: Effective February 1, 1984.
General Authority: NDCC 13-04.1-01
Law Implemented: NDCC 13-04.1-06

13-05-01-10. Copy of written contracts to the potential borrower. A copy of all written contracts between the money broker and the potential borrower must be given to the potential borrower at the time that the contract is signed.

History: Effective February 1, 1984.
General Authority: NDCC 13-04.1-01
Law Implemented: NDCC 13-04.1-06

13-05-01-11. Unprofessional conduct and grounds for revocation of license. Any act or conduct violating any of the provisions of this chapter or any law or rule regarding money brokers constitutes unprofessional conduct and constitutes grounds for revocation of the money broker license.

History: Effective February 1, 1984.
General Authority: NDCC 13-04.1-01
Law Implemented: NDCC 13-04.1-08

TITLE 24
Electrical Board

NOVEMBER 1983

24-01-01-01. Organization of electrical board.

1. **History and functions.** In 1917 legislation was approved which created a state board of electricians. In 1949 the name of the board was changed to the state electrical board. The board is charged with the responsibility to examine applicants and issue licenses to those having the necessary qualifications and knowledge in the laws of electricity and electrical codes. The board has jurisdiction over all electrical installations. Electrical inspectors authorized by the board may condemn installations hazardous to life and property and order electric service to be discontinued.
2. **Board membership.** The board consists of five members appointed by the governor for terms of five years. Terms are arranged so that one term expires each year. To provide equal representation on the board, one member is selected from the master electricians, one from the journeymen electricians, another from the investor-owned utilities, the fourth must be a consumer member of a rural electric cooperative, and the fifth member represents the public and cannot be directly associated with the electrical industry.
3. **Executive director.** The executive director has full responsibility for directing and supervising the operation of the department under the direction of the board.
4. **Director of inspections.** The director of inspections supervises electrical inspectors to carry out an effective inspection program. The director is responsible for reviewing plans and specifications that are submitted on various projects.

5. **Inspection districts.** The state is divided into ~~eight~~ seven districts. Each electrical inspector is assigned to a district. ~~One inspector has no assigned district. That inspector is available to assist in any areas wherever needed.~~ A map showing the ~~eight~~ seven districts is attached as an appendix to this chapter and by this reference is herein incorporated.
6. **Inquiries.** All inquiries and communication relating to licensing, electrical wiring, and inspections shall be directed to:

State Electrical Board
Box 857
Bismarck, North Dakota 58505 58502

Inquiries or proposals for amendments to the rules and wiring standards shall be directed to the executive director.

History: Amended effective November 1, 1981; January 1, 1984.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

24-02-01-02. General statement of policy and interpretative rules.

1. **Apprentice electricians.** There are two categories of apprentice electricians.
- Apprentice electricians under the joint apprenticeship training committee training program approved by the department of labor.
 - Electrician trainees who may not be eligible for the joint apprenticeship training committee program and other persons desiring to accumulate a sufficient time and capability in the electrical trade to qualify them to apply for permission to take the examination for journeyman electrician's license.

Any person may work as an apprentice under a licensed master electrician, but the master electrician shall not allow an apprentice to work on any installation without direct constant supervision by a North Dakota licensed electrician working with the apprentice at the work site.

Any master electrician who fails or refuses to comply with this section or who fails or refuses to comply or demonstrate compliance with this section at the request of the board or its representative, shall subject his license to nonrenewal, suspension, or revocation by the board.

2. **Purpose and scope.** The purpose of these standards is the practical safeguarding of persons and of buildings and their contents, from electrical hazards arising from the use of electricity for light, heat, and power. It covers the electrical conductors and equipment installed within or on public and private buildings and other premises, including yards, carnival and parking lots, also the conductors that supply streetlighting, together with the associated equipment necessary to its safe operation.

These standards based on the National Electrical Code, are the result of years of experience and research to meet the demand for uniform standards to govern electrical wiring in North Dakota, and provide basic rules for intelligent and uniform installation and inspection.

~~Compliance with these standards and proper maintenance of an approved installation should result in an installation reasonably free from hazard but not necessarily efficient or convenient.~~ All requirements contained herein shall be given careful consideration to ensure greatest permanence, convenience, and safety. These standards do not constitute a design specification for any particular installation, nor an instruction manual for untrained persons. Skill and experience are necessary factors for a safe and adequate wiring installation. In cases where these requirements differ or are in conflict with the requirements of the 1981 1984 edition, National Electrical Code, and the 1976 1981 edition, Life Safety Code NFPA no. 101, and the fire protection association standards, the more restrictive requirements shall be the minimum.

3. **Administrative powers and duties.** The executive director of the North Dakota state electrical board, under the direction of the board, shall administer laws, rules, and wiring standards of this state, the electrical requirements of the 1981 1984 edition, National Electrical Code, and the 1976 1981 edition, Life Safety Code NFPA no. 101, and the fire protection association standards. In all cases where any action is taken by the executive director to enforce the provisions of any sections contained in these electrical regulations, the 1981 1984 edition, National Electrical Code, and the 1976 1981 edition, Life Safety Code NFPA no. 101, and the fire protection standards, such acts shall be done in the name of and on behalf of the state and the executive director, in so acting for the state, shall not render the executive director liable for any damages that may accrue to persons or property as a result of any such act committed in good faith in the discharge of the executive director's duties, and any suit brought against the executive director by reason thereof, shall be defended by the state until final termination of proceedings contained therein.

The electrical regulations of these standards, the ~~1981~~ 1984 edition, National Electrical Code, and the ~~1976~~ 1981 edition, Life Safety Code NFPA no. 101, ~~and the fire protection association standards,~~ may be modified or waived by special permission in particular cases where such modification or waiver is specifically permitted or in particular cases where an advancement in the technology of electricity makes such modification or waiver advisable in the best interest of the people of North Dakota. Such "special permission" shall, in all cases, be obtained from the executive director in writing prior to the commencement of the work.

The executive director or the electrical inspector shall have the power to enter any building or premises at any reasonable hour in the discharge of their duties, and it shall be competent for them, when necessary, to remove any existing obstructions such as laths, plastering, boarding, or partitions, which may prevent a perfect inspection of electrical wiring and equipment; they shall also have the power to enter any building used in whole or part for the purpose of public assemblage at any time when occupied by the public in order to examine electrical wiring and equipment in such building and it shall be unlawful for any person to interfere with them in the performance of their duties.

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-03. General requirements. Electrical installations shall be planned to provide adequate capacity for the load.

1. Wiring systems shall have conductors of sufficient capacity to furnish each outlet without excessive line loss or voltage drop. The voltage drop shall not exceed five percent at the farthest outlet of power, heating and lighting loads, or combinations of such loads.
2. All wiring materials shall be listed by underwriters' laboratories, incorporated, or other accepted testing laboratories to safeguard life and property. It shall be the duty of the electrical installer to secure permission from the executive director to use materials, devices, and methods of installation not specifically covered by these standards.
3. All installations shall be made in a workmanlike manner with special attention paid to the mechanical execution of work. All conductors shall be rigidly supported and all fittings securely fastened.

4. When wiring public school buildings approval shall be received from the department of public instruction and the state electrical board.
5. Overhead conductors shall not cross over water wells or known sites where water wells may be drilled. A minimum distance of twenty feet [6.10 meters] in all directions shall be maintained for overhead conductors.
6. Buildings moved must have an electrical wiring certificate before service is reconnected.
7. Hospitals, nursing homes, homes for the aged, and dormitories which house more than twenty people shall be wired in metal raceway. Portable cleaning equipment receptacle outlets shall be installed in corridors and located so that no point in the corridor along the floorline, measured horizontally, is more than twenty-five feet [7.62 meters] from an outlet. Spacing of receptacle outlets for dormitories and homes for the elderly shall be in conformity with section 210-52(a), ~~1981~~ 1984 edition, National Electrical Code.

Exception: By special permission from the state electrical board, receptacles in dormitories and homes for the elderly may be located conveniently for the permanent fixture layout.

8. In the wiring of nursing homes and hospitals, reference shall be made to the state department of health for special requirements pertaining to operating rooms, delivery rooms, and emergency lighting.
9. Aluminum conductors in sizes smaller than No. 6 shall not be used. Aluminum conductors installed and all corresponding materials shall be underwriters' laboratories listed. All materials used shall be installed according to the requirements of the National Electrical Code. Connections shall be made with the type approved for aluminum. Consideration shall be given to the use of different types of metal.

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-04. Places of assembly. This section covers all buildings, structures or portions of buildings designed or intended for the assembly of one hundred or more persons.

Places of assembly include, but are not limited to: assembly halls, auditoriums, including auditoriums in schools; mercantile, business and other occupancies; exhibition halls; armories; dining facilities, including restaurants; church chapels; dancehalls; mortuary

chapels; museums; skating rinks; gymnasiums and multipurpose rooms; bowling lanes; poolrooms; clubrooms; places of awaiting transportation; courtrooms; drinking establishments; and conference rooms.

Occupancy of any room or space for assembly purposes by less than one hundred persons in a building of other occupancy, and incidental to such other occupancy, shall be classed as part of the other occupancy and subject to the applicable provisions.

When such building structures or portion thereof contains a projection booth or stage platform or area for the presentation of theatrical or musical production, either fixed or portable, the wiring for that area shall comply with all applicable provisions of article 520, ~~1981~~ 1984 edition, National Electrical Code.

(For methods of determining population capacity, see occupant load value table, section 24-02-01-16).

1. **Hazardous (classified) locations.** Hazardous areas located in any assemblage occupancy shall be installed in accordance with article 500, ~~1981~~ 1984 edition, National Electrical Code, hazardous locations.
2. **Temporary wiring.** In exhibition halls used for display booths, as in trade shows, the temporary wiring shall be installed in accordance with article 305, ~~1981~~ 1984 edition, National Electrical Code - temporary wiring, except approved portable cables and cords shall be permitted to be laid on floors where protected from contact by the general public.
3. **Wiring methods.** The fixed wiring method shall be metal raceway or nonmetallic raceway encased in not less than two inches [5.08 centimeters] of concrete.

Adjacent areas separated by a firewall shall be considered a separate building and may be wired in nonmetallic cable. (For the purpose of this section, a firewall is defined as a wall constructed of solid masonry or of hollow masonry units or of reinforced concrete. The wall shall start at the foundation and extend continuously through all floors to and above the roof, except where the roof is of fire-resistive construction and the wall is carried up tightly against the underside of the roof slab).

Exception: As provided in article 640, ~~1981~~ 1984 edition, National Electrical Code, sound reproduction and similar equipment; in article 800, ~~1981~~ 1984 edition, National Electrical Code, communication circuits, and in article 725, ~~1981~~ 1984 edition, National Electrical Code, for class 1, class 2, and class 3 remote control and signaling circuits, and in article 760, ~~1981~~ 1984 edition, National Electrical Code, for fire protective signaling systems.

History: Amended effective January 1, 1981; January 1, 1984.
General Authority: NDCC 43-09-05
Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-05. Class II locations. Electrical wiring in grain elevators shall conform with code requirements, class II division 1 under article 500, ~~1981~~ 1984 edition, National Electrical Code. All enclosures and electrical equipment mounted in rooms containing grinders, cleaners, roller mills, hoppers, open conveyors or spouts, mixers, and other dust producing machinery shall be labeled and approved for class II division 1 location, including motor controllers of the type in which starting and running contractors are oil immersed. General purpose enclosures may only be installed in dustfree locations.

1. Surge protective capacitors shall be provided for all services in grain elevators receiving power from an exterior overhead line. Surge protective capacitors may be located inside or outside a building. If located within a building each capacitor shall be protected with a fuse of proper voltage rating for the circuit and an ampere rating not less than twenty nor more than thirty amperes.
2. ~~Electrical service equipment, including meter base (if installed inside building) and surge capacitors shall be mounted on a noncombustible wall, or shall have a backing of noncombustible material at least three sixteenths inch {4.76 millimeters} thick which shall provide protection for all combustible material within three inches {7.62 centimeters} of service equipment.~~
- ~~3-~~ 3. Where necessary to employ flexible connections in grain elevators, dusttight flexible connectors and conduit shall be used.
- ~~4-~~ 3. Receptacles and switches installed in grain elevators shall be labeled and approved for a class II, division 1 dusty location.
- ~~5-~~ 4. Electrical wiring and equipment installed in a grain elevator which is not used commercially and having a total capacity of less than ten thousand bushels [352.39 cubic meters] and located in a rural district shall conform to class II, division 2, under article 500, ~~1981~~ 1984 edition, National Electrical Code.
- ~~6-~~ 5. Electrical wiring and equipment in buildings or rooms other than a grain elevator where grain is handled or processed on a commercial basis such as rooms containing grinders, augers, open spouts, roller mills, or similar dust producing

machinery, shall be labeled and approved for class II division 1 under article 500, ~~1981~~ 1984 edition, National Electrical Code.

- ~~7-~~ 6. In buildings or rooms where grain is handled or processed not on a commercial basis, such as rooms containing grinders, augers, open spouts, roller mills or similar dust producing machinery, the electrical wiring and equipment shall conform to class II, division 2, under article 500, ~~1981~~ 1984 edition, National Electrical Code.

Exceptions: Rooms where grain is handled or processed occasionally on a limited basis, general purpose equipment may be used if approved by the local inspection authority.

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-06. Grounding. Grounding shall conform to article 250, ~~1981~~ 1984 edition, National Electrical Code. In no case shall resistance to ground exceed twenty-five ohms.

1. The equipment grounding conductor shall be spliced in the same manner as branch circuit conductors except that solder shall not be used.
2. The neutral conductor shall not be used as the equipment grounding conductor and shall be insulated except as provided in section 250-60, ~~1981~~ 1984 edition, National Electrical Code.
3. All metal boxes in structures containing metal lath, tinfoil insulation, or other metallic barrier shall be grounded.
4. At motor connections, a bonding jumper sized in accordance with table 250-95, ~~1981~~ 1984 edition, National Electrical Code, shall be provided around all flexible conduit in sizes one-half inch [12.70 millimeters] and larger. The bonding jumper is not required where a separate grounding conductor is included.
5. Grounding of metal streetlighting standards. The maximum resistance to ground from any standard shall be twenty-five ohms.
 - a. Circuits run in nonmetallic conduit or buried directly in the ground: the ornamental metal standard shall be grounded by use of a grounding conductor, not the neutral conductor. This grounding conductor shall be run continuously throughout the system and properly bonded to each standard by use of lugs. It shall be connected to a

one-half inch [12.70 millimeters] by ten foot [3.0 meters] copperweld ground rod at each metal standard. The ten foot [3.0 meters] ground rod is driven in the center of the metal standard base and projecting slightly above the base. Both ground rod and grounding conductor shall be connected to the metal standards. The grounding conductor shall be in accordance with the ~~1981~~ 1984 edition, National Electrical Code and in no case smaller than No. 8 copper or No. 6 aluminum.

- b. Because of different characteristics of copper and aluminum, devices such as pressure terminal or pressure splicing connectors and soldering lugs shall be suitable for the material of the conductor and shall be properly installed and used. Conductors of dissimilar metals shall not be intermixed in a terminal or splicing connector where physical contact occurs between dissimilar conductors (such as copper and aluminum, copper and copper-clad aluminum, or aluminum and copper-clad aluminum), unless the device is suitable for the purpose and conditions of use. Consideration shall also be given to dissimilar metals when grounding aluminum light standards.
- c. When circuits are run in metal conduit the ornamental metal streetlighting standard shall be grounded to the metal conduit. No ground rod is required.

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-07. Branch circuits and feeders. Branch circuits and feeders shall comply with articles 210 and 215, ~~1981~~ 1984 edition, National Electrical Code.

1. The total connected load shall be divided as evenly as practicable, between the two ungrounded conductors of a three-wire system and three conductors of a four-wire wye (120-208 volts) system.
2. A separate circuit with disconnect switch shall be provided for the purpose of operating or controlling electrical equipment on heating plants. Wiring requirements for fixed electrical space heating equipment is provided under article 424, ~~1981~~ 1984, National Electrical Code.
3. Dwelling occupancies having built-in baking or cooking units installed separately shall have an individual disconnect and overcurrent protective device. Conductors supplying these units shall have a carrying capacity according to nameplate rating.

4. A minimum of six appliance circuits shall be installed in kitchens that may be used to serve public gatherings such as schools, churches, lodges, etc.
5. Dwelling type occupancies. Receptacle outlets shall be installed in accordance with section 210-52(a), ~~1981~~ 1984 edition, National Electrical Code.
 - a. ~~For a one- and two-family dwelling, one receptacle outlet shall be installed outdoors for each unit.~~ Lighting outlets in dwelling type occupancies shall be installed in accordance with section 210-70, 1984 edition, National Electrical Code.
 - b. A minimum of three circuits shall be installed to supply receptacle outlets in kitchen; pantry, ~~family room~~, dining room and breakfast room. These circuits shall not supply other outlets and shall have conductors not smaller than No. 12. Such circuits shall be provided with overcurrent devices rated at twenty amperes and shall be known as appliance circuits. Two of these circuits shall supply receptacle outlets on or near work counter area and so arranged that adjacent receptacles are not on the same circuit.
 - c. In laundry at least one 20-ampere branch circuit shall be provided to supply laundry receptacles. See exceptions 1 and 2, section 210-52(e), ~~1981~~ and 220-3(c), 1984 edition, National Electrical Code.
 - d. Ground-fault ~~circuit~~ protection for personnel shall comply with section 210-8, ~~1981~~ 1984 edition, National Electrical Code.
6. Branch circuit and feeder calculations shall comply with article 220, ~~1981~~ 1984 edition, National Electrical Code. Voltage drop must be taken into consideration when figuring size of feeder or branch circuit.

Formulas for determining voltage drop or conductor size are:

$$\text{Voltage drop} = \frac{21.6 \times L \text{ ft.} \times I}{\text{C.M.A.}}$$

or

$$\text{C.M.A.} = \frac{21.6 \times L \text{ ft.} \times I}{\% \text{ drop} \times \text{voltage}}$$

L = length in ft., one way

I = load in amps

E = volts

C.M.A. = Circular-mil area 21.6 multiplying factor for copper 35 multiplying

factor for aluminum

Percent drop = permissible voltage drop times

voltage of circuit as follows:

3% of 208 = $208 \times .03 = 6.24$ volts

3% of 115 = $115 \times .03 = 3.45$

3% of 230 = $230 \times .03 = 6.9$ volts

5% of 230 = $230 \times .05 = 11.5$ volts

Example:

230 volts, 1000 ft. distance, 10 ampere

load, 5% drop

$21.6 \times 1000 = 21600.0 \times 10 = 216,000$

216,000 divided by 26,250 (C.M.A. of No. 6) = 8.2 volts
(less than 5%)

216,000 divided by 16,510 (C.M.A. of No. 8) = 13 volts
(more than 5%)

115 volts, 8 ampere load, 100 ft. distance,
3% drop

$21.6 \times 100 = 2160 \times 8 = 17280$

17280 divided by 6530 (C.M.A. of No. 12) = 2.64 volts
(less than 3%)

17280 divided by 4107 (C.M.A. of No. 14) = 4.2 volts
(more than 3%)

or

$21.6 \times 8 \text{ amps} \times 100 \text{ ft.} = 17,280$

17,280 divided by 3.45 (volts representing 3%) =
5008 C.M.A. (No. 12)

For 3-phase circuits, use formula, then
multiply the results by .86

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-08. Services. Electrical services shall comply with article 230, ~~1981~~ 1984 edition, National Electrical Code.

1. In general, the point of attachment of a service drop to a building shall be not less than ten feet [3.0 meters] above the ground and shall be at a height to permit a minimum clearance of service conductors of ten feet [3.0 meters] above walks and eighteen feet [5.48 meters] above driveways or public roads. Where the form of the building will not permit placing the attachment ten feet [3.0 meters] or more above the ground a mast or other suitable means shall be used to obtain the ten feet [3.0 meters] clearance.
2. Perpendicular mast used for support of a service drop to low buildings shall be not less than two-inch [5.08-centimeter] galvanized rigid steel conduit or intermediate metal conduit

fitted with storm collar flashing and offset reducer if needed, at the lower end to accommodate a meter socket.

3. A span of one hundred ten feet [43.48 meters] shall be considered a maximum distance for a one hundred amp service drop to a mast unless the mast is substantially guyed.
4. To eliminate moisture condensation, service raceways shall have provisions to prevent circulation of air from a warmer to a colder section of the raceway (see section 300-7, ~~1981~~ 1984 edition, National Electrical Code).
5. Where the service conduit enters a switch, cabinet, or trough through a knockout, the conduit must be bonded.
6. Switch location. A service switch or a manually operable circuit breaker shall be provided for each set of service entrance conductors and located at a readily accessible point not more than six and one-half feet [1.98 meters] above the floor level and as near as possible to the entrance of the conductors either inside or outside the building or structure. If outside, this equipment shall be approved for outside location. In no case shall the equipment be mounted lower than eighteen inches [45.72 centimeters] above grade level. Switch cabinets should preferably be of the dead front type. All service equipment and panels to be mounted on inside of outside walls of buildings housing livestock shall be mounted at least two inches [5.08 centimeters] away from such outside walls by means of a substantial backboard or frame. It is recommended that the service entrance switch in residences be located in the basement or on the first floor. In no case shall overcurrent devices be located in bathrooms, clothes closets, or stairways.
7. Rating of service switch. Any new or old dwelling where service is altered, or where the dwelling is rewired, a minimum one hundred amp service and rated panel shall be installed.
 - a. A one hundred ampere service shall be installed using conductors rated at one hundred amperes with no reduction in size for the grounded (neutral) conductor up to one hundred amperes. The panel shall contain provisions for four double pole two hundred forty volt three-wire circuits, one of which may be used as a disconnect for not less than ten 2-wire one hundred twenty volt circuits.
 - b. A pole top disconnecting means in rural areas shall be mandatory on all overhead pole top meter installations. Disconnect switches with an overcurrent protective device is optional to the supplier of electric current.

- c. Where a single stack service is used on a yard pole, it must be considered only as a meter loop and the load conductor must be treated as service conductors to buildings.
8. Clearance from ground. Conductors shall have a clearance of not less than ten feet [3.0 meters] from the ground or from any platform or projection from which they might be reached. See section 225-18, ~~1981~~ 1984 edition, National Electrical Code.
9. Clearances from buildings for conductors not over six hundred volts. See section 225-19, ~~1981~~ 1984 edition, National Electrical Code. Conductors shall have a clearance of not less than thirty-six inches [.914 meters] from windows, doors, porches, fire escapes, or similar locations. Conductors run above the top level of a window are considered out of reach from that window.
10. Temporary service. Temporary service shall be granted to any contractor and this temporary service can be moved from place to place with one certificate issued for the first installation and the same certificate will suffice for all future locations. It shall be the responsibility of the contractor to maintain the temporary service in good condition and electrically safe at all times. If the power supplier finds these conditions not being complied with, the supplier may refuse hook up and notify the inspector covering that area who has full authority to determine whether it be condemned or rebuilt. At the expiration of ninety days it may be considered a permanent service and all wiring connected shall comply with the provision pertaining to permanent wiring.
- a. Each temporary service shall be provided with the electrical wiring certificate number, name, and license number of electrician that issued the certificate. This information shall be applied in such a manner that it will withstand the elements of weather.
- b. Minimum requirements for temporary services. Outdoor equipment must be weatherproof. (Wood enclosures are unsatisfactory and should not be used.) Temporary service must be grounded. (Butt pole ground is acceptable.) A minimum clearance of ten feet [3.0 meters] above finished grade shall be provided for overhead service conductors.
- c. Temporary wiring is not permitted without approval from the state electrical board or local inspector, however, this shall not apply to a temporary pole service or wiring for construction purposes.

11. Underground services: Underground service shall comply with article 230 part D, ~~1981~~ 1984 edition, National Electrical Code.
 - a. Cables or individual conductors on outside of buildings or poles shall be protected where subject to mechanical injury. Where rigid metal conduit is used a bushing shall be used on both ends. Sufficient slack conductor shall be left to allow for ground settling next to foundations. Past experience indicates that the ground next to a foundation has settled as much as three feet [.914 meters]. Where conduit is used on a pole to protect such conductors it must terminate just below the ground surface adjacent to the pole. Metal conduit protecting underground conductors on a pole or building shall be grounded.
 - b. Underground service conductors shall be protected against physical damage in accordance with section 300-5, ~~1981~~ 1984 edition, National Electrical Code.
12. High voltage installations over six hundred volts. All wiring installations containing circuits and equipment operated at more than six hundred volts shall comply with article 710, ~~1981~~ 1984 edition, National Electrical Code, along with the following requirements.
 - a. All ducts, pull boxes, junction boxes, and equipment shall be clearly marked with signs having white background and red lettering by word "DANGER" and value of operating voltage.
 - b. All wiring and equipment shall be bonded and grounded as per article 250, ~~1981~~ 1984 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-09. Overcurrent protection. Overcurrent protection shall comply with article 240, ~~1981~~ 1984 edition, National Electrical Code.

1. Weatherproof sockets, pigtail sockets, or lampholders shall not be considered as cutout bases for plug fuses.
2. Overcurrent devices shall be located at a height of no less than eighteen inches [45.72 centimeters] above grade level.

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-10. **Wiring methods.** Nonmetallic sheathed cable type NM, NMC, and UF shall be supported at intervals not to exceed two feet [.608 meters] for two conductor cable and three feet [.914 meters] for three conductor cable and within twelve inches [30.48 centimeters] from each cabinet, box, or fitting. For additional installation requirements, see articles 336 or 339, ~~1981~~ 1984 edition, National Electrical Code.

1. Agricultural buildings. This section covers all buildings housing livestock, poultry, and other areas of similar or like nature. All electrical wiring devices and equipment shall be installed in accordance with the provisions of article 547, ~~1981~~ 1984 edition, National Electrical Code.
2. Electric metallic tubing shall not be used in concrete below grade, in concrete slab or masonry in direct contact with earth. (A vapor barrier, if used, will have no effect on the requirements of the section.) Electric metallic tubing shall not be embedded in earth or fill.
3. Aluminum conduit shall not be installed in contact with earth or embedded in concrete.
4. Rigid metal conduit may be used under all atmospheric conditions and occupancies, except that ferrous raceways and fittings protected from corrosion solely by enamel may be used only indoors and in occupancies not subject to severe corrosive influences. Conduits and fittings exposed to severe corrosive influences shall be of corrosion-resistant material suitable for the conditions. Where practicable, the use of dissimilar metals throughout the system shall be avoided to eliminate the possibility of galvanic action.
5. The installation of rigid nonmetallic conduit shall comply with the provision of article 347, ~~1981~~ 1984 edition, National Electrical Code.
6. Fertilizer rooms, meatpacking plants, salt processing plants, and similar locations are judged to be occupancies where severe corrosive conditions are likely to be present. It is recommended that nonmetallic conduit with nonmetallic boxes and fittings be used as the wiring method for such occupancies. Ferrous and nonferrous metal raceways may be used providing the raceway, boxes and fittings are properly protected against corrosion. Wherever rigid nonmetallic conduit is used as the wiring method, provisions shall be made for expansion. (Approximately one inch [2.54 centimeters] of expansion per thirty feet [9.10 meters] of conduit per fifty degrees Fahrenheit [28 degrees Celsius] temperature change.)

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-11. Motors, motor circuits, and controllers. Section 430-1, ~~1981~~ 1984 edition, National Electrical Code, is a guide to general requirements.

1. For motor running protection, all three-phase motors shall be provided with three running overcurrent units.
2. The motor branch circuit overcurrent device shall be capable of carrying the starting current of the motor but shall not exceed two hundred twenty-five percent of the full load current of the motor.

Exception: Where the two hundred twenty-five percent is not sufficient for starting the motor, a higher rating or setting overcurrent device may be used if approved by the state electrical board.

3. All other wiring for motors, motor circuits, and controllers shall comply with article 430, ~~1981~~ 1984 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-12. Boxes and fittings. Boxes shall be of sufficient size to provide free space for all conductors enclosed in the box in accordance with article 370, ~~1981~~ 1984 edition, National Electrical Code.

1. All unused openings shall be effectively closed with metal plugs or plates.
2. Not more than one extension ring shall be used on outlet boxes unless special permission has been obtained from the electrical inspector having jurisdiction.
3. Boxes shall be installed at each opening.

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-13. Seasonal dwellings. Electrical wiring installation in all seasonal dwellings shall comply with the North Dakota wiring

standards and the ~~1981~~ 1984 edition, National Electrical Code, with the following exceptions:

1. Buildings without basements may be wired with a minimum of sixty ampere service providing it is adequate for the load.
2. A minimum of two appliance circuits shall be provided to supply outlets in kitchen, dining room, and breakfast room.
3. A minimum of two receptacles shall be provided in each room, except in the living and recreation rooms, there shall be one receptacle for every twenty linear feet [6.10 meters] or major fraction thereof of the total distance around the room as measured horizontally along the wall at the floorline. Receptacle outlets shall be installed in accordance with section 210-52(a), 1984 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-14. Mobile home parks and recreational vehicle parks.

The electrical wiring in mobile home parks shall comply with part B, article 550, ~~1981~~ 1984 edition, National Electrical Code. Mobile home service equipment shall not be mounted in or on the mobile home and shall be located at a height of no less than eighteen inches [45.72 centimeters] above grade level.

1. The electrical wiring in recreational vehicle parks shall comply with part B, article 551, ~~1981~~ 1984 edition, National Electrical Code. Lot service equipment shall be located not less than two feet [.608 meters] nor more than six and one-half feet [1.98 meters] above the ground.
2. Electrical enclosures located outdoors in mobile home parks or recreational vehicle parks that house bare bus bars or terminals shall be provided with covers requiring a tool for removal of such covers. Overhead conductors shall have a clearance above ground of not less than eighteen feet [5.48 meters] except in areas where it is impractical for movement of vehicles or mobile homes, the clearance above ground shall not be less than twelve feet [3.66 meters].

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-15. Athletic field lighting. All lighted athletic and sport fields supplied from a primary system shall be provided with a

fused disconnect switch on the primary side. The switch shall have proper ratings with a lockable manual control handle. The installation of primary conductors installed underground shall conform to section 24-02-01-08. The secondary conductors are considered service conductors. For installation of service conductors, see article 230, parts D, E, and F, ~~1981~~ 1984 edition, National Electrical Code. A main disconnect switch on the secondary side is optional. A disconnecting means at each pole or tower is not mandatory. Branch circuit panel boards having a rating of no less than one hundred twenty-five percent of the total connected load shall be provided at each tower or pole. The panel may be located at the top of pole or tower. Conductors supplying panel shall be calculated on the basis of one hundred twenty-five percent of the total connected load. Wiring installed on pole or tower shall be in raceway except for flexibility at lamps, approved cable assemblies will be permitted. All metal towers shall be grounded to a one-half inch [12.7 millimeter] by ten foot [3.0 meter] ground rod. The grounded conductor on the secondary side shall be grounded to the grounding electrode. Metal boxes, raceways, cabinets and fittings, or noncurrent-carrying metal parts of other fixed electrical equipment shall be grounded when required. (See article 250, ~~1981~~ 1984 edition, National Electrical Code.)

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-16. Exit marking, illumination of means of egress, and emergency lighting. The purpose of this section is to provide exit and emergency lighting requirements in accordance with Life Safety Code NFPA 101, ~~1976~~ 1981 edition, in simple and condensed form. For occupancies or items not covered in this condensed version, refer to NFPA 101, ~~1976~~ 1981 edition, for complete details. In the wiring of institutional occupancies, governmental agencies may use other codes, which may be more stringent, especially where federal funds are involved.

1. **Exit marking.** All required exits and access to exits shall be marked by readily visible signs with letters not less than six inches [15.24 centimeters] high and arrows indicating direction to exits. ~~Every sign shall be suitably illuminated by a reliable light source giving a value of not less than five foot-candles on surface of signs. Signs may be internally or externally illuminated and shall be illuminated from the same source as the required illumination of the means of egress. Every sign shall be suitably illuminated. See section 5-10.3, Life Safety Code NFPA 101, 1981 edition.~~
2. **Illumination of means of egress.** Illumination of means of egress shall provide continuous, dependable, illumination of not less than one foot-candle at floor level for all areas such as corridors, stairways, and exit doorway, providing a lighted path of travel to the outside of the building and

public way during all times that the means of egress is available for use. Illumination shall be from a source of reasonable assured reliability and may be supplied from normal lighting circuits or special circuits with switching controlled by authorized personnel. Illumination required for exit marking may also serve for illumination of means of egress and shall be so arranged that failure of a single unit such as burning out of a single bulb will not leave any area in darkness.

3. **Emergency lighting.** Emergency lighting systems shall be so arranged to provide the required illumination automatically in event of any interruption or failure of the normal power supply. An acceptable alternate source of power may be an electric generator or approved battery. In occupancies where emergency lighting is required, the circuits supplying exit marking and illumination of means of egress shall be supplied by the emergency system. Other areas of the facilities only requiring exit marking and illumination of means of egress may be supplied by the normal source.
4. **Classification of occupancy.**

Assembly

Theaters
Motion picture theaters
Assembly halls
Auditoriums
Exhibition halls
Libraries
Museums
Skating rinks
Gymnasiums
Bowling lanes
Poolrooms
Armories
Conference rooms
Restaurants
Churches
Dancehalls
Clubrooms
Passenger stations and terminals of
air surface, underground, and marine
public transportation facilities
Recreation piers
Courtrooms
Mortuary chapels
Drinking establishments
College and university classrooms,
fifty persons and over

Educational

Schools twelfth grade and under

Universities

Colleges

Instructional building - Business occupancy

Classrooms under fifty persons - Business occupancy

Classrooms fifty persons and over - Place of assembly

Laboratories, instructional - Business occupancy

Laboratories, Noninstructional - Industrial

Child day care facilities

Academies

Nursery schools

Kindergartens

Health care

Health care facilities

Hospitals

Nursing homes

Residential-custodial care

Nurseries

Homes for the aged

Mentally retarded care institutions

Penal Detention and correctional occupancies

Residential-restrained care

Penal institutions

Reformatories

Jails

Detention centers

Correctional centers

Residential

Hotels

Motels

Apartments

Dormitories

Orphanages for age six years and older

Lodging or roominghouses

One- and two-family dwellings

Mercantile

Supermarkets

Department stores

Shopping centers

Drugstores

Auction rooms

Business

Doctors' offices

Dentists' offices

City halls

General offices

Townhalls

Courthouses

Libraries

Outpatient clinics, ambulatory
College and university - instructional
buildings, classrooms under 50 persons,
and instructional laboratories

Industrial

Factories of all kinds
Laboratories
Drycleaning plants
Power plants
Pumping stations
Smokehouses
Laundries
Creameries
Gas plants
Refineries
Sawmills
College and university
noninstructional laboratories

Storage

Warehouses
Cold storage
Freight terminals
Truck and marine terminals
Bulk oil storage
Parking garages
Hangars
Grain elevators
Barns
Stables

5. Occupant load value table.

Occupancy	Square Feet Per Person
Places of assembly	15 net *
Areas of concentrated use	
without fixed seating	7 net
Standing <u>Waiting</u> space	3 net
<u>Libraries. In stack areas</u>	100 net
<u>In reading rooms</u>	50 net
 Mercantile store <u>building</u> , street floor	
and sales basement <u>below street floor</u>	30 gross **
Other <u>Upper floors</u>	60 gross
 Mall	
Street level and below	30 gross
Upper floor	60 gross
Storage, shipping	300 gross
Offices only	100 gross
 Educational occupancies	
Classroom area	20 net
Shops and other vocational areas	50 net
Day nurseries with sleeping	
facilities	35 net
 Business, industrial and workroom	100 gross
 Hotels, motels, apartments, and	
dormitories	200 gross
 Health care and penal	
Sleeping departments	120 gross
Inpatient departments	240 gross

* Net floor area shall be the actual occupied area, not including accessory unoccupied areas or thickness of walls.

** Gross floor area shall be the floor area within the inside perimeter of the outside walls of the building under consideration with no deduction for hallways, stairs, closets, thickness of interior walls, columns, or other features.

Notes to occupant load table.

- (a) An assembly area of concentrated use without fixed seats such as an auditorium, church, chapel, dance floor, ~~and or~~ lodge room - seven square feet [.65 square meters] per person.
- (b) An assembly area of less concentrated use such as a conference room, dining room, drinking establishment, exhibit room, gymnasium, or lounge - fifteen square feet [1.39 square meters]

- per person.
- (c) Standing room or waiting space - three square feet [.28 square meters] per person.
- (d) Bleachers, pews, and similar bench type seating - eighteen linear inches [45.72 centimeters] per person.

6. Building classification table.

x - indicates required
o - indicates not required

Occupancy	Exit Marking	Illumination of Means of Egress	Emergency
-----------	--------------	---------------------------------	-----------

Places of assembly			
Class A-1000 persons or more	x	x	Notes x 6&7
Class B- 300 to 1000 persons	x	x	x
Class C- 50 to 300	x	x	x
All windowless or underground places of assembly	x	x	x

Churches - Class C (exclusively for religious worship with windows)	x	x	o
Class A & B	x	x	x

Educational			Note 4
All educational occupancies	x	x	o

Flexible plan and open plan buildings, buildings used for night occupancy, all portions of buildings that are interior and windowless, such as rooms, stairs, area, or corridors		x	x	x
(a) All interior				

stairs and corridors
 (b) All normally occupied spaces except administrative areas, general classrooms (but not shop and laboratories), and mechanical rooms and storage areas.
 (c) In flexible and open plan buildings
 (d) In all portions of buildings that are interior or windowless

	x	x	x
--	---	---	---

Child care centers -
 (~~12 or~~ More than 12

persons under 6 years)	x	x	x
6 years and over	x	x	0

Group day care centers - 7 to including 12 persons

	x	x	0
--	---	---	---

Family child day-care homes Fewer than 7 children

	x	x	0
--	---	---	---

Health care and ~~penal~~ occupancies

Hospitals and nursing homes (for complete details see article 517 of NEC or NFPA standard 56A and 76A)

	x	x	x
--	---	---	---

Note 1

~~Residential- eustodial and restrained care~~

	x	x	x
--	---	---	---

Detention and correctional occupancies

	x	x	x
--	---	---	---

These occupancies include residential - restrained care, penal institutions, reformatories, jails, detention centers and correctional centers

Residential

Hotels and motels

~~Under 26~~ 25 rooms
and less x

x

o

Over 25 rooms x

x

x Note 2

Apartment buildings

~~25~~ 12 or less
apartments x

x

e x Note 3

Over ~~25~~ 12
apartments or
four or more
floors x

x

x Note 3

Dormitories - same as hotels

Mercantile

Class A - over
30,000

square feet x

x

x

Class B - 3000 to
30,000

square feet x

x

x

Class C - under
3000

square feet x

x

o

Business

Under 1000 persons,
1 floor x

x

o

2 or more stories
above exit dis-
charge x

x

x

100 or more per-
sons above or be-
low level of exit
discharge x

x

x

1000 or more per-
sons x

x

x

All windowless,
and underground
with only upward
travel exit x

x

x

Industrial

All x

x

x

When occupied
during daylight
hours only with
skylights or
windows x

o

o

Storage

All	x	x	x *
When occupied during daylight hours only with skylights or windows	x	o	o

* Storage occupancies do not require emergency lighting when not normally occupied.

Special provisions

Underground or windowless buildings or structures	x	x	x
---	---	---	---

Swimming pools

(other than single family residential)	x	x	x
--	---	---	---

Combined facility

Note 5

NOTES:

Note 1: Exit lighting and emergency lighting must be powered per NFPA No. 76A.

Note 2: Where each guest room on ground floor has direct exit to outside, no emergency lighting need be provided (motels).

Note 3: Buildings with only one exit need not be provided with exit signs.

Note 4: Small schools familiar to occupants need not be provided with exit signs.

Note 5: Where the same means of egress serve multiple-use or combined occupancies, exit lighting, exit signs, and emergency lighting shall be provided for the occupancy with the most stringent lighting requirements. The occupant load of each type of occupancy shall be added to arrive at the total occupant load.

Note 6: Exit lighting on floor of motion picture theaters may be reduced to one-fifth foot-candle during period of performance.

Note 7: See occupant load value table.

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-19. Wiring certificates and Inspection fees. All installations certified under this section shall be subject to inspection.

1. All electrical installations, including new jobs and additional work on old installations, made in this state, shall have an electrical wiring certificate properly executed by the master or class "B" electrician in charge where the installation is made. The state electrical board shall prescribe such form, and shall have on hand a supply of such certificates for distribution to master and class "B" electricians. Such certificate shall consist of the original and four copies.
2. Upon completion, use, or occupancy, whichever is foremost, of any electrical installation where a new entrance is installed, an existing entrance is altered, or where the cost of repair work or additional installation exceeds one hundred fifty three hundred dollars, the master or class "B" electrician supervising such installation shall execute an electrical wiring certificate and distribute the various copies as directed. The original and duplicate of the certificate must be forwarded at once to the state electrical board, Bismarck, North Dakota. The triplicate copy shall be sent to the power company, municipal plant, or to the person or persons or concern providing the electric current for the installation. The fourth copy shall be retained by the master or class "B" electrician and the fifth copy shall be submitted to the owner.
3. The electric wiring certificates shall be secured available from the state electrical board at Bismarck, North Dakota, upon request of any master or class "B" electrician holding a current license from the electrical board.
4. A copy of an electrical wiring certificate shall be filed with the power supplier before an electrical installation may be energized.
5. Fees for electrical wiring certificates Inspection fees shall be as follows:

\$5.00 minimum for installations up to \$99.99

(For installations \$100.00 through \$999.99)
\$5.00 for first \$100.00 plus 2% on next \$900.00

(For installations \$1,000.00 through \$9,999.99)
\$23.00 for first \$1,000.00 plus 1% on next \$9,000.00

(For installations \$10,000.00 through \$49,999.99)
\$113.00 for first \$10,000.00 plus 1/2% on next \$40,000.00

(For installations over \$50,000.00)
 \$313.00 on first \$50,000.00 plus 1/4% on
 balance

Job Cost	Inspection Fee
Up to \$100.00	\$10.00 (minimum fee)
\$100.00 to \$2,000.00	\$10.00 for the first \$100.00 plus 2% on balance up to \$2,000.00
\$2,000.00 to \$10,000.00	\$48.00 for first \$2,000.00 plus 1% on balance up to \$10,000.00
\$10,000.00 to \$100,000.00	\$128.00 for first \$10,000.00 plus 1/2 of 1% on balance up to \$100,000.00
Over \$100,000.00	\$578.00 for the first \$100,000.00 plus 1/4 of 1% on balance

Percentage remittance fee, less original certificate cost of five dollars. Inspection fee must accompany the copies of wiring certificates which shall be forwarded to the state electrical board, box 857, Bismarck, North Dakota 58505 58502.

6. Whenever an electrical installation made by or under the supervision of a master or class "B" electrician is connected and in use without the issuance of an electrical wiring certificate, the normal inspection fee, as required under this section shall be increased in the amount of fifteen dollars.
7. Corrections. Whenever a correction order is written and corrections are not completed within the allotted time, there shall be an administration charge of twenty-five dollars, which shall be paid to the board by the master or class "B" electrician.
8. All reinspections shall be paid for by the electrical contractors at actual a cost of the reinspections fifteen dollars each.
9. The electrical wiring certificate inspection fee shall be based on the total amount of the electrical contract or total cost to the owner including extras.
10. The following items need not be included in the cost:
 - a. Appliances, including dishwashers, heat pumps, air conditioners, disposals, etc.
 - b. Electric heating panels, including heating and air conditioning units.

- c. Electric motors.
- d. Trenching, concrete basis for streetlighting and traffic signal standards.
11. The electrical contractor is responsible to collect the proper ~~certificate~~ inspection fee on each installation. When the owner furnishes the ~~owner's~~ material and the electrical contractor furnishes the labor, the owner shall provide the electrical contractor with the total amount expended for electrical materials used in connection with the installation and the electrical contractor shall then calculate and collect the necessary ~~certificate~~ inspection fee from the owner. Whenever electrical materials are removed from an existing installation and placed at another location, the electrical contractor shall estimate the cost of these materials and include the amount in the job cost for the purpose of calculating the proper ~~certificate~~ inspection fee.
12. The ~~state wiring certificate~~ inspection fee for all motor-driven passenger or freight elevators and dumbwaiters installed in North Dakota shall be as follows:
- Elevators and dumbwaiters having horsepower rating up to 5 horsepower - \$10.00
 - Elevators and dumbwaiters having horsepower rating 5 horsepower through 15 horsepower - \$20.00
 - Elevators and dumbwaiters having horsepower rating over 15 horsepower - \$30.00
- The master electrician having supervision of elevator or dumbwaiter installations shall ~~purchase~~ obtain electrical wiring certificates from the state electrical board. The certificate form shall be completed, signed by the master electrician, and forwarded to the state electrical board, Bismarck, North Dakota with the inspection fee.
13. Electrically driven irrigation machines. Each center pivot system, a flat fee of forty dollars. All other types, the fee shall be based on cost of electric material and labor (see section 24-02-01-19).
14. Requested inspections. For inspections not covered in this section or special services, the fee shall be fifteen dollars per man hour, including traveltime, plus twenty cents per mile traveled.

History: Amended effective January 1, 1981; January 1, 1984.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

TITLE 28

**Engineers and Land Surveyors, Board of
Registration for Professional**

DECEMBER 1983

EXPLANATION OF CHANGES TO CHAPTER 28-02-03 AND ARTICLE 28-03

ATTORNEY GENERAL'S OPINION, OCTOBER 31, 1983:

Walton S. Russell
Special Assistant Attorney General
North Dakota State Board of
Registration for Professional
Engineers and Land Surveyors
P.O. Box 644
Mandan, North Dakota 58554

Dear Wally:

Thank you for your letter of October 18, 1983, submitting for my approval proposed rules and amended rules to Chapters 28-02-02 and 28-02-03 of the North Dakota Administrative Code.

I have reviewed the proposed rules along with the proposed amended rules. I have also examined the existing rules of the Engineers and Land Surveyors Board. I have also asked for additional input from the United States Department of Justice Antitrust Division as to their earlier objections as to portions of these rules deemed to be anti-competitive. Finally, I have reexamined Section 28-32-02 of the North Dakota Century Code which prohibits the Attorney General from approving any rule as to legality where it exceeds the statutory authority of the agency or is written in a manner which is not concise or easily understandable.

As to your proposed amendments to Sections 28-02-03-02, 28-03-01-05(2), (3), 28-03-01-11(1), (4), and 28-03-01-13(4), (5), N.D.A.C., I find that the proposed amended rules do not exceed the statutory authority of the State Board of Registration for Professional Engineers and Land Surveyors. The rules are written in a manner which is easily

understandable and the rules do not repeat or paraphrase the text of the North Dakota Century Code. Accordingly, it is my opinion that when these amended rules are filed in accordance with Section 28-32-03 of the North Dakota Century Code, said rules will have the force and effect of law the first day of the month after the month of publication in the North Dakota Administrative Code.

It is my decision to not approve proposed rules Sections 28-02-02-03 and 28-02-02-04, N.D.A.C., and proposed amended rules Sections 28-03-01-05(1), (4), 28-03-01-11(3), and 28-03-01-13(1), (2), (3), N.D.A.C. My specific reasons are set forth as follows:

1. The proposed rules (Sections 28-02-02-03 and 28-02-02-04, N.D.A.C.) are not in proper form as they do not include categories entitled "General Authority" and "Law Implemented."
2. Section 28-02-02-03(2), N.D.A.C., contains the phrases "a grade and character satisfactory to the board" and "the board may give up to two years credit for formal education." It is my opinion that the first phrase is vague and ambiguous lending toward confusion amongst those attempting to determine when an applicant may be qualified to act as a land surveyor. The second phrase provides discretion to the board without any standards as to when such discretion will be exercised.
3. Section 28-03-01-05, N.D.A.C., as to advertising, contains the phrases "upon the dignity or honor of the profession" and "carefully and honestly describe and define one's ability and practice." These phrases are vague and ambiguous as they are not easily understandable and do not provide guidance or notice to engineers and land surveyors as to what they can and cannot do.
4. Section 28-03-01-05(1), N.D.A.C., is drafted so as to suggest that there is some restriction as to the media available to a land surveyor or engineer in conducting advertising. This is a subject the board should avoid. Furthermore, the phrase "advertising should be free of any factor or circumstance that would bring disrepute to the profession" is vague and ambiguous and does not provide guidance to land surveyors or engineers who wish to be in compliance with these rules but do not know what is or is not allowed.
5. Section 28-03-01-05(4), N.D.A.C., prohibits advertising which "will avoid any act tending to promote one's own interest at the expense of the dignity and standing of the profession." This phrase is vague and ambiguous and provides little guidance to land surveyors or engineers in their advertising.
6. Section 28-03-01-11(3), N.D.A.C., continues to restrict and interfere with salaries paid to engineers and land surveyors. This is a subject which the board should avoid.

7. Section 28-03-01-13, N.D.A.C., continues to prohibit supplantation, restrict political contributions to political parties or candidates, and prohibit a contingent fee engagement by the engineer or land surveyor. These rules continue to be anti-competitive and, in the case of restrictions on political contributions, beyond the authority of the Board of Land Surveyors and Engineers.

With respect to Sections 28-03-01-05, 28-03-01-11(3), and 28-03-01-13(1), (2), (3), N.D.A.C., I repeat my earlier conclusion of August 11, 1983, that these administrative rules as they currently exist are anti-competitive. I requested that these rules be repealed, but that action has not occurred. As such, I have no other choice but to formally withdraw the earlier opinions of this office approving said rules as to their legality. Pursuant to Section 28-32-03, N.D.C.C., it is my opinion that these particular rules no longer have the force and effect of law and no longer may appear in the North Dakota Administrative Code.

Notification as to the action I have just taken will be forwarded to Jay Buringrud at the Legislative Council and to the Antitrust Division of the United States Department of Justice.

Sincerely,

Robert O. Wefald

28-02-03-02. Examination, registration, and renewal fees.

1. Effective December 1, ~~1979~~ 1983, the following fees shall be required:

Registration fees

Professional engineer.....	\$ 50.00	
Land surveyor.....	\$ 50.00	
Engineer-in-training.....	\$ 25.00	<u>35.00</u>
Land surveyor-in-training	\$ 35.00	
Partnership or corporation	\$100.00	
Temporary permits	\$ 100.00	<u>150.00</u>

Renewal fees

Professional engineer	\$ 17.50	<u>27.50</u>
Land surveyor	\$ 17.50	<u>27.50</u>
Professional engineer and land surveyor...	\$ 32.00	<u>52.00</u>
Partnership or corporation	\$ 50.00	<u>100.00</u>

2. Applicants failing to pass the professional engineer examination may take a second examination after six months by payment of the examination fee.
3. Applicants failing to pass the land surveying examination may take a second examination after six months by payment of the examination fee.

4. Applicants failing to pass the engineer-in-training or surveyor-in-training examination are not entitled to a return of any part of the fee. An examination fee will be charged for each subsequent examination. The engineer-in-training and surveyor-in-training fee shall not be applied as part payment for the professional engineer or land surveyor examination.
5. The professional engineer and land surveying registrations expire on December thirty-first of each year. Renewal notices will be sent out on December first of each year.
 - a. If payment is made by March thirty-first the name of the registrant will appear in the roster for the year.
 - b. Registrants who have permitted their registration to lapse one year or more may become reinstated by paying current yearly dues plus one year back dues.

History: Amended effective January 1, 1980; December 1, 1983.

General Authority: NDCC 43-19.1-08

Law Implemented: NDCC 43-19.1-18

28-03-01-05. Advertising. The engineer or land surveyor will not advertise one's work or merit in a self-laudatory manner, and will avoid all conduct or practice likely to discredit or unfavorably reflect upon the dignity or honor of the profession:

1. Circumspect advertising may be properly employed by the engineer or land surveyor to announce one's practice and availability. Only those media shall be used as are necessary to reach directly an interested and potential client or employer, and such media shall in themselves be dignified, reputable, and characteristically free of any factor or circumstance that would bring disrepute to the profession or to the professional using them. The substance of such advertising shall be limited to fact and shall contain no statement or offer intended to discredit or displace another engineer, either specifically or by implication.
2. Telephone listings shall be limited to name, address, and telephone number either under or with each branch listing in which the engineer or land surveyor qualifies.
3. The engineer or land surveyor will not allow oneself to be listed for employment using exaggerated statements of one's qualifications.

- 4- The engineer or land surveyor will not use one's professional affiliations or public office to secure personal advantage and will avoid any act tending to promote one's own interest at the expense of the dignity and standing of the profession.

General Authority: NDCC 43-19-1-08, 43-19-1-24
Law Implemented: NDCC 43-19-1-24

Repealed effective December 1, 1983.

28-03-01-11. **Compensation.** The engineer or land surveyor will uphold the principle of appropriate and adequate compensation for those engaged employed in engineering and surveying work, complying with state and federal laws and regulations. The engineer or land surveyor:

1. Will not undertake or agree to perform any engineering service on a free basis, except for civic, charitable, eleemosynary nonprofit organizations.
- 2- Will not accept remuneration from either an employee or an employment agency for giving employment.
- 3- When hiring other engineers, shall offer a salary according to the engineer's qualifications and the recognized standards in the particular geographical area.
- 4- 2. When employed as a sales representative, will not offer or give engineering consultation, or designs, or advice other than that which specifically applying applies to the equipment or products being sold.

History: Amended effective December 1, 1983.
General Authority: NDCC 43-19.1-08, 43-19.1-24
Law Implemented: NDCC 43-19.1-24

28-03-01-13. **Competition with others.** The engineer or land surveyor will not compete unfairly with another engineer or land surveyor. The engineer or land surveyor:

1. Will not attempt to supplant another engineer in a particular employment after becoming aware that definite steps have been taken toward the other's employment.
- 2- Will not offer to pay, either directly or indirectly, any commission, gift, political

contribution, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies. Contributions made to, or on behalf of, any particular candidate or political party, either directly or indirectly, should be in a limited amount, and made only after most serious consideration. It is the consensus of the national society of professional engineers that contributions should be limited to one hundred dollars.

3. Shall not solicit or accept an engineering engagement on a contingent fee basis if payment depends on a finding of economic feasibility, or other conclusions by the engineer.
4. While in either a private or governmental salaried position, will not accept part-time engineering or surveying work without specific consent of the employer or government department superior.
5. 2. Will not use equipment, supplies, laboratory, or office facilities of the employer to carry on outside private practice without the employer's consent.

History: Amended effective December 1, 1983.
General Authority: NDCC 43-19.1-08, 43-19.1-24
Law Implemented: NDCC 43-19.1-24

TITLE 30
Game and Fish Department

SEPTEMBER 1983

STAFF COMMENT: Chapter 30-04-06 contains all new material but is not underscored so as to improve readability.

CHAPTER 30-04-06
DUPLICATE LICENSES

Section	
30-04-06-01	Petition Required
30-04-06-02	Fees
30-04-06-03	Approval Required

30-04-06-01. Petition Required. Upon the filing of a petition by the license purchaser, the North Dakota game and fish department may reissue replacements for lost or destroyed game and fish licenses. The petition shall state the name and address of the license vendor where the original license was purchased. It shall also include personal information as required by law for the original license and a listing of the licenses that are to be replaced. The petition shall be signed by the person requesting license replacement and properly notarized.

History: Effective September 1, 1983.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

30-04-06-02. Fees. Each petition shall be accompanied by a two dollar application fee. In addition to the application fee, the following fees are required for each license that is to be replaced:

TYPE OF LICENSE	FEE
Resident fishing licenses	\$ 1.00

Husband-wife resident fishing license	1.00
Resident senior citizen fishing license	1.00
Resident totally or permanently disabled fishing license	1.00
Nonresident fishing license	4.00
Nonresident husband-wife fishing license	8.00
Resident small game and habitat license (age 19 and over)	1.00
Resident youth small game and habitat license (under age 19)	1.00
Nonresident small game - including general game	10.00
Nonresident small game/waterfowl - including general game	10.00
Resident deer bow license	8.00
Nonresident deer bow license	18.00
Resident furbearer license	1.00
Resident antelope bow license	8.00
Nonresident antelope bow license	18.00
Resident deer gun license	8.00
Nonresident deer gun license	18.00
Resident general game license	1.00
Nonresident general game license	1.00
Nonresident nongame license	2.00

History: Effective September 1, 1983.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

30-04-06-03. Approval required. Each petition shall be reviewed and approved by the game and fish commissioner or the commissioner's designated representatives. A petition may be rejected if it is not complete, if the proper fee is not enclosed, or if there is reason to believe that statements made on the petition are not true.

History: Effective September 1, 1983.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

OCTOBER 1983

30-05-03-02. Clausen Springs Lake. Boats and watercraft used on Clausen Springs Lake in Barnes County may be propelled by paddles, oars, or sails only. Boats powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Clausen Springs Lake in Barnes County.

History: Amended effective October 1, 1983.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-17. Heinrich-Martin Dam. Boats powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Heinrich-Martin Dam in LaMoure County.

History: Effective October 1, 1983.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-18. Epping-Springbrook Dam. Boats powered by motors of more than ten horsepower are prohibited on the waters of Epping-Springbrook Dam in Williams County.

History: Effective October 1, 1983.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

NOVEMBER 1983

STAFF COMMENT: Sections 30-05-03-19 through 30-05-03-21 contain all new material but are not underscored so as to improve readability.

30-05-03-19. Balta Dam. Boats powered by motors of more than ten horsepower are prohibited on the waters of the Balta Dam located in section fifteen of Balta Township (T154N, R73W) in Pierce County.

History: Effective November 1, 1983.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-20. North Lake. Boats and watercraft used on the waters of North Lake, located in Bryant and Kroeher Townships in Logan County, may be propelled by paddles, oars, or sails only during the annual waterfowl hunting seasons as set in the governor's hunting proclamation.

History: Effective November 1, 1983.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-21. Sweet Briar Dam. Boats powered by motors of more than ten horsepower are prohibited on the waters of Sweet Briar Dam in Morton County.

History: Effective November 1, 1983.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

TITLE 33
Health, Department of

SEPTEMBER 1983

STAFF COMMENT: Chapters 33-03-13 and 33-03-14 contain all new material but are not underscored so as to improve readability.

CHAPTER 33-03-13
CONSTRUCTION STANDARDS FOR
RESIDENTIAL FACILITIES FOR THE
PHYSICALLY DISABLED

Section	
33-03-13-01	Definitions
33-03-13-02	Fire Safety
33-03-13-03	Water Supply
33-03-13-04	Sewage Disposal
33-03-13-05	Physical Plant
33-03-13-06	Variance

33-03-13-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Ambulatory" means able to walk without assistance.
2. "Department" means the state department of health.
3. "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place with the use of a device such as a walker, crutches, a wheelchair, or a wheeled platform.
4. "Nonambulatory" means unable to walk without assistance.
5. "Nonmobile" means unable to move from place to place.

6. "Physically disabled" means a mobile nonambulatory, nonambulatory, or nonmobile person.
7. "Residential facility for physically disabled" means a facility of residential character having sleeping space for no more than fifteen physically disabled residents.

History: Effective September 1, 1983.

General Authority: NDCC 6-09.6-04

Law Implemented: NDCC 6-09.6-04

33-03-13-02. Fire safety. Residential facilities for the physically disabled shall:

1. Be located in areas served by a fire extinguishing organization approved by the state fire marshal.
2. Comply with chapter 12 of the 1981 edition of the Life Safety Code. The fire safety evaluation system may be used in the design of a facility and in the evaluation of an existing building.

History: Effective September 1, 1983.

General Authority: NDCC 6-09.6-04

Law Implemented: NDCC 6-09.6-04

33-03-13-03. Water supply.

1. Residential facilities for the physically disabled shall be located in areas where public or private water supplies approved by the department are available. Approved public water supplies shall be used where available.
2. When a private water supply is utilized, water samples shall be submitted to the department and analyzed to determine bacteriological acceptability.

History: Effective September 1, 1983.

General Authority: NDCC 6-09.6-04

Law Implemented: NDCC 6-09.6-04

33-03-13-04. Sewage disposal.

1. Residential facilities for the physically disabled shall be located in areas where public or private sewage disposal systems approved by the department are available. Approved public sewage disposal systems shall be used where available.

2. Plans and specifications for proposed private sewage disposal systems or alteration to such systems must be approved by the department prior to their construction.

History: Effective September 1, 1983.

General Authority: NDCC 6-09.6-04

Law Implemented: NDCC 6-09.6-04

33-03-13-05. Physical plant. Buildings housing a residential facility for the physically disabled shall:

1. Comply with North Dakota Century Code section 48-02-19.
2. Be constructed to accommodate no more than fifteen eligible residents.
3. Provide space for dining, kitchen, family living and recreation, utility, and bedrooms as an integral part of a single structure.
4. Provide these sleeping area standards:
 - a. Require no more than two residents to share a bedroom other than on a temporary basis.
 - b. Provide no less than one hundred square feet [9.29 square meters] of floor area exclusive of bathroom and closet space for single occupancy bedrooms.
 - c. Provide no less than eighty square feet [7.43 square meters] per bed of floor space exclusive of closet and bathroom space in double occupancy bedrooms.
 - d. Locate bedrooms on the outside wall and separate them from other rooms and spaces by walls extending from floor to ceiling.
 - e. Locate bedrooms at or above grade level.
5. Provide at least one full bathroom for every four residents.
6. Be designed to accommodate the resident's privacy with bedrooms and bathrooms arranged to provide separation of male and female residents.
7. Provide sufficient space in the kitchen to permit the participation of residents as well as staff in food preparation. Provide appropriate space and equipment, including a two-compartment sink, to adequately serve the food preparation and storage requirements of the facility.
8. Provide these staff accommodations:

- a. Space to accommodate employees, limited to a living room, efficiency kitchen, one full bathroom, and a double occupancy bedroom, when, as a condition of employment, they must live onsite.
 - b. A multipurpose space usable for sleeping for employees serving in shifts.
9. Provide sufficient storage, in addition to closet space, to accommodate the storage of out-of-season clothing, outdoor furniture, garden tools, lawnmower, and other equipment.
 10. Provide a tempering valve, located to preclude resident access, to control the temperature of hot water supplied to lavatories and bathing facilities. The tempering valve shall permit control of temperature in the range of one hundred ten degrees Fahrenheit [47.22 degrees Celsius] to one hundred thirty-five to one hundred forty degrees Fahrenheit [57.22 to 60 degrees Celsius]. Hot water supplied to clotheswashers and dishwashers shall be one hundred thirty-five to one hundred forty degrees Fahrenheit [57.22 to 60 degrees Celsius].

History: Effective September 1, 1983.
General Authority: NDCC 6-09.6-04
Law Implemented: NDCC 6-09.6-04

33-03-13-06. Variance. Upon written application, the department may grant a variance from specific provisions of this chapter, except no variance may permit or authorize a danger to the health or safety of residents or impede their normalization process.

History: Effective September 1, 1983.
General Authority: NDCC 6-09.6-04
Law Implemented: NDCC 6-09.6-04

**CHAPTER 33-03-14
 CONSTRUCTION STANDARDS FOR
 SMALL INTERMEDIATE CARE FACILITIES
 FOR THE MENTALLY RETARDED**

Section	
33-03-14-01	Definitions
33-03-14-02	Location of Intermediate Care Facility for the Developmentally Disabled - Hazardous Areas
33-03-14-03	Fire Safety
33-03-14-04	Water Supply

33-03-14-05 Sewage Disposal
33-03-14-06 Physical Plant
33-03-14-07 Day Service Facility
33-03-14-08 Variance

33-03-14-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Ambulatory" means able to walk without assistance.
2. "Day service facility" means a nonresidential building in which a variety of activities are provided to maximize the developmental potential of persons served.
3. "Department" means the state department of health.
4. "Developmental disability" has the same meaning as in North Dakota Century Code chapter 25-01.2.
5. "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place with the use of a device such as a walker, crutches, a wheelchair, or a wheeled platform.
6. "Nonambulatory" means unable to walk without assistance.
7. "Nonmobile" means unable to move from place to place.
8. "Small intermediate care facility for the ambulatory developmentally disabled" means a facility of residential character having sleeping space for no more than fifteen ambulatory residents capable of taking action for self-preservation.
9. "Small intermediate care facility for the mobile nonambulatory, nonambulatory, and nonmobile developmentally disabled" means a facility of residential character having sleeping space for no more than fifteen mobile nonambulatory, nonambulatory, or nonmobile residents incapable of taking action for self-preservation.

History: Effective September 1, 1983.

General Authority: NDCC 6-09.6-04

Law Implemented: NDCC 6-09.6-04

33-03-14-02. Location of intermediate care facility for the developmentally disabled - Hazardous areas.

1. Intermediate care facilities for the developmentally disabled shall be located at least three hundred feet [91.44 meters] from hazardous areas such as bulk fuel or chemical storage

areas, anhydrous ammonia facilities, or other fire hazards or sources of noxious or odoriferous emissions.

2. Intermediate care facilities for the developmentally disabled may not be located in areas subject to adverse environmental conditions such as mud slides, harmful air pollution, smoke or dust, sewage hazards, rodent or vermin infestations, excessive noise, vibration, or vehicular traffic.
3. Intermediate care facilities for the developmentally disabled may not be located in an area within the one hundred year base flood elevations unless:
 - a. The facility is covered by flood insurance as required by 42 U.S.C. 4101; or
 - b. The finished lowest floor elevation is above the one hundred year base flood elevation and the facility is free from significant adverse effects of the velocity of moving water or by wave impact during the one hundred year flood.

History: Effective September 1, 1983.

General Authority: NDCC 6-09.6-04

Law Implemented: NDCC 6-09.6-04

33-03-14-03. Fire safety.

1. Small intermediate care facilities for the developmentally disabled shall be located in areas served by a fire extinguishing organization approved by the state fire marshal.
2. Small intermediate care facilities for the ambulatory developmentally disabled shall comply with chapter 20 of the 1981 edition of the Life Safety Code. The use of chapter 20 rather than chapter 12 is permitted by 42 CFR 442.508 when a waiver is requested from and granted by the department. The department will grant a waiver provided a physician or psychologist, who meets the definition of a qualified mental retardation professional under paragraph 42 CFR 442.401, certifies that each resident served will:
 - a. Be ambulatory;
 - b. Receive active treatment; and
 - c. Be capable of following directions and taking appropriate action for self-preservation under emergency conditions.
3. A small intermediate care facility for the mobile nonambulatory, nonambulatory, and nonmobile shall comply with chapter 12 of the 1981 edition of the Life Safety Code. The

fire safety evaluation system may be utilized in the design of the facility and in the evaluation of an existing building.

History: Effective September 1, 1983.
General Authority: NDCC 6-09.6-04
Law Implemented: NDCC 6-09.6-04

33-03-14-04. Water supply.

1. Intermediate care facilities for the developmentally disabled shall be located in areas where public or private water supplies approved by the department are available. Approved public water supplies shall be used where available.
2. When a private water supply is utilized, water samples shall be submitted to the department and analyzed to determine bacteriological acceptability.

History: Effective September 1, 1983.
General Authority: NDCC 6-09.6-04
Law Implemented: NDCC 6-09.6-04

33-03-14-05. Sewage disposal.

1. Intermediate care facilities for the developmentally disabled shall be located in areas where public or private sewage disposal systems approved by the department are available. Approved public sewage disposal systems shall be used where available.
2. Plans and specifications for proposed private sewage disposal systems or alteration to such systems must be approved by the department prior to their construction.

History: Effective September 1, 1983.
General Authority: NDCC 6-09.6-04
Law Implemented: NDCC 6-09.6-04

33-03-14-06. Physical plant. Buildings housing a small intermediate care facility for the developmentally disabled shall:

1. Provide a design making:
 - a. The small intermediate care facility for the ambulatory developmentally disabled accessible to nonambulatory visitors and employees, with at least one bathroom accessible to and usable by such visitors and employees. When the facility is accessible and the bathroom provided, the balance of the handicapped standards may be waived by the department as provided for in 42 CFR 442.511. The

waiver will be granted when only ambulatory developmentally disabled persons are served as listed under subsection 2 of section 33-03-14-03.

- b. The small intermediate care facility for the mobile nonambulatory, nonambulatory, and nonmobile developmentally disabled comply with North Dakota Century Code section 48-02-19.
2. Be constructed to accommodate no more than fifteen eligible residents.
 3. Provide space for dining, kitchen, family living and recreation, utility, and bedrooms as an integral part of a single structure.
 4. Provide these sleeping area standards:
 - a. Require no more than two residents to share a bedroom other than on a temporary basis.
 - b. Provide no less than one hundred square feet [9.29 square meters] of floor area exclusive of bathroom and closet space for single occupancy bedrooms.
 - c. Provide no less than eighty square feet [7.43 square meters] per bed of floor space exclusive of closet and bathroom space in double occupancy bedrooms.
 - d. Locate bedrooms on an outside wall and separate them from other rooms and spaces by walls extending from floor to ceiling.
 - e. Locate bedrooms at or above grade level.
 5. Provide at least one full bathroom for every four residents.
 6. Be designed to accommodate the resident's privacy, with bedrooms and bathrooms arranged to provide separation of male and female residents.
 7. Provide sufficient space in the kitchen to permit the participation of residents as well as staff in food preparation. Provide appropriate space and equipment, including a two-compartment sink, to adequately serve the food preparation and storage requirements of the facility.
 8. Provide staff accommodations:
 - a. Space to accommodate employees, limited to a living room, efficiency kitchen, one full bathroom, and a double occupancy bedroom, when, as a condition of employment, they must live onsite.

- b. A multipurpose space usable for sleeping for employees serving in shifts.
- 9. Provide sufficient storage, in addition to closet space, to accommodate the storage of out-of-season clothing, outdoor furniture, garden tools, lawnmower, and other equipment.
- 10. Provide a tempering valve, located to preclude resident access, to control the temperature of hot water supplied to lavatories and bathing facilities. The tempering valve shall permit control of temperature in the range of one hundred ten degrees Fahrenheit [47.22 degrees Celsius] to one hundred thirty-five to one hundred forty degrees Fahrenheit [57.22 to 60 degrees Celsius]. Hot water supplied to clotheswashers and dishwashers shall be one hundred thirty-five to one hundred forty degrees Fahrenheit [57.22 to 60 degrees Celsius].

History: Effective September 1, 1983.

General Authority: NDCC 6-09.6-04

Law Implemented: NDCC 6-09.6-04

33-03-14-07. Day service facility. Day service facilities providing services to eligible developmentally disabled residents shall comply with the requirements of chapter 10 of the 1981 edition of the Life Safety Code, whether the facilities are constructed, reconstructed, or acquired.

History: Effective September 1, 1983.

General Authority: NDCC 6-09.6-04

Law Implemented: NDCC 6-09.6-04

33-03-14-08. Variance. Upon written application, the department may grant a variance from specific provisions of this chapter, except no variance may permit or authorize a danger to the health or safety of residents or impede their normalization process.

History: Effective September 1, 1983.

General Authority: NDCC 6-09.6-04

Law Implemented: NDCC 6-09.6-04

JANUARY 1984

33-18-01-01. Responsibility. It is the responsibility of any person, partnership, association, or corporation engaged in the business of construction of water wells or the installation of water well pumps, pitless units, or other appurtenances, or both, to comply within the meaning of this chapter pursuant to North Dakota Century Code chapters 23-01, 43-35, and 61-28.1.

History: Amended effective January 1, 1984.

General Authority: NDCC ~~28-32-02~~ 43-35-19

Law Implemented: NDCC ~~28-32-02~~ 43-35-19

33-18-01-03. Plans and specifications. No public water well shall be constructed or modified, or water well pump, pitless unit, or other appurtenances be installed without prior approval of plans and specifications. Plans and specifications ~~for all public water wells and water well pump installations~~ shall be submitted to the department for review prior to construction. Note chapter 33-03-08. The plans and specifications shall include:

1. Proposed well location.
2. Location and depths of existing wells, location of septic tanks, absorption fields, sewers, barnyards, feedlots, landfills, and high water marks of lakes or streams with a radius of five hundred feet [152.4 meters].
3. Elevation of highest known flood levels, upper terminal of well casing, floor of structure, and outside grade.
4. A schematic drawing of the well construction showing diameter and depth of drill holes, casing and liner diameters and depths, grouting depths, and other details as necessary to completely describe the proposed well.

5. Certification that the state engineer, North Dakota state water ~~conservation~~ commission, has issued a conditional water permit for the beneficial use of water from the well to be constructed, if such a permit is required pursuant to North Dakota Century Code section 61-04-02.

Routine maintenance and repair does not require submission of plans and specifications.

History: Amended effective January 1, 1984.

General Authority: NDCC ~~28-32-02~~ 43-35-19

Law Implemented: NDCC ~~28-32-02~~ 43-35-19

33-18-01-04. Location of wells.

1. **Relation to sources of contamination.** Determination of minimum lateral distances of a well from potential sources of contamination, involves evaluation of the character and location of the sources of contamination, types of geologic formations, depth to the aquifer, effect on ground water movement by well pumping, and possibilities of flooding of the site by surface waters.

Based on experience, accepted minimum lateral distances for some common sources of pollution with respect to a well have been established. The lack of specific distances for other possible sources of contamination such as refuse disposal sites, excavations, waste treatment facilities, buried oil and gasoline storage tanks, improperly constructed wells and cisterns, etc., does not minimize their potential hazards.

The site should be on high ground and be:

- a. At least one hundred feet [30.48 meters] (fifty feet [15.24 meters] for private wells) from privy pits, cesspools, septic tanks, ~~sewers~~, absorption fields, barnyards, feedlots, high water marks of lakes, streams, sloughs, ponds, etc., when well is constructed in unconsolidated soils with filtering properties.
- b. At least thirty feet [9.14 meters] from ~~east iron soil pipe connected to sewers~~ sewerlines.
- c. At least ten feet [3.05 meters] from basements or pits.
- d. At least twenty feet [6.1 meters] from overhead powerlines and other hazardous devices. Note North Dakota Administrative Code section 24-02-01-03.

Greater distances are always preferable and often necessary, depending upon soil conditions. When wells are constructed in consolidated formations, care must be taken in locating the wells as pollutants have traveled great distances in such formations.

2. **Relation to buildings.** When a well must be located adjacent to a building, it shall be located so that the centerline of the well extended vertically will clear any projection from the building by not less than two feet [60.96 centimeters].

Every well shall be reasonably accessible for proper repair, cleaning, testing, inspection, or other attention as may be necessary.

The well casing shall not extend through nor shall the top of the well casing or any other well openings shall not opening terminate in the basement of any building or in a pit, room, or other space which is below ground surface.

History: Amended effective January 1, 1984.

General Authority: NDCC ~~28-32-02~~ 43-35-19

Law Implemented: NDCC ~~28-32-02~~ 43-35-19

33-18-01-05. Protection of ground water sources.

1. **Minimum protective depths of wells.** All wells shall be watertight to exclude contamination. Wells shall be designed to seal off formations that are or may be contaminated or undesirable.

Wells constructed in unconsolidated formations with stable overburdens cannot be expected to form a continuous contact seal. Unless approved otherwise by the department, ~~on all public wells, and all private wells in subdivisions with lots under ten acres {4.05 hectares} in size,~~ the annular opening outside the casing shall be filled with ~~concrete grout or neat cement grout~~ or other approved material at least one and one-half inches [3.81 centimeters] in thickness to a depth of not less than ~~ten~~ twenty feet [~~3.05~~ 6.1 meters]. Wells with a depth of twenty feet [6.1 meters] or less shall be grouted from the top of the well screen. Greater depths are preferable and may be required for specific installations as determined by review of the plans and specifications.

Grouting of all private wells is recommended to protect the quality of the water supply. Driven well casing may, when conditions warrant, be installed without grouting.

2. **Required protection for various sources.**
 - a. **Gravel wall wells.** The gravel used shall be free of foreign material, properly sized, washed, and then disinfected prior to or during placement. Where gravel refill pipes are used, their upper terminal shall be incorporated within the pump foundation and terminated

with screwed or welded caps at least thirteen inches [33.02 centimeters] above the pumphouse floor or concrete apron.

The outer casing or drill hole shall be of such diameter as to provide a minimum of one and one-half inches [3.81 centimeters] of grout around the gravel refill pipes when installed in the grouted annular opening. Provisions for prevention of leakage of grout into the gravel pack or screen shall be provided.

b. **Radial collector wells.** The location of all caisson construction joints and porthole assemblies shall be indicated. The caisson wall shall be substantially reinforced. Radial collectors shall be in areas and at depths approved by the department. Provisions shall be made to assure minimum vertical rise. The top of the caisson shall be covered with a watertight floor. All openings in the floor shall be curbed and protected from entrance of foreign material. Pump discharge piping shall not be placed through caisson walls.

c. **Dug or bored wells.** Dug or bored wells shall be developed only where geological conditions preclude the development of a satisfactory drilled well.

Every dug or bored well shall have a continuous watertight lining of steel casing or concrete. The lining in the producing zone shall readily admit water and shall be structurally sound to withstand external pressures.

The open space between the excavation and the installed lining shall be sealed with cement grout or other approved materials.

The watertight lining shall extend at least eight inches [20.32 centimeters] above finished ground surface. A cover slab at least four inches [10.16 centimeters] thick, adequately reinforced and having a diameter sufficient to overlap the lining by two inches [5.08 centimeters] shall be provided. The slab shall be constructed without joints.

The top of the slab shall be sloped to drain to all sides and a watertight joint made where the slab rests on the well lining using cement mortar or a mastic compound.

A manhole, if installed, shall be provided with a curb cast in the slab and extending at least four to six inches [10.16 to 15.24 centimeters] above the slab. The manhole shall have a watertight overlapping cover extending down around the curb by at least two inches [5.08 centimeters].

Adequate sized pipe sleeve or sleeves shall be cast in place in the slab to accommodate the type of pump or pump piping proposed for the well.

- d. **Infiltration wells.** Infiltration wells may be considered where geological conditions preclude possibility of developing an acceptable drilled well. The area around the well shall be under the control of the water purveyor for a distance acceptable to or required by the department. The flow in the lines shall be by gravity to a collecting well. The water shall be continuously chlorinated to assure bacterial purity.
- e. **Flowing wells.** The construction of flowing wells shall be in compliance with North Dakota Century Code chapter 61-20.

The construction of flowing wells shall be such that the flow from them can be controlled. The drill hole shall extend into, but not through, the confining bed. A protective casing shall be installed, and the annular space grouted to form a tight seal. The grout should extend upward from within five feet [1.52 centimeters] of the top of the aquifer to the ground surface. After the grout has set, the drill hole may be extended into the artesian formation.

An inner casing shall be required where erosion of the confining bed by the flowing water will occur. This inner casing shall be joined in a watertight manner to the protective casing. Flow control should consist of valved pipe connections, watertight pump connections, or receiving reservoirs set at an elevation corresponding to the artesian head.

- f. **Existing wells.** The department shall be consulted for requirements concerning the reconstruction of existing wells.

History: Amended effective January 1, 1984.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

33-18-01-06. General well construction requirements.

1. **Construction water.** Water used in the drilling process shall be obtained from a source which will not result in contamination of the well. Chlorination of the water with an initial dosage of not less than fifty milligrams per liter is desirable.
2. **Ferrous well casing.**

- a. **General.** Casing and liner pipe for public water wells of wrought iron or steel through ten inches [25.4 centimeters] in diameter shall be prime pipe meeting current American Society for Testing and Materials Schedule 40, or American petroleum institute equivalent specifications. Larger diameter pipes shall have a minimum wall thickness of three hundred seventy-five thousandths of an inch [0.952 centimeters].

Casing and liner pipe for private and irrigation wells may be of lighter weight. Wells up to eight inches [20.32 centimeters] in diameter may be constructed of American society for testing and materials Schedule 30 pipe. All wells over eight inches [20.32 centimeters] in diameter shall have a minimum wall thickness of one-quarter inch [6.35 millimeters].

All casing shall have additional thickness and weight if standard thickness is not considered sufficient to assure reasonable life expectancy of the well or be capable of withstanding forces to which they are subjected.

- b. **Drive shoe.** Pipe that is to be driven shall be equipped with a drive shoe or other device approved by the department.
- c. **Joints.** Casing and liner pipe joints shall be properly welded or threaded.
3. **Nonferrous well casing.**
- a. **General.** Pipe other than wrought iron or steel must be adaptable to the stresses to which they will be subjected during installation and to the corrosiveness of the water.
- b. **Plastic well casing.** Plastic well casing shall comply with current American society for testing and materials specifications, rated at two hundred pounds per square inch [14.06 kilograms per square centimeter] and carry the seal of the national sanitation foundation. Note: The national sanitation foundation maintains an evaluation and inspection program for thermoplastic piping. Manufacturers of the products that meet the requirements for potability as well as those in the current American society for testing and materials specifications or commercial standards are permitted to mark their products with the national science foundation seal of approval. Thermoplastic well casing. Thermoplastic well casing shall conform with American Society for Testing and

Materials Specification F480-81 or latest revision as follows:

- (1) Minimum standard dimension ratio shall be twenty-one.
- (2) Minimum pipe stiffness shall be two hundred twenty-four pounds foot/ (inch · inch) (kiloneutron/ (meter · meter)) when tested according to section 5.4.1 of American Society for Testing and Materials Specification F480.
- (3) All casing five inches [12.7 centimeters] and larger shall be tested for impact resistance and meet or exceed IC-1 impact classification according to section 6.5 and table 6 of American Society for Testing and Materials Specification F480.
- (4) Carry the seal of the national sanitation foundation.

All casing shall have additional thickness and weight if standard thickness is not capable of withstanding forces to which it is subject.

- c. **Poured-in-place concrete well casing.** Poured-in-place well casing shall be at least six inches [15.24 centimeters] thick and be poured in one operation if possible. There shall be no construction joint within ten feet [3.05 meters] of the original ground surface.
 - d. **Precast casing.** Concrete well pipe, vitrified pipe, and similar forms of precast curbing, have construction joints that cannot be depended upon to be watertight. Where used, such precast curbing shall extend to a depth of ten feet [3.05 meters], and shall be encased in six-inch [15.24 centimeters] thick neat cement or concrete grout placed in one operation. Other materials. Other well casing materials that may be proposed shall be approved in writing by the department prior to installation.
4. **Packers.** Packers shall be of a material that will not impart taste, odors, toxic substances, or bacterial contamination to the water in the well. Lead packers may, under certain conditions when in contact with soft aggressive waters possessing sufficient plumbosolvency, result in toxic concentrations of lead in the water. When the water is to be used for domestic or livestock purposes, lead packers shall be restricted to use with nonaggressive waters and used only when nontoxic packers such as neoprene cannot be properly installed.

5. **Screens.** Screen openings shall provide the maximum amount of open area consistent with the strength of the screen and grading of the water-bearing formation or gravel pack. The size of the screen should be based on a sieve analysis. The openings shall permit maximum transmitting ability without clogging or jamming. Screens should be constructed of material which will not be damaged by chemical action of ground water or future cleaning operations and be installed so that exposure above pumping level will not occur. Lead shot, lead wool, or other toxic lead products shall not be used for sealing the bottom of well screens or casing.

6. **Yield and drawdown test.** Every well should be tested for yield and drawdown. The test method to be followed should be clearly outlined in the specifications. The test pump should have a maximum capacity at least equal to one and one-half times the quantity of water anticipated. The test pump should be able to operate continuously until the water level has stabilized. Test data to be recorded should include:

- a. Static water level.
- b. Pumping rate.
- c. Drawdown during test.
- d. Recovery water levels.
- e. Depth of pump setting.

Duration of the test shall be determined with due consideration given to pumping of sand, clarity of water pumped, and the obtaining of a representative sample of water for chemical analysis.

7. **Chemical conditioning.** When chemical treatment of a public well is proposed, the method of conditioning shall be included in the specifications. The equipment, chemicals, and inhibitors to be used, the method of testing for chemical residuals and the disposal of waste shall be indicated.

8. **Grouting requirements.**

- a. **Concrete grout.** The mixture should consist of cement, sand, and water, in the proportion of one bag of cement (ninety-four pounds [38.04 kilograms]), and an equal volume of dry sand to not more than six gallons [22.71 liters] of clean water. Where large volumes are required to fill annular opening, gravel not larger than one-half inch [12.7 millimeters] in size may be added.
- b. **Neat cement grout.** The mixture should consist of one bag of cement (ninety-four pounds [38.04 kilograms]) to not

more than six gallons [22.71 liters] of clean water. Additives up to five percent by weight to increase fluidity may be used.

- c. **Grouting guides.** Protective casing that is to be grouted in the drill hole or annular opening shall be provided with sufficient guides welded to the casing to permit the unobstructed flow and uniform thickness of grout.
 - d. **Grout application.** All grouting shall be performed by adding the mixture, from the bottom of the annular opening upward, in one continuous operation, until the annular opening is filled. Sufficient annular opening shall be provided to permit a minimum of one and one-half inches [3.81 centimeters] of grout around the protective casing, including couplings, if used. Bentonite, aquajel, or similar materials may be added to the annular opening in the manner indicated for grouting, to seal any small crevices or fissures, and assure that the space is open.
9. **Plumbness and alignment.** Every well shall be tested for plumbness and alignment upon completion of construction. The casing shall be sufficiently plumb so as not to interfere with the installation and operation of the pump. (See recommended procedures in the appendix to this chapter.)
 10. **Geological data.** Drill cuttings should be obtained at five-foot [1.52 meters] intervals, and at all pronounced changes in formation. The driller shall supply the North Dakota state board of water well contractors with an accurate record of the drill hole diameters and depths, assembled order of size and length of casings and liners, grouting depths, formations penetrated, water levels, location of blast shots, and pumping tests.
 11. **Upper terminal of well.** The protective casing for all ground water sources shall project not less than six inches [15.24 centimeters], and preferably thirteen inches [33.02 centimeters] (mandatory for public water supplies), above the well cover slab or pumphouse floor.

Sites not subject to flooding shall have the floor of the pumphouse and the cover of every dug well at least one foot [30.48 centimeters] above original ground surface. Sites subject to flooding shall have the cover of every dug well and the floor of the pumphouse at least two feet [60.96 centimeters] above the highest known flood elevation and be surrounded by earthfill as required by the reviewing authority.
 12. **Capping.** A properly fitted, firmly driven, solid wooden plug shall be the minimum acceptable method of capping a well until pumping equipment is installed. A welded metal plate is

preferred. Nonferrous well casing shall be capped using a plug or cap designed for the type of well casing installed. The well must be protected during construction.

13. **Bacteriological quality of water.** Every new, modified, or reconditioned ground water source shall be thoroughly cleaned and disinfected after completion. One or more water samples from the source shall be submitted to a department or other approved laboratory for bacteriological analysis and if found satisfactory shall be approved for placement in service. When it is established that the ground water is subject to continuous or intermittent contamination, provisions for continuous disinfectant will be required.
14. **Chemical quality of water.** Every new, modified, or reconditioned ground water source should be examined for its chemical characteristics by tests of a representative sample in a department or other approved laboratory. The samples should be collected and tested as soon as practical.
15. **Water level measurement.** Provisions should be made for periodic measurement of the static and pumping water levels in the completed well. The installation shall be made in such manner as to prevent the entrances of foreign material.
16. **Observation Monitoring wells, irrigation wells, geothermal ground water and return wells, and special purpose water wells.** Any water well designed as an observation a monitoring well, irrigation well, geothermal ground water or return well, or for other purposes shall be constructed in accordance with this chapter.

Each well shall be protected at its upper terminal to preclude the entrance of foreign materials.

17. **Abandoned wells.** Any abandoned water wells shall be sealed by restoring as far as possible the geological conditions which existed before the wells were drilled. Wherever feasible, the wells should be completely filled with concrete. (See recommended procedures in the appendix to this chapter.)

At no time shall any sewage or other contaminated materials be discharged into an abandoned well.

18. **Organic polymers.** The use of biodegradable organic polymers as a drilling fluid additive has resulted in persistent microbiological contamination of ground water supplies. Organic polymers shall be used only when approved in writing by the department for a specific well construction project.

History: Amended effective January 1, 1984.
General Authority: NDCC 28-32-02 43-35-19
Law Implemented: NDCC 28-32-02 43-35.19

33-18-01-07. Pump installation for water wells.

1. **Pumphouse appurtenances.** The installation of necessary appurtenances for public wells shall be as illustrated in pump installation details contained in the diagrams attached to this chapter.
 - a. **Floor drain.** The pumphouse floor shall be watertight and shall slope away from the pump base. The pumphouse floor shall be provided with a floor drain discharging to a sump at least twenty-five feet [7.62 meters] from the well.
 - b. **Vents.** Provisions shall be made for venting the well casing to atmosphere. There shall be no holes in the pump base which might allow wastewater or other material to enter the well. The A breather tube shall be installed of sufficient size to permit air to enter and leave the well freely with the changing of water elevation caused by starting and stopping the pump. The breather tube shall terminate in a full one hundred eighty degree bend at least eighteen inches [45.72 centimeters] above the floor, securely screened with sixteen mesh wire screen. If the breather tube or a depth gauge line passes through the base of the pump or through the seal connection into the well, the hole about the tube shall be sealed.
 - c. **Water level measurement.** An access plug for a measuring tape or an air line and drawdown gauge for determining location of the water level shall be installed during the installation of the pump on all public wells. Installation of permanent water level measuring equipment shall be made using corrosion resistant materials firmly attached, in a vertical position, to the drop pipe or pump column in such a manner as to prevent entrance of foreign materials. The air line shall extend from the top of the well to several feet [meters] below the lowest anticipated water level. The length of the air line shall be accurately measured and the length recorded.
2. **Cutting of well casing.** No casing shall be cutoff or cut into below ground level except to install a pitless unit or adapter.
3. **Pitless unit.** Pitless units designed to replace a section of well casing ~~or, adapters for attachment to the exterior of a well casing~~ shall be constructed of materials which provide strength and durability equal to the well casing.

Installation shall be by threaded, welded, or compression flange gasketed connection to the cutoff casing ~~or exterior wall of the casing~~. The threaded, welded, or compression flange gasketed connection to the cutoff casing ~~or~~

attachment to the exterior wall of the casing shall be watertight. Pitless units designed to replace a section of the well casing shall extend above grade shall form an unbroken extension of the well casing from below the frostline to aboveground level as specified for upper well terminals. The top of the pitless unit shall be capped with a cover having a downward flange which will overlap the edge of the unit. The cover shall be securely fastened to the unit and shall ~~fit~~ be sufficiently snug to the unit to be vermin proof or watertight if required. The cover shall provide for watertight entrance of electrical cables and vent piping or air line, and a tap for wetted tape depth to water level measurements. Pitless adaptors for attachment to the exterior of a well casing shall be installed only when approved in writing by the department.

4. **Over-the-well pumps.** Power-driven pumps located over a well shall be installed on a concrete base of sufficient height to permit the outside casing to extend one inch [2.54 centimeters] above the concrete base. On all public water wells the annular opening between the drill hole and casing shall be filled with cement grout before the pump base and pumphouse floor are constructed. If the well is of the gravel wall type, the outer casing shall extend at least twelve inches [30.48 centimeters] above the pumphouse floor with suitable provisions made for adding gravel. The inner casing shall extend one inch [2.54 centimeters] above the pump base. Note diagrams No. 1 and No. 2, pump installation details, in the diagrams attached to this chapter.

A sanitary well seal shall be installed at the top of the well casings to prevent the entrance of contaminated water or objectional material.

5. **Pump column.** A separate pump column, suction or discharge pipe shall be installed inside the well casing in all instances, whether the well is to be pumped by suction, airlift, or deep well pump.
6. **Submersible pumps.** The discharge line shall leave the well at the top of the casing. The opening between the discharge line and casing or pipe sleeve shall be sealed watertight with an expanding rubber seal or equivalent device. When an underground discharge is desired, a properly installed pitless unit shall be used.

The electrical cable shall be firmly attached to the pump riser at intervals of twenty feet [6.10 meters] or less.

When a check valve is not part of the pump, a check valve shall be installed on the discharge line.

A check valve shall be installed in the discharge line above the pump in the well or discharge line.

7. Offset pumps. Pumps offset from public wells shall be located in an aboveground pumphouse or other building. All portions of suction lines buried below the ground surface between the well and the pump shall be enclosed in a protective pipe of standard thickness and be sealed watertight at both ends.

This requirement shall be considered satisfied if the suction line lies within a pressure discharge line.

Offset pumps for private wells may be located in a basement provided that the pumps and all suction pipes are elevated at least twelve inches [30.48 centimeters] above the floor.

8. Hand pumps. Hand pumps shall be of the force type equipped with a packing gland around the pump rod, a delivery spout which is closed and downward directed, and a one-piece bell type base which is part of the pump stand or is attached to the pump column in a watertight manner.

The bell base of the pump shall be bolted with a gasket to a flange which is securely attached to the casing or pipe sleeve.

History: Amended effective January 1, 1984.

General Authority: NDCC 28-32-02 43-35-19

Law Implemented: NDCC 28-32-02 43-35-19

FEBRUARY 1984

33-04-15-02. Amount of fee. For the issuance of a the first full certified copy or, short form, or birth card certification of a vital record, the initial fee shall be two per request is five dollars per copy. For subsequent copies or certifications, or both, issued at the time of the request, the fee is two dollars per copy. The filing fee for a delayed certificate of birth shall be two is five dollars unless provided otherwise by statute or regulation. The fee for amendments to vital records is five dollars per request. The fee for creation of a new certificate of birth following adoption, legitimation, or paternity determination is five dollars. For each search of the files when no record is found or no copy is made, a fee of two five dollars will must be charged. For statistical research purposes, the state registrar shall determine the fee for such services and shall determine the manner in which the costs are to be paid.

History: Amended effective February 1, 1984.
General Authority: NDCC 23-02.1-04, 28-32-02
Law Implemented: NDCC 23-02.1-29

33-05-01-05. Cemeteries.

1. All cemeteries must be registered with the state department of health on forms provided by the department.
2. All cemeteries must be surveyed by a registered land surveyor prior to filing a plat of the cemetery with the register of deeds in the county in which the cemetery is located, as outlined in North Dakota Century Code section 43-19.1-30.
3. No body can be accepted for burial without a burial permit issued by the registrar where the death occurred.

4. The sexton or other person making burial must endorse on the burial permit the time and place of burial, and file the permit with the registrar having jurisdiction over the territory where the burial was made.
5. Sextons must keep permanent records of every burial or disinterment. The following items of record are required:
 - a. Full name of deceased.
 - b. Age at death and sex.
 - c. Date and place of death.
 - d. ~~Cause of death~~ Date of burial.
 - e. Place of burial, block, lot, and grave.
 - f. Number of burial permit.
 - g. Name and address of embalmer or undertaker.
6. All cemetery authorities must make such reports at such time as the state department of health may from time to time direct.
7. The state department of health has recommended a standard uniform record book for cemetery records. It may be obtained from the larger printing concerns in the state.

History: Amended effective February 1, 1984.

General Authority: NDCC 23-01-03, 23-06-23

Law Implemented: NDCC 23-01-03, 23-06-21, 23-06-23

33-23-01-02. Fees charged for laboratory microbiological analyses.

1- Fees regarding clinical microbiology, effective July 17, 1981, are as follows:-

a- Anaerobic culture	\$ 9-00
b- Blood, enteric, spinal fluid, urine, and miscellaneous culture	7-00
c- Culture and susceptibility test	9-00
d- Parasite examination	7-00
e- Lancefield streptococcus grouping	5-00
f- Legionnaires disease	15-00
g- Throat culture	3-00

1. 1-Unit Procedures \$3.00

a. Febrile agglutination panel

b. Tularemia tube agglutination

c. Proteus agglutination panel

d. RPR test for syphilis

e. Rubella screen

f. Throat culture

2- Fees concerning serology, effective July 1, 1981, are as follows:

a- Antistreptolysin (ASO)	\$ 4.00
b- Bacterial agglutination	3.00
c- Blood grouping	2.00
d- Ox-cell hemolysin	6.00
e- Rubella screen	2.00
f- Syphilis serology excludes premarital and prenatal	3.00
g- Tularemia	3.00

2. 2-Unit Procedures \$6.00

a. Ox-cell hemolysin test

b. Routine cultures

c. FTA-ABS

3- Fees regarding viral tests, effective July 1, 1981, are as follows:

a- Complex - two or more	\$14.00
b- Rabies - out of state	20.00
c- Simple - one test	7.00

3. 3-Unit Procedures \$9.00

a. Viral CF and HAI tests A/C, one antigen

b. Rickettsial CF and HI tests A/C, one antigen

c. Culture and susceptibility

d. Anaerobic culture

e. Parasite examination

4- Fees concerning Rickettsial tests, effective July 1, 1981, are as follows:

a- Proteus, OXK, OX2, and OX19

(agglutination)
b- Rocky mountain spotted fever,
complement fixation test

\$ 4.00
7.00

4. 4-Unit Procedures \$12.00

a. Viral IFA-IgM and IgG, one antigen

b. Rickettsial IFA-IgM and IgG, one antigen

5. 5-Unit Procedures \$15.00

Rota Virus (EA)

6. 6-Unit Procedures \$18.00

a. Viral CF and HAI - A/C - multiple antigen

b. Rickettsial CF and HI - A/C - multiple antigen

c. Fungal serology A/C - battery

d. Parasitic serology A/C - battery

e. Legionnaires disease A/C

f. Virus tissue culture (isolation only)

7. 7-Unit Procedures \$21.00

8. 8-Unit Procedures \$24.00

Viral IFA-IgG and IgM/multiple antigen

9. 9-Unit Procedures \$27.00

10. 10-Unit Procedures \$30.00

Virus isolation and identification (when available)

5- 11. Fees pertaining to bacteriological tests, effective July 1, 1981, are as follows:

a. Water - private supply \$ 4.00

b. Water - public - contract optional,
reduced fee depending on number of
samples 4.00

6- 12. Dairy products fees by contract, effective July 1, 1981, are as follows:

a. Abnormal milk test (WMT) \$ 1.00

b. Coliform count	1.00
c. Inhibitory substance (penicillin, etc.)	2.00
d. Manufacturing grade milk (includes c and h)	3.50
e. Pasteurized milk sample, grade A (includes b, c, f, and h)	6.50
f. Phosphatase test	2.00
g. Raw milk, grade A, standard test (includes a, c, and h)	4.50
h. Standard plate count (SPC)	1.50

7- Handling fee, effective July 17, 1981, is as follows:

Handling fee for sending specimens to other laboratories	\$ 2.00
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13. Handling costs for CDC referrals--\$3.00 - \$6.00 - \$9.00 depending upon amount of handling required, i.e., dry ice, repackaging, method of shipping, etc.

History: Effective March 1, 1979; amended effective July 1, 1981; February 1, 1984.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-01-09(6)

TITLE 37
Highway Department

OCTOBER 1983

STAFF COMMENT: Article 37-06 (Chapter 37-06-01), Chapters 37-06-02, 37-06-03, and 37-06-04 contain all new material but are not underscored so as to improve readability.

ARTICLE 37-06

MULTIPLE VEHICLE COMBINATIONS

Chapter	
37-06-01	Definitions - Equipment and Operation
37-06-02	Implements of Husbandry
37-06-03	Combinations of Two, Three, or Four Vehicles - Seventy-five Feet or Less
37-06-04	Combinations of Two, Three, or Four Vehicles - Over Seventy-five Feet

CHAPTER 37-06-01
DEFINITIONS - EQUIPMENT AND OPERATION

Section	
37-06-01-01	Definitions
37-06-01-02	Equipment

37-06-01-01. Definitions. In this article, unless the context or other subject matter requires:

1. "B-train" means a truck-tractor, semitrailer, and semitrailer.

2. "Converter dolly" means an auxiliary axle assembly equipped with a fifth wheel used to convert a semitrailer to a trailer.
3. "Double bottom" means a truck-tractor, semitrailer, and trailer or semitrailer converted to a trailer by use of a converter dolly.
4. "Fifth wheel" means a device used to connect a truck-tractor or converter dolly to a semitrailer.
5. "Gooseneck" means a coupling device attached to the frame of a trailer or vehicle used to connect the trailer or vehicle to a truck-tractor or to the bed of a truck or pickup truck.
6. "Pickup truck" means a small truck with a capacity of less than one ton [907.18 kilograms] registered as a truck or as a passenger vehicle.
7. "Semitrailer" includes every vehicle of the trailer type so designed and used in conjunction with a truck or truck-tractor that some part of its own weight and that of its own load rests upon or is carried by a truck or truck-tractor, except that it does not include a "housetrailer" or "mobile home".
8. "Trailer" includes every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle, except that it does not include a "housetrailer" or "mobile home", which terms mean a vehicle as defined in this subsection which is designed and intended for use as living or sleeping quarters for people and which is not used for commercial hauling of passengers.
9. "Triple bottom" (triple trailers) means a truck-tractor, semitrailer, and two trailers or two semitrailers converted to trailers by use of converter dollies.
10. "Truck" includes every motor vehicle designed, used, or maintained primarily for transportation of property.
11. "Truck-tractor" includes every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.
12. "Unit" means one motor vehicle or one vehicle.
13. "Vehicle" includes every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

History: Effective October 1, 1983.

General Authority: NDCC 39-12-04

Law Implemented: NDCC 39-12-04

37-06-01-02. Equipment. All vehicle combinations must comply with the applicable requirements for equipment as specified in North Dakota Century Code chapter 39-21, and:

1. Every trailer must be equipped with a drawbar and a means of attaching the drawbar to the towing and towed vehicles. Such drawbar must be structurally adequate for the weight being drawn, be properly and securely mounted, provide for adequate articulation at the connection without excessive slack at that location, and can be provided with a locking device that prevents accidental separation of the vehicles.
2. Every trailer, including a semitrailer utilizing a converter dolly, must have safety chains or cables installed. Such chains or cables shall be connected prior to any over-the-road movement.
3. The lower half of a fifth wheel mounted on a truck-tractor or converter dolly must be secured to the frame of that vehicle with properly designed brackets, mounting plates or angles, and properly tightened bolts of adequate size and grade, or devices that provide equivalent security. The installation shall not cause cracking, warping, or deformation of the frame. The installation must include a device for positively preventing the lower half of the fifth wheel from shifting on the frame to which it is attached.
4. The upper half of a fifth wheel must be fastened to the semitrailer with at least the same security required for the installation of the lower half on a truck-tractor or converter dolly.
5. Each fifth wheel assembly must have a locking mechanism.

History: Effective October 1, 1983.

General Authority: NDCC 39-12-04

Law Implemented: NDCC 39-12-04

**CHAPTER 37-06-02
IMPLEMENTS OF HUSBANDRY**

Section
37-06-02-01

Combination Permitted - Limitation

37-06-02-01. Combination permitted - Limitation. Two implements of husbandry or two liquid fertilizer tanks may be towed by a truck or farm tractor operated by resident farmers between sunrise and sunset at a speed limit not to exceed twenty-five miles [40.25 kilometers] per hour. A packer-drill combination shall be considered one implement of husbandry. Such combination may not exceed seventy-five feet [22.86 meters] in length.

History: Effective October 1, 1983.

General Authority: NDCC 39-12-04

Law Implemented: NDCC 39-12-04

**CHAPTER 37-06-03
COMBINATIONS OF TWO, THREE, OR FOUR VEHICLES -
SEVENTY-FIVE FEET OR LESS**

Section

37-06-03-01	Authorized Combinations of Vehicles - Routes of Operation
37-06-03-02	Limited Combinations of Vehicles

37-06-03-01. Authorized combinations of vehicles - Routes of operation. The following combinations of vehicles may be operated on all North Dakota highways provided the overall length does not exceed seventy-five feet [22.86 meters]:

1. Any combination of two units.
2. A truck-tractor and semitrailer may draw a trailer or semitrailer converted to a trailer by use of a converter dolly and fifth wheel. This combination of vehicles is commonly referred to as a double bottom.
3. A truck-tractor and semitrailer may draw a semitrailer. This combination of vehicles is commonly referred to as a B-train.
4. A truck properly registered and designed to legally carry a gross weight of more than twenty-four thousand pounds [10886.22 kilograms] may draw two trailers provided both trailers are designed to legally carry gross weights of more than twenty-four thousand pounds [10886.22 kilograms], provided both trailers are equipped with safety chains and brakes adequate to control the movement of and to stop and hold such trailers. The brakes shall be designed as to be applied by the driver of the truck from the cab. The brakes shall be designed and connected so that in case of an

accidental breakaway the brakes shall be automatically applied on the trailer that breaks loose.

5. A combination of four units consisting of a truck-tractor, semitrailer, and two trailers. A semitrailer used with a converter dolly is considered to be a trailer. This combination of vehicles is commonly referred to as triple trailers or a triple bottom.
6. A motor vehicle drawing three motor vehicles attached to the towing motor vehicle by a triple saddle mount. In such a mount, the front wheels of the towed motor vehicle are mounted upon the bed of the towing vehicle, with any other towed motor vehicle being mounted in a like manner on the preceding motor vehicle.

History: Effective October 1, 1983.

General Authority: NDCC 39-12-04

Law Implemented: NDCC 39-12-04

37-06-03-02. Limited combinations of vehicles. A truck, pickup truck, or truck-tractor may draw two trailers or two vehicles subject to the following conditions:

1. The first drawn vehicle shall be of a fifth wheel or gooseneck design.
2. The towed vehicles, in addition to brake lights, stoplights, and turn signals, shall be equipped with front and rear clearance lights, and side marker lights, and reflectors as prescribed by North Dakota Century Code chapter 39-12.
3. The hitch on the rear of the first drawn vehicle shall be attached to the frame. Such hitch shall be a ball and socket type with a locking device or a pintle hook.
4. The first drawn vehicle shall be equipped with brakes and the second drawn vehicle shall be equipped with safety chains and brakes, adequate to control the movement of and to stop and hold such vehicles. If the gross weight of the second drawn vehicle is three thousand pounds [1360.78 kilograms] or less, brakes are not required on the second vehicle. When brakes are required, the brakes shall be so designed as to be applied by the driver of the truck or motor vehicle from the cab. The brakes shall be so designed and connected so that in case of an accidental breakaway the brakes shall be automatically applied on the drawn vehicle that breaks loose.

History: Effective October 1, 1983.

General Authority: NDCC 39-12-04

Law Implemented: NDCC 39-12-04

**CHAPTER 37-06-04
COMBINATIONS OF TWO, THREE, OR FOUR VEHICLES -
OVER SEVENTY-FIVE FEET**

Section	
37-06-04-01	Authorized Combinations of Vehicles Exceeding Seventy-Five Feet
37-06-04-02	Routes of Operation
37-06-04-03	Minimum Power Requirement
37-06-04-04	Weight Distribution by Trailer Weight
37-06-04-05	Signing Requirement
37-06-04-06	Weather Restrictions

37-06-04-01. Authorized combinations of vehicles exceeding seventy-five feet. The following combinations of vehicles exceeding seventy-five feet [22.86 meters] in overall length may be operated on those highways described in 37-06-04-02:

1. Any combination of two units.
2. A truck-tractor and semitrailer may draw a trailer or semitrailer converted to a trailer by use of a converter dolly and fifth wheel. This combination of vehicles is commonly referred to as a double bottom.
3. A truck-tractor and semitrailer may draw a semitrailer. This combination of vehicles is commonly referred to as a B-train.
4. A truck properly registered and designed to legally carry a gross weight of more than twenty-four thousand pounds [10886.22 kilograms] may draw two trailers provided both trailers are designed to legally carry gross weights of more than twenty-four thousand pounds [10886.22 kilograms], provided both trailers are equipped with safety chains and brakes adequate to control the movement of and to stop and hold such trailers. The brakes shall be designed as to be applied by the driver of the truck from the cab. The brakes shall be designed and connected so that in case of an accidental breakaway the brakes shall be automatically applied on the trailer that breaks loose.

5. A combination of four units consisting of a truck-tractor, semitrailer, and two trailers. A semitrailer used with a converter dolly is considered to be a trailer. This combination of vehicles is commonly referred to as triple trailers or a triple bottom.

History: Effective October 1, 1983.
General Authority: NDCC 39-12-04
Law Implemented: NDCC 39-12-04

37-06-04-02. Routes of operation. Authorized combinations of vehicles may be operated on all four-lane divided state highways and on those state highways designated on Exhibit I attached to this chapter and made a part of this section. Authorized combinations of vehicles may travel for a distance of ten miles [16.09 kilometers] on a state highway, that is not a four-lane divided highway or part of the designated routes.

History: Effective October 1, 1983.
General Authority: NDCC 39-12-04
Law Implemented: NDCC 39-12-04

37-06-04-03. Minimum power requirement. The power unit shall have adequate power and traction to maintain a minimum speed of fifteen miles [24.14 kilometers] per hour on all grades.

History: Effective October 1, 1983.
General Authority: NDCC 39-12-04
Law Implemented: NDCC 39-12-04

37-06-04-04. Weight distribution by trailer weight.

1. In any three-unit combination, the lighter trailer must always be operated as the rear trailer except when the gross weight differential with the other trailer does not exceed five thousand pounds [2267.96 kilograms].
2. In any four-unit combination, the lightest trailer must always be operated as the rear trailer. The other two trailers must be arranged as provided in subsection 1.

History: Effective October 1, 1983.
General Authority: NDCC 39-12-04
Law Implemented: NDCC 39-12-04

37-06-04-05. Signing requirement. The last trailer in any combination must have an "OVERLENGTH" sign mounted on the rear. The "OVERLENGTH" sign must be a minimum twelve inches [30.48 centimeters] in height and sixty inches [152.4 centimeters] in length. The lettering

must be eight inches [20.32 centimeters] in height with one-inch brush strokes. The letter must be black on yellow background. A "LONG LOAD" sign may be used in lieu of the overlength sign. Beginning January 1, 1985, the "LONG LOAD" sign is mandatory.

History: Effective October 1, 1983.

General Authority: NDCC 39-12-04

Law Implemented: NDCC 39-12-04

37-06-04-06. Weather restrictions. Movements of combinations of vehicles authorized for operation under this chapter are prohibited:

1. When road surfaces, due to ice, snow, slush, or frost present a slippery condition which may be hazardous to the operation of the unit or to other highway users;
2. When wind or other conditions may cause the unit or any part thereof to swerve, to whip, to sway, or fail to follow substantially in the path of the towing vehicle; or
3. When visibility is reduced due to snow, ice, sleet, fog, mist, rain, dust, or smoke.

The North Dakota highway patrol may restrict or prohibit operations during periods when in its judgment traffic, weather, or other safety conditions make travel unsafe.

History: Effective October 1, 1983.

General Authority: NDCC 39-12-04

Law Implemented: NDCC 39-12-04

TITLE 38
Highway Patrol

OCTOBER 1983

STAFF COMMENT: Article 38-03, Chapter 38-03-02, and Article 38-04 contain all new material but are not underscored so as to improve readability.

ARTICLE 38-03
HAZARDOUS MATERIALS

Chapter	
38-03-01	Hazardous Materials - General
38-03-02	Hazardous Materials - Implements of Husbandry

CHAPTER 38-03-01
HAZARDOUS MATERIALS - GENERAL

Section	
38-03-01-01	Regulatory Intent
38-03-01-02	Adoption of Regulations
38-03-01-03	Amendments

38-03-01-01. Regulatory intent.

1. The hazardous materials regulations adopted in this article are designed to improve the safety and welfare of the general public by providing a framework of commonly accepted practices for the safe transport of commodities designated as hazardous material by the United States department of transportation.

2. These regulations are adopted without substantial modification so as to provide for the greatest flexibility in both interstate and intrastate movement of these materials.
3. These regulations are binding upon all shippers and carriers of hazardous materials into, through and within the state of North Dakota, and shall be enforced by the North Dakota highway patrol.

History: Effective October 1, 1983.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 39-21-44

38-03-01-02. Adoption of regulations.

1. The following parts of Title 49, Code of Federal Regulations, including amendments, are adopted by reference.
 - a. Part 171 - General Information, Regulations and Definitions.
 - b. Part 172 - Hazardous Materials Tables and Hazardous Materials Communications Regulations.
 - c. Part 173 - Shippers - General Requirements for Shipments and Packagings.
 - d. Part 177 - Carriage by Public Highway.
 - e. Part 178 - Shipping Container Specifications.

History: Effective October 1, 1983.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 39-21-44

38-03-01-03. Amendments. These regulations include such amendments as may be promulgated by the United States department of transportation.

History: Effective October 1, 1983.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 39-21-44

CHAPTER 38-03-02
HAZARDOUS MATERIALS - IMPLEMENTS OF HUSBANDRY

Section
38-03-02-01 Anhydrous Ammonia - Portable Tanks

38-03-02-01. Anhydrous ammonia - Portable tanks.

1. Portable tanks, commonly referred to as nurse tanks, intended for farm fertilizer application, designed and utilized for the carriage of anhydrous ammonia, are exempt from the container specification and other regulations adopted in this article when the tank:
 - a. Has a minimum design pressure of two hundred fifty pounds per square inch gauge [1,683.7 kilopascals] and meets the requirements of the edition of the American Society of Mechanical Engineers Code in effect at the time it was manufactured and is marked accordingly;
 - b. Is equipped with safety relief valves meeting the requirements of the compressed gas association, pamphlet 51.2;
 - c. Is painted white or aluminum;
 - d. Has the capacity of three thousand gallons [11.36 cubic meters] or less;
 - e. Is loaded to a filling density no greater than fifty-six percent;
 - f. Is securely mounted on a farm wagon; and
 - (1) Is placarded front and rear, and on both sides with approved department of transportation nonflammable gas placards; or
 - (2) Is identified front and rear, and on both sides with the words "anhydrous ammonia" in letters not less than three inches [7.62 centimeters] high, utilizing a one-inch [2.54-centimeter] brush stroke.
2. Portable tanks containing anhydrous ammonia must be marked with a slow-moving vehicle emblem on the rear of the unit and may not be towed in excess of twenty-five miles [40.23 kilometers] per hour on any road or highway.
3. Shipping papers may not be required to accompany the movement of portable tanks containing anhydrous ammonia when transported under the provisions of this chapter.

4. No material other than anhydrous ammonia may be carried in any portable container identified in this chapter and exempted as such from the regulations contained in this article.

History: Effective October 1, 1983.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 39-21-44; 49 CFR 173.315(m)

ARTICLE 38-04

MOTOR CARRIER SAFETY REGULATIONS

Chapter

38-04-01

Motor Carrier Safety Regulations - General

CHAPTER 38-04-01

MOTOR CARRIER SAFETY REGULATIONS - GENERAL

Section

38-04-01-01

Regulatory Intent

38-04-01-02

Adoption of Regulations

38-04-01-03

Amendments

38-04-01-01. Regulatory intent.

1. The motor carrier safety regulations adopted in this chapter are designed to improve the safety and welfare of the general public by providing a framework of safe operating practices for motor carriers.
2. These regulations are adopted without substantial modification so as to provide for the greatest flexibility and uniformity in both interstate and intrastate commerce.
3. These regulations are binding upon all motor carriers and their employees while operating within or through the state of North Dakota and shall be enforced by the North Dakota highway patrol.

History: Effective October 1, 1983.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 39-21-46

38-04-01-02. Adoption of regulations.

1. The following parts of Title 49, Code of Federal Regulations, including amendments are adopted by reference:
 - a. Part 390 - Federal Motor Carrier Safety Regulations: General.
 - b. Part 391 - Qualifications of Drivers.
 - c. Part 392 - Driving of Motor Vehicles.
 - d. Part 393 - Parts and Accessories Necessary for Safe Operation.
 - e. Part 395 - Hours of Service of Drivers.
 - f. Part 396 - Inspection, Repair and Maintenance.
 - f. Part 397 - Transportation of Hazardous Materials; Driving.

History: Effective October 1, 1983.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 39-21-46

38-04-01-03. Amendments. These regulations include such amendments as may be promulgated by the United States department of transportation.

History: Effective October 1, 1983.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 39-21-46

TITLE 43
Industrial Commission

NOVEMBER 1983

STAFF COMMENT: Chapter 43-02-06 contains all new material but is not underscored so as to improve readability.

**CHAPTER 43-02-06
ROYALTY STATEMENTS**

Section	
43-02-06-01	Royalty Owner Information Statement
43-02-06-02	Annual Windfall Profits Tax Information Statement

43-02-06-01. Royalty owner information statement.

1. Any person who makes payment to an owner of a royalty interest in land in this state for the purchase of oil or gas produced from the royalty interest must provide with the payment to the royalty owner the following information on a lease, property, or per well basis:
 - a. The month and year during which sales occurred for which payment is being made.
 - b. The lease, property, or well name or any lease, property, or well identification number used to identify the lease, property, or well; provided, that if a lease, property, or well identification number is used the royalty owner must initially be provided with the lease, property, or well name to which the lease, property, or well number refers.
 - c. The total number of barrels of oil or thousand cubic feet [28.32 cubic meters] of gas sold.

- d. Price per barrel or thousand cubic feet [28.32 cubic meters] based on average current month's gross sales.
 - e. The gross value of oil or gas sold.
 - f. The royalty owner's interest in sales from the lease, property, or well expressed as a decimal.
 - g. The royalty owner's share of total value of sales prior to any deductions.
 - h. The production tax paid on royalty owner's interest.
 - i. The extraction tax paid on royalty owner's interest.
 - j. The windfall profit tax paid on royalty owner's interest.
 - k. Any deductions or adjustments. Those not explained on the statement or in a separate mailing, shall be explained to the royalty owner upon inquiry to the disburser.
 - l. The royalty owner's net share of sales after deductions.
 - m. A telephone number and address where additional information may be obtained and any questions answered. If information is requested by certified mail, the answer must be mailed by certified mail within thirty days of receipt of the request.
2. The information required by this section may be included on the check stub or may be provided on a separate royalty information statement. All information must be provided on a lease, property, or per well basis except for unitized formations which may be reported as one property.
 3. This section is effective beginning with any royalty payments made on oil or gas sold in January of 1984.

History: Effective November 1, 1983.

General Authority: NDCC 38-08-06.3

Law Implemented: NDCC 38-08-06.3

43-02-06-02. Annual windfall profits tax information statement.

1. Any person making payment to a royalty owner for the sale of oil must provide the royalty owner with an annual statement containing the following information:
 - a. Removal date - month or quarter and year.
 - b. Tier level.

- c. Tax rate.
 - d. The quantity of oil on which windfall profit tax has been paid.
 - e. Removal value.
 - f. Adjusted base price.
 - g. Severance tax adjustment.
 - h. Windfall profit.
 - i. Windfall profit tax liability.
 - j. Windfall profit tax withheld.
2. The information provided in the annual statement must be broken down into monthly or quarterly totals on a lease, property, or per well basis (except for unit production) and must be mailed to the royalty owner by March thirty-first immediately following the year of the sale.
 3. The windfall profits tax information required by this section shall be furnished for all oil sales after January 1, 1983.

History: Effective November 1, 1983.

General Authority: NDCC 38-08-06.3

Law Implemented: NDCC 38-08-06.3

TITLE 45
Insurance, Commissioner of

SEPTEMBER 1983

STAFF COMMENT: Chapters 45-02-02, 45-02-03 and 45-03-06 contain all new material but are not underscored so as to improve readability.

ARTICLE 45-02

REGULATION OF INSURANCE AGENTS, BROKERS, LIMITED
INSURANCE REPRESENTATIVES, CONSULTANTS,
AND ADMINISTRATORS

Chapter	
45-02-01	Licensing of Insurance Agents, Insurance Brokers, Surplus Lines Insurance Brokers, Limited Insurance Representatives, and Consultants [Superseded]
45-02-02	Licensing of Insurance Agents, Insurance Brokers, Surplus Lines Insurance Brokers, Limited Insurance Representatives, and Consultants
45-02-03	Licensing of Administrators

CHAPTER 45-02-01
LICENSING OF INSURANCE AGENTS, INSURANCE BROKERS,
SURPLUS LINES INSURANCE BROKERS, LIMITED INSURANCE
REPRESENTATIVES, AND CONSULTANTS

[Superseded by Chapter 45-02-02]

CHAPTER 45-02-02
LICENSING OF INSURANCE AGENTS, INSURANCE BROKERS,
SURPLUS LINES INSURANCE BROKERS, LIMITED INSURANCE
REPRESENTATIVES, AND CONSULTANTS

Section

45-02-02-01	Definitions
45-02-02-02	Applications for Licenses
45-02-02-03	Examination for Licensure
45-02-02-04	Exceptions to Examination Requirement
45-02-02-05	Effective Date of License - New Line - New Company Appointment - Renewals
45-02-02-06	Appointment Procedure - Terminations
45-02-02-07	Renewal Procedure for License
45-02-02-08	Agent or Broker - Sharing Commission
45-02-02-09	Insurance Consultant - Agreement
45-02-02-10	Insurance Agent, Insurance Broker, and Surplus Lines Insurance Broker Acting as Consultant
45-02-02-11	Agents Selling Variable Annuity Contracts
45-02-02-12	Administrative Terminations
45-02-02-13	Proceedings, Hearings, and Appeals

45-02-02-01. Definitions. Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meaning as given them under North Dakota Century Code chapter 26-17.1.

History: Effective September 1, 1983.

General Authority: NDCC 26-17.1-55

Law Implemented: NDCC 26-17.1-02

45-02-02-02. Applications for licenses.

1. Resident agents' applications.
 - a. An application must be completed in accordance with the instruction sheet and submitted on the insurance department's application form.
 - b. An application may be submitted prior or subsequent to the applicant's testing date.

- c. An application for an agent's license by a partnership must be accompanied by a certified copy of the agreement.
 - d. An application for an agent's license by a corporation must be accompanied by a certified copy of the articles of incorporation.
 - e. An applicant who is licensed as a nonresident agent in this state and seeks to be licensed as a resident agent must provide, with the application, a letter of clearance from the state in which the agent is currently or was most recently licensed as a resident agent. Additionally, the agent must have that state indicate whether the agent was so licensed within the preceding twelve months.
 - f. An application for a corporate or partnership agent's license must be completed on the department form.
 - g. A new application form is not required to add a new company.
 - h. Every application must be accompanied by the appropriate fee.
2. Nonresident agents' applications.
- a. An application for a nonresident agent's license must comply with subdivisions a, b, c, d, f, and h of subsection 1 and must contain a written designation of the commissioner and the commissioner's successors in office as that agent's true and lawful attorney for purposes of service of process.
 - b. An applicant for a nonresident agent's license must have the state which issued the agent's resident license, supply to the department a certificate showing the lines for which the agent is licensed and eligible to write in that state.
 - c. A new application form is not required to add a new company.
3. Resident and nonresident brokers' applications.
- a. An application must be completed in accordance with the instruction sheet provided by the department and submitted on the appropriate application form.
 - b. A broker's application must be accompanied by written proof of compliance with the requirement that the broker have in force a bond in the penal sum of not less than two thousand dollars and the appropriate fee.

- c. An application for a broker's license may not be submitted unless the applicant is currently licensed in this state as an agent, and has had two years' experience as an insurance agent or in comparable employment for an insurance company, agency, or brokerage firm during the three years immediately next preceding the date of application.
4. Surplus lines brokers' applications. A surplus lines insurance broker's application must be submitted in accordance with chapter 45-09-01.
5. Consultants' applications.
 - a. An application for a consultant's license must be submitted in accordance with the instruction sheet provided by the department and submitted on the appropriate form.
 - b. No person, firm, corporation, or partnership holding a license as an agent, broker, surplus lines broker, or limited insurance representative may obtain and simultaneously hold a license as a consultant. If the applicant holding such licenses at the time of application, the licenses must be terminated prior to obtaining a consultant's license.
 - c. No person may apply for a consultant's license unless the applicant has had not less than five years' experience as an insurance agent or in comparable employment for an insurance company, agency, or brokerage firm, within the ten years immediately next preceding the date of application in the area of insurance in which the applicant intends to consult.
 - d. An application may be submitted prior or subsequent to the applicant's testing date and must be accompanied by the appropriate fee.
6. Limited insurance representatives' applications.
 - a. An application for a limited insurance representative must be submitted in accordance with the instruction sheet provided by the department and submitted on the appropriate form.
 - b. The applicant must clearly indicate in writing the specific area of insurance in which the applicant intends to conduct business and which must be exempt from the examination requirement.
7. Temporary license applications.

- a. An application for a temporary insurance agent's or broker's license must be submitted in accordance with subdivisions a, b, c, d, e, and h of subsection 1, subsection 2, and subsection 3 and be accompanied by the appropriate fee.
- b. The application must be accompanied by a written statement of the reasons for requesting the issuance of a temporary license.
- c. A temporary license will not be granted for the sole reason that the applicant has failed to pass the agents' examination and desires to be licensed until such time as a passing examination score is obtained.

History: Effective September 1, 1983.

General Authority: NDCC 26-17.1-55

Law Implemented: NDCC 26-17.1-15

45-02-02-03. Examination for licensure.

1. An applicant must register and take the examination authorized and required by the department of insurance.
2. The examination is administered by the educational testing service through its multistate insurance licensing program.
3. The examination may be taken prior or subsequent to the date an application for the license is submitted to the department at a designated time and location on a preregistration or walk-in basis, and in compliance with all procedures required by the test administrator.
4. An applicant must present a photo identification card at the test center prior to being admitted for testing. If the applicant does not have a photo identification card, permission to take the test may be specially obtained upon application to the office of the department.
5. There are two basic parts to each examination:
 - a. Part One is the part of the test developed as a test of general knowledge for the major categories of insurance and there are four such part ones:
 - (1) 01 Life
 - (2) 02 Accident and health
 - (3) 03 Property (fire)
 - (4) 04 Casualty

- b. Part Two is the part of the test which examines the applicant's knowledge of North Dakota law.
6. For an applicant to be qualified to conduct the business of insurance in the following lines, the applicant must take and pass the test listed immediately after it in the separate column.
- | | |
|---|---------------------------------------|
| a. Life insurance and annuity contracts | 01 Life |
| b. Sickness, accident and health | 02 Accident and health |
| c. Credit life insurance and credit accident and health insurance | 01 Life and
02 Accident and health |
| d. Fire and allied lines | 03 Property |
| e. Vehicle liability and vehicle damage insurance | 04 Casualty |
| f. Comprehensive personal and general liability coverage | 04 Casualty |
| g. Marine and transportation | 03 Property |
| h. Credit and mortgage guarantee insurance | 03 Property |
| i. Burglary and theft insurance | 04 Casualty |
| j. Crop insurance | 03 Property |
| k. Bail bonds | 04 Casualty |
| l. Fidelity and surety insurance | 04 Casualty |
| m. Homeowners' and farmowners' multiple peril insurance | 03 Property |
| n. Commercial multiple peril insurance | 03 Property and
04 Casualty |
| o. Property and casualty insurance sold in connection with a credit transaction | 03 Property and
04 Casualty |

2. If an applicant previously held a like license in another state with which North Dakota has reciprocal agreements within twelve months prior to the application for license of this state, the applicant need take only Part Two of the licensure test covering North Dakota law and administrative rules.
3. Consultants' exemption.
 - a. If an applicant holds a chartered life underwriter or chartered property/casualty underwriters designation, the exemptions in subsection 1 of section 45-02-01-04 apply.
 - b. Subsection 2 applies to consultant examinations.
 - c. If an applicant holds an agent's or broker's license in North Dakota, the applicant is exempt from the testing requirements; however, the applicant must terminate all other licenses prior to obtaining a consultant's license.
 - d. Upon application, it may be shown that the educational background or work experience record are adequate basis to grant an exemption from testing. A narrative must be included with the application.

History: Effective September 1, 1983.

General Authority: NDCC 26-17.1-55

Law Implemented: NDCC 26-17.1-35

45-02-02-05. Effective date of license - New line - New company appointment - Renewals.

1. Resident agent.
 - a. An applicant who has filed a completed application for a resident agent's license with the department of insurance may first transact business under that license effective the date the applicant receives a passing test score report from the testing service.
 - b. An applicant who passes the examination prior to the filing of a completed application with the department may first transact business effective the date the company, through which the license is issued, signed the appointment. The company is responsible for notifying the agent of the appointment date. A completed application must be filed with the department within forty-five days of the date the applicant signed the application for the license to remain effective.
 - c. An agent who is adding a new line of insurance may first transact business in that new line effective the same date

as the effective date if the agent were obtaining a new license under the provisions of subdivision a or b.

- d. An agent who is adding a new company may first transact business under that new appointment effective the date of that appointment. A letter of appointment must be mailed to the department on the day the letter is signed.
2. Nonresident agent.
 - a. An applicant who has filed a completed application for a nonresident license with the department may first transact business under the license when the license is physically in the possession of that applicant.
 - b. A nonresident agent who is adding a new line of insurance may first transact business in that new line effective the date the license with the new line added is physically in the possession of the agent.
 - c. A nonresident agent who is licensed for the appropriate category of insurance and who is adding a new company may first transact business under that new appointment effective the date of that appointment. A letter of appointment must be mailed on the day the letter is signed.
 3. A person obtaining a broker, surplus lines broker, limited representative, temporary, or consultant license may first transact business under that license effective the date the license is physically in the possession of that person.

History: Effective September 1, 1983.

General Authority: NDCC 26-17.1-55

Law Implemented: NDCC 26-17.1-13.1, 26-17.1-15

45-02-02-06. Appointment procedure - Terminations.

1. The appointment of an agent who is a new agent shall be contained in the application form submitted to the department of insurance to obtain that new license.
2. The appointment of an agent licensed for a new major category of insurance shall be contained in the application form submitted to the department.
3. The appointment of an agent when the agent is already licensed for the appropriate major categories and lines of insurance is accomplished through an agreement or contract between the company and the agent. A new application form is not required with such an appointment. However, for that appointment to become effective the company must provide notice of the

appointment to the department by letter. The letter shall include the full name and social security number of the agent, the federal employee identification number of the appointing company, and a statement that "The appointing company assumes full and complete responsibility for the acts of this agent without regard to any technical distinction between this relationship and that which exists in law between 'principal and agent'." Such letter must be signed by the appointed company representative and filed with the department within forty-five days of the date of that signature and be accompanied by the appropriate fee.

4. Appointments of agents which are made through one representative for a group of companies may be made in one letter, however, a fee is payable for each company appointment of each agent.
5. If a company desires to limit the appointment to specified categories or lines of insurance, such limitation must be clearly set out in the applications or letter of appointment.
6. The fees for all appointments shall be submitted with the letters of appointment.
7. Notice of termination of all appointments shall be provided by the company to the department only on an annual basis and only by lining out the agent on the renewal list, on or before May first of each year unless the agent was terminated for any of the grounds listed in North Dakota Century Code section 26-17.1-42, in which case notification shall be submitted immediately. Such immediate notice shall specify the grounds for the termination.

History: Effective September 1, 1983.

General Authority: NDCC 26-17.1-55

Law Implemented: NDCC 26-17.1-13, 26-17.1-13.1, 26-17.1-15

45-02-02-07. Renewal procedure for license.

1. On or before March first of each year, a computerized renewal list of the agents appointed by that company, together with an instruction letter, will be furnished by the department to each company.
2. The company shall designate on that list which agents it does not wish to renew, and return the list to the department within the time frame set out in the cover letter.
3. The renewal list shall be the company's record of its appointed agents.

4. The company shall pay the appropriate fee for all appointments which were renewed, along with the renewal list prior to May first.

History: Effective September 1, 1983.

General Authority: NDCC 26-17.1-55

Law Implemented: NDCC 26-17.1-13.1

45-02-02-08. Agent or broker - Sharing commission.

1. An agent may in isolated situations share a commission with another agent who has forwarded an insured's business to that agent where both agents are licensed for that line of insurance even though the forwarding agent may not be appointed by the company with which the business is placed.
2. If such sharing of commission is done on a regular basis, it will be considered a violation of North Dakota Century Code section 26-17.1-11 by both parties and disciplinary action may be taken by the department.

History: Effective September 1, 1983.

General Authority: NDCC 26-17.1-55

Law Implemented: NDCC 26-17.1-11

45-02-02-09. Insurance consultant - Agreement. In advance of rendering any service as a consultant, such consultant shall prepare a form of written agreement which shall substantially comply with the model form available on request from the department of insurance. The form prepared by the consultant shall be submitted to the department for the commissioner's approval or disapproval. If the commissioner disapproves the form, the consultant shall not use the form so disapproved.

In advance of rendering any service as a consultant, a written agreement on the form which has been approved by the department shall be signed by both the consultant and client. The consultant shall retain a copy of the agreement for not less than two years after completion of the services. A copy of the agreement shall be available to the department upon request.

History: Effective September 1, 1983.

General Authority: NDCC 26-17.1-55

Law Implemented: NDCC 26-17.1-36, 26-17.1-38

45-02-02-10. Insurance agent, insurance broker, and surplus lines insurance broker acting as consultant. Although duly licensed insurance agents, insurance brokers, or surplus lines insurance brokers are exempt from licensing as consultants and are specifically prohibited from concurrently holding a consultant's license and a license as an

insurance agent, or an insurance broker, or surplus lines insurance broker in any line, duly licensed insurance agents, insurance brokers, or surplus lines insurance brokers may perform consulting services in the ordinary course of their businesses. However, if duly licensed insurance agents, insurance brokers, or surplus lines insurance brokers charge a fee, or receive any type of remuneration, for rendering such consulting service, they shall comply with the provisions and requirements of a consultant's agreement set forth in section 45-02-02-08.

History: Effective September 1, 1983.

General Authority: NDCC 26-17.1-55

Law Implemented: NDCC 26-17.1-38

45-02-02-11. Agents selling variable annuity contracts. All applicants for a license to do business in the line of insurance set out in subdivision r of subsection 6 of section 45-02-02-03, must first become licensed as a securities salesman under North Dakota law and provide written proof of such licensure along with the application.

History: Effective September 1, 1983.

General Authority: NDCC 26-17.1-55

Law Implemented: NDCC 26-17.1-07

45-02-02-12. Administrative terminations.

1. An agent or a limited insurance representative may terminate one's North Dakota insurance license voluntarily and have a letter of clearance issued by filing a written request with the department.
2. The agent or limited insurance representative must return the licenses to the department.
3. The agent is responsible for notifying the appointing companies of the termination.
4. A broker, surplus lines broker, or consultant license may be terminated administratively and a letter of clearance issued upon receipt of a written request by the department from the licenseholder.
5. A broker's license will be automatically terminated administratively, if the underlying agent's license is terminated.

History: Effective September 1, 1983.

General Authority: NDCC 26-17.1-55

Law Implemented: NDCC 26-17.1-13

45-02-02-13. **Proceedings, hearings, and appeals.** All proceedings, hearings, and appeals under this chapter and North Dakota Century Code chapter 26-17.1 shall be governed by North Dakota Century Code chapter 28-32.

History: Effective September 1, 1983.

General Authority: NDCC 26-17.1-55

Law Implemented: NDCC 26-17.1-45

CHAPTER 45-02-03 LICENSING OF ADMINISTRATORS

Section	
45-02-03-01	Definitions
45-02-03-02	Application for License - Fee
45-02-03-03	Signature on Application
45-02-03-04	Application of Corporation, Association, Benefit Society
45-02-03-05	Change of Address
45-02-03-06	Renewal Procedure
45-02-03-07	Waiver Procedure
45-02-03-08	Proceedings - Hearings and Appeals

45-02-03-01. **Definitions.** Unless otherwise defined or made inappropriate by context, all words used in this chapter have meaning as given them under North Dakota Century Code chapter 26-17.2

History: Effective September 1, 1983.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26-17.2

45-02-03-02. **Application for license - Fee.** All persons defined as administrators under the provisions of North Dakota Century Code chapter 26-17.2 must complete an application form and file it with the department of insurance and must remit the required twenty-five dollar fee along with the application.

History: Effective September 1, 1983.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26-17.2

45-02-03-03. **Signature on application.** The application must be signed by the applicant personally if an individual, a partner, if a partnership, an officer, if a corporation, association, or benefit society.

History: Effective September 1, 1983.
General Authority: NDCC 26.1-01-08
Law Implemented: NDCC 26-17.2

45-02-03-04. Application of corporation, association, benefit society. An application by a corporation, association, or benefit society must be accompanied by a certified copy of the articles of incorporation or association.

History: Effective September 1, 1983.
General Authority: NDCC 26.1-01-08
Law Implemented: NDCC 26-17.2

45-02-03-05. Change of address. The applicant/administrator is required to provide a current address to the department and notify the department of any change in that address within thirty days of such change. If such notification is not provided, the certificate of registration may be administratively terminated.

History: Effective September 1, 1983.
General Authority: NDCC 26.1-01-08
Law Implemented: NDCC 26.1-01-08

45-02-03-06. Renewal procedure. The administrator is required to remit a twenty-five dollar renewal fee on or before each annual anniversary date in order to maintain the certificate of registration. If such fee is not received in the prescribed time, the certificate of registration may be administratively terminated. The department will provide notice of the renewal of the certificate of registration or the termination of that certificate of registration.

History: Effective September 1, 1983.
General Authority: NDCC 26.1-01-08
Law Implemented: NDCC 26-17.2

45-02-03-07. Waiver procedure. Persons applying for a waiver of the registration requirement under North Dakota Century Code section 26-17.2-12 must in addition to an application submit a written detailed and documented statement as to the basis for the requested waiver. The commissioner shall make a determination with regard to the request for a waiver within sixty days of receipt of the request by the department.

History: Effective September 1, 1983.
General Authority: NDCC 26.1-01-08
Law Implemented: NDCC 26-17.2

45-02-03-08. Proceedings - Hearings and appeals. All proceedings, hearings, and appeals under this chapter and North Dakota Century Code chapter 26-17.2 shall be governed by North Dakota Century Code chapter 28-32.

History: Effective September 1, 1983.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26-17.2

**CHAPTER 45-03-06
PREMIUM TAX PAYMENTS - ESTIMATES**

Section

45-03-06-01	Application of Chapter - Exceptions
45-03-06-02	Definitions
45-03-06-03	Quarterly Payments - Reconciliation
45-03-06-04	Credits
45-03-06-05	Fees Payable Annually
45-03-06-06	Interest and Penalties

45-03-06-01. Application of chapter - Exceptions. This chapter applies to all companies doing business in the state as described in North Dakota Century Code section 26.1-03-17 and applies to all business conducted in this state, except business specifically exempted by statute, i.e., annuities (North Dakota Century Code section 26.1-03-17) and North Dakota uniform group insurance program (North Dakota Century Code chapter 54-52.1).

History: Effective September 1, 1983.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-03-17

45-03-06-02. Definitions. Unless otherwise defined or made inappropriate by context, all words used in this chapter have meanings as given them under North Dakota Century Code chapter 26.1-03.

History: Effective September 1, 1983.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-03-17

45-03-06-03. Quarterly payments - Reconciliation.

1. The initial payments on a quarterly basis are due on or before August 29, 1983, from all companies subject to the gross premium tax. That payment shall include 1982 for those companies which have not paid or filed the new tax for that year and the first two quarters of 1983. Those companies who

are required to pay the 1982 tax within sixty days after enactment of the new tax law are only required to file and pay the estimated tax on August 29, 1983.

2. Thereafter every company required to pay premium taxes in this state shall make and file a statement of estimated premium taxes for the period covered by the quarterly installment tax payment. The statement shall be on forms prescribed by the commissioner. The payments shall be made on an individual quarterly basis on or before May thirtieth, August twenty-ninth, November twenty-ninth, and March first.
3. The tax imposed under North Dakota Century Code section 26.1-03-17 shall be an estimated tax of at least twenty-five percent of the premium tax on the prior calendar year's business or eighty percent of the premium tax on the current calendar year's business for each of the first three quarters and shall be reconciled for the entire calendar year on the insurance department form and filed on or before March first of the following calendar year.
4. Any company with a certificate of authority to conduct business in this state must file a quarterly estimate form even when no tax is owed. No payment is required until the final quarter when the tax is reconciled if the estimated tax for the quarter is less than twenty-five dollars.

History: Effective September 1, 1983.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-03-17

45-03-06-04. Credits.

1. The principal office ad valorem tax credit shall be used as a credit against the premium tax liability for the calendar year in which the ad valorem tax was paid. Any unused credit may be carried over as a credit against the premium tax liability for the following calendar years but not beyond 1985. North Dakota Century Code section 26.1-07-17 requires that the credit be prorated on a quarterly basis. Credit shall be used for each quarter and shall be fully reconciled, along with the premium tax, as of the end of each calendar year, on or before March first of the subsequent year.
2. The examination credit shall be used as a credit against the premium tax liability for the quarter in which expense was paid and the succeeding three quarters. The credit is limited to expenses incurred and paid to the North Dakota department of insurance. North Dakota Century Code section 26.1-07-17 requires that the credit be prorated on a quarterly basis. The credit shall be reconciled along with the premium tax as

of the end of each calendar year, on or before March first of the subsequent year.

3. The credit for income tax or premium tax paid in 1983, on business done in 1982, shall first be taken as a credit against the tax liability under North Dakota Century Code section 26.1-03-17 for 1982, and the remaining credit against the tax liability for 1983 either on the quarterly estimates or at the time the tax is reconciled.
4. The credit taken for assessments paid to the comprehensive health association of North Dakota shall be taken in the calendar year in which paid and any remaining credit used as completely as possible in each succeeding year. Credit cannot be taken for any assessments paid prior to March 21, 1983.
5. The credit for assessments paid to the North Dakota life and health insurance guaranty association shall be twenty percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. The credit shall be taken annually at the time the premium tax is reconciled for each calendar year.
6. Credit may be taken in the following year for miscalculations resulting in an overpayment in a preceding reconciliation submitted with the March first payment.

History: Effective September 1, 1983.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-03-17

45-03-06-05. Fees payable annually. All fees will be paid annually, on or before March first of each calendar year.

History: Effective September 1, 1983.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-03-17

45-03-06-06. Interest and penalties.

1. Penalties and interest shall be assessed in accordance with the provisions of North Dakota Century Code section 26.1-03-17 for a failure to file the quarterly estimated tax statement or the reconciled tax statement or both, or pay the estimated or reconciled tax.
2. If an insurance company fails to pay the quarterly estimated tax or reconciled taxes prescribed by North Dakota Century Code section 26.1-03-17 in the time required, penalties of five percent shall accrue thereon, or one hundred dollars, whichever is greater, plus six percent of the tax for each day

of delay except the first day after the tax became due for that quarter or year.

3. Failure of the company to make each estimated return and payments of at least one quarter of the total reconciled tax paid during the previous calendar year, or eighty percent of the actual reconciled tax for the current calendar year, shall subject the company to the penalty and interest provided in subsection 2 on the tax payable for that calendar year.

History: Effective September 1, 1983.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-03-17

JANUARY 1984

STAFF COMMENT: Chapter 45-03-07 contains all new material but is not underscored so as to improve readability.

**CHAPTER 45-03-07
REINSURANCE**

Section	
45-03-07-01	Definitions
45-03-07-02	Foreign Insurer Cessions
45-03-07-03	Domestic Insurer Cessions
45-03-07-04	Procedure for Approval of Reinsurer
45-03-07-05	Continued Proof of Compliance
45-03-07-06	Withdrawal of Approval of Reinsurer
45-03-07-07	Separability of Provisions

45-03-07-01. Definitions. As used in this chapter:

1. "Domestic insurer" is an insurer licensed in this state and incorporated in this state.
2. "Foreign insurer" is an insurer licensed in this state but incorporated in a jurisdiction other than this state.

History: Effective January 1, 1984.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-02-20

45-03-07-02. Foreign insurer cessions. A foreign insurer may cede reinsurance to a reinsurer to which the foreign insurer is

permitted to cede reinsurance under the law, regulations, or rules of the jurisdiction of that insurer's domicile.

History: Effective January 1, 1984.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-02-20

45-03-07-03. Domestic insurer cessions. A domestic insurer may cede reinsurance to:

1. A reinsurer licensed in any other state or the District of Columbia if that reinsurer conforms to the same standard of solvency which would be required if, at the time the reinsurance is effected, the reinsurer was licensed in this state.
2. A reinsurer not licensed in any state or the District of Columbia if the reinsurer appears on the most recent "Non-Admitted Insurers Quarterly Listing" published by the national association of insurance commissioners (The NAIC List).
3. A reinsurer not licensed in any state or the District of Columbia, and not appearing on the NAIC List, if approval of the commissioner is obtained by the filing of an application and current financial statement showing that the reinsurer meets the requirements set out in section 45-03-07-04.

History: Effective January 1, 1984.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-01-08

45-03-07-04. Procedure for approval of reinsurer. The reinsurer requested to obtain the approval of the commissioner pursuant to subsection 3 of section 45-03-07-03 and North Dakota Century Code section 26.1-02-20 shall not accept reinsurance unless at the time of cession such reinsurer has been approved by the commissioner. The commissioner shall approve a reinsurer if such reinsurer has:

1. Filed with the commissioner an application including:
 - a. Satisfactory evidence of good repute and financial integrity.
 - b. Satisfactory evidence that the reinsurer has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals five million dollars or in the case of any Lloyd's or other similar unincorporated group of individual insurers, that the group maintains a trust fund of not less than fifty million dollars as security to the full amount thereof for

all policyholders and creditors in the United States of all members of the group.

2. Provided the commissioner with a copy of its current annual financial statement in United States dollars. The statement shall be provided no more than six months after the close of the period reported upon and shall be certified by an accounting or auditing firm licensed in the jurisdiction of the reinsurer's domicile.
3. Promptly advised the commissioner in writing of any changes in the information so furnished arising subsequent to the date upon which such information is filed but prior to the commissioner's disposition of the application.

History: Effective January 1, 1984.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-02-20

45-03-07-05. Continued proof of compliance. A reinsurer shall also provide to the commissioner annually proof of continued compliance with subsection 1 of section 45-03-07-04, along with an annual statement complying with subsection 2 of section 45-03-07-04 following the first year the application is approved by the commissioner.

History: Effective January 1, 1984.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-02-20

45-03-07-06. Withdrawal of approval of reinsurer. The commissioner may withdraw approval if at any time the commissioner has reason to believe that any reinsurer:

1. Is in unsound financial condition;
2. Is no longer eligible under North Dakota Century Code section 26.1-02-20 or this chapter; or
3. Has willfully violated the laws of this state.

The commissioner shall promptly mail notice of such withdrawal to the reinsurer and to each licensed insurer whose most recent annual statement shows it was reinsured by such reinsurer.

History: Effective January 1, 1984.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-02-20

45-03-07-07. Separability of provisions. If any provision of this chapter, or the application of such provision to any person or

circumstance, is held invalid, the remainder of the chapter and the application of such provisions to persons or circumstances other than those as to which it is held invalid is not affected thereby.

History: Effective January 1, 1984.

General Authority: NDCC 26.1-01-08

Law Implemented: NDCC 26.1-02-20

TITLE 51
Milk Stabilization Board

DECEMBER 1983

51-02-02-11. **Deposits on returnable containers.** The requiring of deposits where milk products are purchased in returnable containers and the giving of allowances or credits in connection with the return of such containers is prohibited, except deposits may be required on milk cases provided said deposits do not exceed the reasonable replacement value thereof.

History: Amended effective December 1, 1983.
General Authority: NDCC 4-18.1-01, 4-18.1-11
Law Implemented: NDCC 4-18.1-11

TITLE 52
Motor Vehicle Department

FEBRUARY 1984

52-04-01-01. Scope. Vehicles constructed, reconstructed, or modified shall comply with all provisions of North Dakota Century Code chapter 39-21 and any other applicable provision of North Dakota Century Code title 39, unless specifically excepted. The requirements of this article shall not supersede the original and unaltered design, construction, or equipment standards of motor vehicles manufactured by a recognized manufacturer.

General Authority: NDCC ~~39-23-03~~ 39-02-03

Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-01-02. Definitions. The terms used throughout this article have the same meaning as in the North Dakota Century Code title 39, except:

1. "Recognized manufacturer" means a manufacturer of motor vehicles intended for use on the public roadways and for distribution and sale in interstate commerce.
2. "Recognized manufacturer or assembler" means every fabricator of a special vehicle assembled in its entirety as a complete product for use on the public roadways.
3. "Special motor vehicles" means those passenger vehicles and trucks with an unladen weight of six thousand pounds [2,721.55 kilograms] or less equipped with two or more axles having at least two wheels per axle, and which are intended for use on public highways. The term "special motor vehicle" includes the following types:
 - a. Type I - Those vehicles which are restored to or retain their original configuration but which may contain changed steering,

brake, power train, or suspension systems.

- b. Type II - Those vehicles changed from the recognized vehicle manufacturer's original body configuration but which retain the general appearance, including changes to the body chassis or engine of the original vehicle. This type may also include changes and modifications to engine, chassis, brake system, power train, steering, and suspension systems.
- c. Type III - Other than type I and type II special vehicles, those vehicles custom built with fabricated parts, or parts taken from existing vehicles.

General Authority: NDCC ~~39-23-03~~ 39-02-03

Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-01-03. Manufacturer's certification. The manufacturer or assembler of a special vehicle (type I, II, III) shall provide a certification of fact that the vehicle is designed and manufactured for use on the public roadway and complies with the performance and equipment requirements of this article. Nothing contained in this article shall preclude the motor vehicle registrar from requiring a certificate of inspection to ensure compliance with the standard.

General Authority: NDCC ~~39-23-03~~ 39-02-03

Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-02-01. Door latches. Every special motor vehicle that is equipped with doors leading directly into a compartment that contains one or more seating accommodations shall be equipped with mechanically actuated door latches which firmly and automatically secure the door when pushed closed and which allow each door to be opened from the inside by the actuation of a convenient lever, handle, or other suitable device.

General Authority: NDCC ~~39-23-03~~ 39-02-03

Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-02-02. Floor pan. Every special vehicle shall be equipped with a floor pan under the entire passenger-carrying compartment. The floor pan shall support the weight of the number of occupants that the vehicle is designed to carry. The floor pan shall be so constructed that it prevents the entry of exhaust fumes.

General Authority: NDCC ~~39-23-03~~ 39-02-03
Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-02-03. Hood latches. A front opening hood shall be equipped with a primary and secondary latching system to hold the hood in a closed position.

General Authority: NDCC ~~39-23-03~~ 39-02-03
Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-02-04. Instrumentation and controls. Every special vehicle shall be equipped with a circular steering wheel with an outside diameter of not less than thirteen inches [33.02 centimeters].

General Authority: NDCC ~~39-23-03~~ 39-02-03
Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-02-05. Rearview mirror. Every special vehicle shall be equipped with two rearview mirrors having substantially unit magnification. One shall be mounted on the inside of the vehicle in such a position that it affords the driver a clear view of a straight level road surface at least two hundred feet [60.96 meters] to the rear. The other shall be mounted on the outside of the vehicle on the driver's side in such a position that it affords the driver a clear view to the rear. When an inside mirror does not give a clear view to the rear, the right-hand outside mirrors shall be required in lieu thereof. The mirror mounting shall provide for mirror adjustment by tilting in both horizontal and vertical directions. Each mirror shall have a minimum of ten squares inches [64.52 square centimeters] of reflective surface.

General Authority: NDCC ~~39-23-03~~ 39-02-03
Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-03-01. Brakes. Every special motor vehicle shall be equipped with parking brakes operating on at least two wheels on the same axle which when applied shall be capable of producing a tire to road braking force of not less than twenty-five percent of the gross vehicle weight on a level, dry, concrete or asphalt surface free from loose material. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind.

General Authority: NDCC ~~39-23-03~~ 39-02-03
Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-03-02. Bumpers. Every special motor vehicle shall be equipped with a bumper both on the front and rear of the vehicle with the exception of type I and type II special vehicles where the original

or predominant body configuration, provided by a recognized manufacturer, did not include such bumper or bumpers in the design of the vehicle. Type I and type II special vehicles, not excepted as noted above, and all type III special vehicles shall be equipped with horizontal load bearing bumpers or customized bumpers or grill bars of a sturdy construction which have at least an evenly distributed portion of their horizontal load bearing width within fourteen inches and twenty-two inches [35.56 centimeters and 55.88 centimeters] above a level road surface and which extend no less than the width of their respective wheel tract distances, when these distances are measured to the width of standard size tires. The horizontal bumper or customized bumper or grill bar structure shall be at least four and one-half inches [11.43 centimeters] in vertical height and centered on the vehicle's centerline, and attached to the vehicle frame to effectively transfer impact when engaged.

General Authority: NDCC ~~39-23-03~~ 39-02-03

Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-03-03. Exhaust system.

1. Every special motor vehicle shall be equipped with an exhaust system that is free of leaks including the exhaust manifolds (including headers), the piping leading from the flange of the exhaust manifolds, the mufflers, and the tail piping.
2. Exhaust systems on property-carrying vehicles shall discharge the exhaust fumes to the rear of that part of the vehicle designed for, and normally used for, carrying the driver and passengers.
3. Exhaust systems on passenger vehicles shall discharge the exhaust fumes at a location to the rear of the vehicle body or direct the exhaust fumes outward from the side of the vehicle body at a location rearward of any operable side windows.
4. No part of the exhaust system shall pass through any area of the vehicle that is used as a passenger-carrying compartment.

General Authority: NDCC ~~39-23-03~~ 39-02-03

Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-03-04. Fenders. All wheels of every special motor vehicle shall be equipped with fenders designed to cover the entire tire tread width that comes in contact with the road surface. Coverage of the tire tread circumference shall be from at least fifteen degrees in front to at least seventy-five degrees to the rear of the vertical centerline at each wheel measured from the center of wheel rotation. At no time shall the tire come in contact with the body, fender, or chassis of the vehicle.

General Authority: NDCC ~~39-23-03~~ 39-02-03
Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-03-05. Fuel system.

1. Every special motor vehicle shall have all fuel system components (tank, tubing, hoses, clamps, etc.) securely fastened to the vehicle with fasteners designed for that purpose, and fastened to assure that the fuel system shall be leakproof and fastened so as not to interfere with the vehicle operation.
2. Fuel lines shall be positioned so as not to be in contact with high temperature surfaces or moving components.

General Authority: NDCC ~~39-23-03~~ 39-02-03
Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-03-06. Steering and suspension.

1. A special motor vehicle shall have no parts extending below the wheel rims in their lowest position, excepting tires and electric grounding devices designed for the purpose.
2. The steering system shall remain unobstructed when turned from lock to lock.
3. The steering wheel shall have not less than two turns nor more than six turns when turning the road wheels from lock to lock.
4. While the vehicle is in a sharp turn at a speed between five and fifteen miles [8.05 and 24.14 kilometers] per hour, release of the steering wheel shall result in a distinct tendency for the vehicle to increase its turning radius.
5. No special motor vehicle shall be constructed or loaded so that the weight on the wheels of any axle is less than thirty percent of the gross weight of the vehicle.
6. Special vehicles shall be equipped with a damping device at each wheel location providing a minimum relative motion between the unsprung axle and wheel and the chassis body of plus and minus two inches [5.08 centimeters]. When each corner of the vehicle is depressed and released the damping device shall stop vertical body motion within two inches [5.08 centimeters].

General Authority: NDCC ~~39-23-03~~ 39-02-03
Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-03-07. Tires. The front tires on special motor vehicles must measure a minimum of sixty percent of the tread width of the rear tires.

General Authority: NDCC ~~39-23-03~~ 39-02-03
Law Implemented: NDCC ~~39-23-03~~ 39-02-03

52-04-04-01. Horn. Every special vehicle shall be equipped with a horn that is electrically operated and that will emit a minimum sound level of eight-five decibels measured at a distance of two hundred feet [60.96 meters] directly in front of the vehicle under clear weather conditions. The switch used to actuate the horn shall be easily accessible to the driver when operating the vehicle.

General Authority: NDCC ~~39-23-03~~ 39-02-03
Law Implemented: NDCC ~~39-23-03~~ 39-02-03

ARTICLE 52-06

TRANSPORT OF HAZARDOUS MATERIALS

[Repealed as the result of S.L. 1983, ch. 447, § 1]

TITLE 61
Pharmacy, Board of

AUGUST 1983

61-02-01-02. Application for permit. Applications for permits and renewal of permits to conduct a pharmacy or drugstore shall be made in writing on such form or forms as the board may from time to time prescribe, and shall set forth information required by the board to enable it to determine if the pharmacy or drugstore will be conducted in full compliance with existing laws and with regulations established thereunder by the board of pharmacy. This information shall include:

1. Name and address of proposed pharmacy.
 2. Name of current owner, names of all partners if applicant is a partnership, and names of corporate officers if applicant is a corporation.
 3. If applicant is a corporation, evidence that a majority of the stock is owned by registered pharmacists.
 4. Names of registered pharmacists employed.
 5. Name of pharmacist in charge.
 6. Information showing that adequate technical equipment is maintained.
2. Name of current owner.
 3. If applicant is a sole proprietor, evidence that owner is a registered pharmacist in good standing.
 4. If applicant is a partnership, evidence that each active partner is a registered pharmacist in good standing, names of all partners and ownership interests of each, and copy of partnership agreement.

5. If applicant is a corporation, names of corporate officers, list of shareholders and shares of stock held by each, affidavit of stock ownership showing that a majority of the stock is owned by registered pharmacists in good standing, actively and regularly employed in and responsible for the management, supervision, and operation of applicant pharmacy, copies where applicable of agreement to form corporation, articles of incorporation, certificate of incorporation, bylaws, employment agreements, financial records as they may pertain to stock ownership requirements, and any other corporate documents relating to ownership or control of applicant pharmacy or corporation, or both.
6. Leases on space to be occupied by applicant or permitholder.
7. Blueprints or drawings of floor plans and physical layout of pharmacy and space to be occupied by applicant.
8. Franchise or license agreements where applicable.
9. Names of registered pharmacists employed.
10. Name of pharmacist in charge.
11. Information showing that adequate technical equipment is maintained.

Documents to be provided herein shall include all changes and amendments. All changes and amendments in documents previously furnished to the board shall be promptly submitted to the board. An application for a renewal of a permit need not include documents previously furnished to the board except where the facts, information, or documents have been changed or amended and not previously furnished to the board. The board shall have the right to require that an applicant or permitholder furnish to the board current documents required hereunder, including all changes or amendments, at any time.

History: Amended effective August 1, 1983.

General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35

Law Implemented: NDCC 28-32-03, 43-15-10(9), 43-15-10(12), 43-15-10(14), 43-15-34, 43-15-35

61-02-01-03. Equipment required. The minimum of technical equipment to be considered as adequate shall include:

- 1- Poison cabinet, narcotic cabinet, and refrigerated cabinet (if biologicals are carried in stock)-
- 2- Two scales or balances for bulk and medium weighing, at least one of which must be sensitive to one-half grain (32.40 milligrams)-

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.
 4. Graduates- at least eight, 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, at least two, assorted sizes; Wedgewood, at least three assorted sizes.
 6. Spatulas- steel, at least three assorted sizes; nonmetallic, at least two assorted sizes.
 7. Funnels- glass, at least three assorted sizes.
 8. Stirring rods- glass or rubber, at least two.
 9. Test tubes- any sizes, at least three.
 10. Pill tile- glass or porcelain, one.
 11. Apparatus suitable for heating test tubes, evaporating dishes, water baths, etc.
 12. Evaporating dish, percolator, sieve. At least one of each.
 13. Narcotic and poison record book and suitable prescription files.
 14. The latest edition of the United State Pharmacopoeia and National Formulary.
 15. A reasonable amount of consumable material, corks, filter paper, powder papers, litmus paper, empty capsules, ointment jars, bottles, pill and powder boxes, labels, and distilled water.
1. Suitable storage facilities.
 2. Two scales or balances for bulk and medium weighing, at least one of which must be sensitive to one-half grain [32.40 milligrams].
 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.

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.
10. Suitable heating apparatus.
11. Poison record book and suitable prescription files.
12. The latest edition of the United States Pharmacopoeia and National Formulary.
13. 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.

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.

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

61-02-02-01. Building standards for pharmacies. Any new pharmacy, or any existing pharmacy which is being remodeled, except in the cases of institutional practice, must comply with the following provisions:

1. Approval of plans. The prescription area, merchandising area, waiting area, storeroom, restroom, and all partitions, doors, windows, and fixtures shall be indicated on floor plans showing appropriate elevations submitted to the board at the time the application for a new pharmacy is filed, or prior to remodeling. Such plans shall be submitted to the board prior to proceeding with the new construction. Before a pharmacy permit is issued, the plans submitted must meet the approval of the board.

2. Minimum area of the prescription area. The minimum area of the prescription area, including enclosed storerooms, shall be not less than one hundred fifty square feet [13.94 square meters], but in all cases shall be large enough to carry out efficiently the elements of the practice of pharmacy at the level of activity of that operation. All of the allotted square footage space, including adequate shelving, shall lend itself to efficient pharmaceutical practice so as to permit free movement and visual surveillance. Such area shall not include waiting counters or display space attached to waiting counters. Minimum size of the prescription area. The minimum size of the prescription area, including adjacent drug storage areas shall be not less than five hundred square feet [46.45 square meters], with an additional two hundred fifty square feet [23.23 square meters], to be used but not restricted to prescription receiving, patient counseling, checkout, and entrance area, but in all cases shall be large enough to carry out efficiently the elements of the practice of pharmacy at the level of activity of that operation. All of the allotted square footage space, including adequate shelving, shall lend itself to efficient pharmaceutical practice so as to permit free movement and visual surveillance.
3. Prescription compounding counter. There shall be a prescription compounding counter which shall provide a minimum of sixteen square feet [1.49 square meters] of unobstructed working space for one pharmacist, and a minimum of twenty-four square feet [2.23 square meters] of unobstructed working space where two or more pharmacists are on duty at any one time.

The floor area to be occupied by the dispensing pharmacists shall extend the full length of the prescription compounding counter, and shall be clear and unobstructed for a minimum distance of thirty inches [76.2 centimeters] from the counter.
4. Prescription area. The prescription area shall be separated from other areas in such a manner that prescription or nonproprietary drugs or devices are inaccessible to the reach of any unauthorized person.
5. Light and ventilation. The prescription area and all storerooms shall be well-lighted, ventilated, and kept free of obnoxious odors.
6. Refrigerator. The restricted area shall contain a refrigerator for its exclusive use.
7. Change in location of a pharmacy. Before a licensed pharmacy changes the location of its business, or its physical dimensions or elements of physical security, it shall first

submit the changes to the board for its approval that the changes do conform with all rules of the board.

8. Storage of other merchandise - telephone. The prescription department shall not be used for storage of merchandise other than that used in the preparation or dispensing of medical needs. If such stored material is present, such area shall not be included as part of the prescription department. A telephone shall be immediately accessible in the prescription area, and the telephone number shall coincide with the telephone number on prescription labels.

History: Amended effective August 1, 1983.

General Authority: NDCC ~~43-15-10(11)~~ 28-32-02, 43-15-10(9),
43-15-10(11), 43-15-10(12), 43-15-10(14)

Law Implemented: NDCC ~~43-15-10(11)~~ 28-32-03, 43-15-10(9),
43-15-10(11), 43-15-10(12), 43-15-10(14)

STAFF COMMENT: Chapters 61-02-06 and 61-02-07 contain all new material but are not underscored so as to improve readability.

CHAPTER 61-02-06 COMPUTER PHARMACY REGULATIONS

Section	
61-02-06-01	Input of Drug Information Into Electronic Data Processing Equipment to be by Pharmacist or Under the Supervision of a Pharmacist
61-02-06-02	Requirements for Storage and Retrieval of Prescription Information
61-02-06-03	Original Prescription Shall be Retained on File

61-02-06-01. Input of drug information into electronic data processing equipment to be by pharmacist or under the supervision of a pharmacist. When electronic data processing equipment is employed by a pharmacy, input of drug information shall be performed only by a pharmacist or under the immediate and personal supervision of a pharmacist. If orders are entered by other personnel the pharmacist must certify the accuracy of the information entered and verify the prescription order prior to the dispensing of the medication. The identity of the pharmacist must be retained in the record.

History: Effective August 1, 1983.

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

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

61-02-06-02. Requirements for storage and retrieval of prescription information. Electronic data processing equipment, when used to store prescription information, shall meet the following requirements:

1. Guarantee the confidentiality of the information contained in the data bank.
2. A computerized system must provide on line retrieval via catho ray tube or hard-copy printout of original prescription order information for those prescription orders which are currently authorized for refilling.
3. Be capable of producing a hard-copy daily summary of controlled substance transactions.
4. Be capable of recording and carrying in the record all dates of refills of any prescription and the initials of the pharmacist.
5. Be capable of producing a patient profile indicating all drugs being taken and the date of refills of these prescriptions.
6. Be capable of being reconstructed in the event of a computer malfunction or accident resulting in destruction of the data bank.

History: Effective August 1, 1983.

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

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

61-02-06-03. Original prescription shall be retained on file. In all cases where electronic data processing equipment is used, the original prescription shall be retained on file according to law to assure access to the information contained on the prescription in the event of a computer breakdown.

History: Effective August 1, 1983.

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

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

CHAPTER 61-02-07 CLERICAL PERSONNEL

Section
61-02-07-01

Duties Performed by Clerical Personnel

61-02-07-01. Duties performed by clerical personnel. Clerical personnel as permitted in the prescription area by section 61-02-03-01 may perform clerical functions related to labeling, patient profile, or computer processes, all of which must be verified, reviewed, and checked by a pharmacist prior to delivery to a patient; and other duties not related to compounding or preparing a prescription in its final form.

History: Effective August 1, 1983.

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

Law Implemented: NDCC 28-32-03, 43-15-10(9), 43-15-10(12), 43-15-10(14)

61-03-01-03. Ratings required. Applications for registration by examination will be required to obtain an average rate of seventy-five percent and not less than seventy-five percent in practical work oral examination/practical laboratory and written practice of pharmacy, nor less than sixty percent in any of the following branches: pharmacy, chemistry, pharmacology, pharmaceutical and chemical problems, and oral examinations mathematics, and a federal drug law examination as may be required by the board.

History: Amended effective August 1, 1983.

General Authority: NDCC 28-32-02, 43-15-10(3), 43-15-10(12), 43-15-10(14), 43-15-19

Law Implemented: NDCC 28-32-03, 43-15-10(3), 43-15-10(12), 43-15-10(14), 43-15-19

61-03-01-08. Foreign graduates. Any applicant who is a graduate of a school or college of pharmacy located outside the United States, which has not been recognized and approved by the board, but who is otherwise qualified to apply for a license to practice pharmacy in this state, shall be deemed to have satisfied the requirements of subsection 3 of North Dakota Century Code section 43-15-15 by verification to the board of the applicant's academic record and the applicant's graduation and by meeting such other requirements as this board may establish from time to time. Each such applicant shall have successfully passed the foreign pharmacy equivalency examination (which examination is hereby recognized and approved by the board) given by the foreign pharmacy graduate examination commission and demonstrated proficiency in English by passing the test of English as a foreign language (which examination is hereby recognized and approved by the board) given by the educational testing service as a prerequisite to taking the licensure examination provided for in North Dakota Century Code section 43-15-19.

History: Effective August 1, 1983.

General Authority: NDCC 28-32-02, 43-15-10(2), 43-15-10(3), 43-15-10(12), 43-15-10(14), 43-15-15(4)

Law Implemented: NDCC 28-32-03, 43-15-10(2), 43-15-10(3), 43-15-10(12), 43-15-10(14), 43-15-15(4)

STAFF COMMENT: Chapters 61-03-02, 61-03-03, 61-04-02, and Article 61-05 contain all new material but are not underscored so as to improve readability.

**CHAPTER 61-03-02
CONSULTING PHARMACIST REGULATIONS FOR
LONG-TERM CARE FACILITIES
(SKILLED, INTERMEDIATE, AND BASIC CARE)**

Section	
61-03-02-01	Definitions
61-03-01-02	Absence of Provider or Consulting Pharmacist
61-03-02-03	Physical Requirements of Provider Pharmacy Licensed on Premises or Other Pharmacy
61-03-02-04	Distribution and Control

61-03-02-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Consulting pharmacist" means a pharmacist in a long-term care facility, who:
 - a. Establishes the procedures and rules for distribution and storage of drugs;
 - b. Supervises the distribution and storage of drugs;
 - c. Visits the facility on a regularly scheduled basis;
 - d. Monitors the therapeutic response and utilization of all medications prescribed for the patients, utilizing as guidelines the indicators of the health care financing administration;
 - e. Provides regular pharmacy educational opportunities to the institution.
2. "Provider pharmacist" means a pharmacist who supplies medication to a long-term care facility and maintains separate pharmacy patient profiles from the facility.

History: Effective August 1, 1983.

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

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

61-03-02-02. Absence of provider or consulting pharmacist.

1. General. During such time at the long-term care facility that the pharmacist is not available, arrangements shall be made in advance by the consulting and provider pharmacist for provision of drugs to the staff of the institutional facility by use of an emergency medication kit located at the facility.
2. Emergency medication kit.
 - a. Emergency medications defined. Emergency medications are those medications which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk of harm to patients because of delay resulting from obtaining such medications from such other source.
 - b. Supply pharmacist. All emergency medications shall be provided by a provider pharmacist.
 - c. Medications included. The consulting pharmacist and the physicians representing the facility shall jointly determine and prepare a list of medications, by identity and quantity, to be included in such emergency supply. Such list of medications shall be reviewed quarterly by the pharmaceutical services committee. Only prepackaged drugs shall be available therein, in amounts sufficient for immediate therapeutic requirements.
 - d. Storage. The emergency medication kit shall be stored in areas suitable to prevent unauthorized access and to ensure a proper environment for preservation of the medications within them, as required in official compendia.
 - e. Labeling - Exterior. The exterior of an emergency kit shall be labeled to clearly and unmistakably indicate that it is an emergency drug kit and it is for use in emergencies only; such label shall also contain a listing of the name, strength, and quantity of the drugs contained therein and an expiration date.
 - f. Labeling - Interior. All drugs contained in the emergency medication kit shall be labeled in accordance with subsection 7 of North Dakota Century Code section 43-15-01.
 - g. Removal of medication. Medications shall be removed from the emergency medication kit only pursuant to a valid prescriber order and by authorized personnel, or by the provider pharmacist.
 - h. Notifications. Whenever an emergency medication kit is opened or has expired, the provider pharmacist shall be

notified and the pharmacist shall replace the medication within a reasonable time so as to prevent risk of harm to the patients.

- i. Expiration date. The expiration date of an emergency kit shall be the earliest expiration date on any drug supplied in the kit. Upon the occurrence of the expiration date, the provider pharmacist shall open the kit and replace expired drugs.
- j. Procedures. The consulting pharmacist shall, in communication with the appropriate committee, develop and implement written policies and procedures to ensure compliance.

History: Effective August 1, 1983.

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

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

61-03-02-03. Physical requirements of provider pharmacy licensed on premises or other pharmacy.

- 1. Area. The pharmacy serving a long-term care facility as an insitutional drug outlet shall have floor space allocated to it to ensure that drugs are prepared in sanitary, well-lighted and enclosed places, and meet the other requirements of this section. Floor space shall be allotted to conduct the activities involved with the scope of pharmaceutical services provided.
- 2. Equipment and materials. The pharmacy serving a long-term care facility as an institutional drug outlet shall have equipment and physical facilities for proper compounding, dispensing, and storage for drugs, including parenteral preparations. As a minimum, the pharmacy shall have the following:
 - a. Minimum equipment listed in section 61-02-01-03.
 - b. Drugs to meet the needs of the patients of the long-term care facility.
 - c. A pharmacy policy and procedures manual.
 - d. Pharmaceutical reference books, which shall include one recent edition (not over five years from publication date) from at least two of the following categories, one of which must include dispensing information:
 - (1) Drug dispensing information from one of the following:

- (a) United States pharmacopoeia dispensing information.
- (b) Facts and comparisons.
- (c) Hospital formulary.

(2) Categories to choose from:

Drug interactions - poison and antidote information - chemistry toxicology - pharmacology - bacteriology - sterilization and disinfection - patient counseling - rational therapy - parenteral admixtures.

3. Drug room. The drug room of a long-term care facility may utilize the technical equipment and other requirements of a licensed pharmacy for compliance.

4. Storage.

- a. All drugs shall be stored in designated areas within the pharmacy to ensure proper sanitation, temperature, light, ventilation, moisture control, and security.

Unattended areas: In the absence of a pharmacist, and whenever any area of a pharmacy serving a long-term facility as an institutional drug outlet is not under the personal and direct supervision of a pharmacist, such areas shall be locked. All areas occupied by a pharmacy serving a long-term care facility as an institutional drug outlet shall be capable of being locked by key or combination, so as to prevent access by unauthorized personnel.

- b. When drugs to be dispensed are stored in a long-term facility drug room, the consulting pharmacist shall verify that space will be available at each unit for storage, safeguarding, and preparation of medication doses for administration and shall include provision of at least the following:

- (1) A locked drug cabinet or room shall be equipped to ensure physical separation of individual patient prescribed medications. Medications may be stored in these secured individual patient storage areas, or secured portable storage carts providing separate compartments for individual patients may be used.

- (2) A container or compartment which is capable of securing controlled substances with a lock or other safeguard system shall be permanently attached to storage carts or medication rooms.

History: Effective August 1, 1983.

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

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

61-03-02-04. Distribution and control.

1. General. The consulting pharmacist services shall establish written procedures for the safe and efficient distribution of pharmaceutical products; which shall be on hand for inspections.
2. Responsibility of consulting pharmacist. The consulting pharmacist shall be responsible for the safe and efficient distribution of, control of, and accountability of medications including:
 - a. Establishment of specifications for the storage, distribution, and procurement of medications and biologicals, subject to approval of the pharmaceutical services committee of the long-term care facility.
 - b. Participation in those aspects of the long-term care patient evaluation program which relate to drug utilization and effectiveness.
 - c. Providing information on a twenty-four-hour basis for assistance in emergency situations.
 - d. Assuring all medication shall be stored in a locked area or locked cart.
 - e. Review, evaluate, and make recommendations monthly regarding drug utilization to the pharmaceutical services committee.
3. Responsibility of provider pharmacy. The pharmacy serving the long-term care facility as an institutional drug outlet shall be responsible for:
 - a. The emergency medication kit.
 - b. Medications for the long-term patient.
 - c. Records of all transactions of the institutional pharmacy as may be required by law, state and federal, and to maintain accurate control over and accountability for all pharmaceutical materials.
4. Discontinued drugs.
 - a. The consulting pharmacist shall develop and implement policies and procedures to ensure that all discontinued or outdated drugs or containers with worn, illegible or

missing labels are destroyed or disposed of so as to render them unusable. Controlled and noncontrolled drugs shall be destroyed by the consulting pharmacist subject to guidelines and approval of the state board of pharmacy.

- b. All drugs for destruction be they controlled or noncontrolled shall be destroyed at the specific institution.
5. Practitioner's orders. A pharmacist shall review the medication order, or a copy thereof.
- a. Authorization. Any licensed practitioner authorized by law to prescribe drugs within the scope of the practitioner's license may prescribe for the practitioner's patient in a long-term facility.
 - b. Abbreviations. Orders employing abbreviations or chemical symbols will be only those which are customarily used in the practice of medicine and pharmacy or those on a list of approved abbreviations developed by the pharmaceutical services committee of the facility.
 - c. Requirements. Orders for drugs for use by patients of the facility shall, at a minimum, contain patient name, drug name and strength, directions for use, date of order, and name of prescriber. On facility reorder form, include all of the above except for directions.
 - d. Emergency medication order. In cases where an emergency medication order is written when pharmacy services are unavailable, the medication order shall be reviewed by the pharmacist as soon as reasonably possible.
 - e. Verification. Verification of the accuracy of any medication dispensed and of any transcriptions made of that order shall be done by handwritten initials of the pharmacist so certifying.
 - f. Duration. The prescribed medications should be for a specific time.
6. Controlled drug accountability. The consulting pharmacist shall establish and implement effective procedures and assure that adequate records be maintained regarding use and accountability of controlled substances which meet federal and state laws and regulations, and which shall at least specify the following:
- a. Name of drug.
 - b. Dose.

- c. Prescriber.
 - d. Patient.
 - e. Date and time of administration.
 - f. Person administering the drug.
7. Recall. The consulting pharmacist shall develop and implement a recall procedure that can readily be activated to assure the medical staff of the facility, the provider pharmacy, and the consulting pharmacist that all drugs included in the recall, located within the facility, are returned to the provider pharmacy for proper disposition.
8. Records and reports. The consulting pharmacist shall supervise the maintenance of such records and reports as are required to ensure patient health, safety, and welfare and, at a minimum, the following:
- a. Pharmacy patient profiles and medication administration records.
 - b. Reports of suspected adverse drug reactions.
 - c. Inspections of drug storage areas.
 - d. Controlled drug and accountability reports, including board of pharmacy destroyed medication forms for controlled and noncontrolled medications.
 - e. Such other and further records and reports as may be required by law and this chapter.
9. Labeling.
- a. All stock drugs intended for use within the facility shall be in appropriate containers and adequately labeled as to identify at a minimum: brand name or generic name and manufacturer, and strength. An internal code which centrally references manufacturer and lot number can be utilized.
 - b. Whenever any drugs are added to parenteral solutions, whether within or outside the direct and personal supervision of a pharmacist, such admixtures shall be labeled with a distinctive supplementary label indicating the name and amount of the drug added, date and time of addition, expiration date, administration time and infusion rate when applicable, and name or initials of person so adding. This excludes any single dose medication prepared and totally administered immediately.

History: Effective August 1, 1983.

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

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

**CHAPTER 61-03-03
PRECEPTOR/INTERN - INTERNSHIP/EXTERNSHIP/CLERKSHIP**

Section

61-03-03-01	Definitions
61-03-03-02	Internship/Externship/Clerkship Responsibilities
61-03-03-03	Registered Pharmacist/Preceptor Responsibilities

61-03-03-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Approved internship programs" means pharmacy practice experience, apart from college, school, or university administered programs, that is gained after successful completion of one academic year or graduation from an accredited college of pharmacy or during a period when a pharmacy student is either not enrolled or enrolled in less than a full-time program of study.
2. "Approved pharmacy externship program/approved pharmacy clerkship program" means structured courses in the pharmacy undergraduate curriculum that are administered by a college of pharmacy, that is accredited by the American council on pharmaceutical education, and approved by the state board of pharmacy, where the college is located.
3. "Concurrent time" means clock hours of pharmacy practice experience gained during the fourth and fifth years of the standard pharmacy undergraduate curriculum which is gained while enrolled as a full-time student in either an approved pharmacy externship program, hereafter referred to as externship program or an approved clerkship program, hereafter referred to as clerkship program.
4. "Full-time program of study" is one where a student is enrolled in twelve credit hours or more per academic quarter or semester credit hour equivalent. For five week summer sessions a full-time student is one enrolled in six quarter credit hours or more per session or the semester credit hour equivalent.
5. "Hours" means the standard sixty minutes division of time.

6. "Intern" means a person registered by the state board of pharmacy for the purpose of receiving instruction in the practice of pharmacy from a preceptor. The state board of pharmacy may register as an intern any candidate who has successfully completed no less than one academic year of full-time college (university) enrollment and has satisfied the state board of pharmacy that the candidate is of good moral character.
7. "Location" means any establishment other than a preceptor pharmacy approved by the state board of pharmacy.
8. "Preceptor" means a person registered as a pharmacist and in good standing with the state board of pharmacy, or a duly constituted licensing agency, in the state where the person's professional practice is being conducted.
9. "Preceptor pharmacy" means the pharmacy where the preceptor is practicing the profession. This pharmacy must have a clear record with respect to adherence to federal, state, and municipal laws governing any phase of activity in which it is engaged and must be licensed by the state board of pharmacy, or other duly authorized licensing agency, where located.
10. "Supervision" means that in the preceptor pharmacy or other location where the intern is being taught, a registered pharmacist designated as preceptor or another registered pharmacist shall be in continuous personal contact with and actually giving instructions to the intern during all professional activities of the entire period of internship/externship/clerkship.

History: Effective August 1, 1983.

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

Law Implemented: NDCC 28-32-03, 43-15-10(12), 43-15-10(14)

61-03-03-02. Internship/externship/clerkship responsibilities.

1. Application for internship registration.
 - a. A college or university student, having met the requirement of an intern, prior to entering into internship, externship, clerkship programs, must be registered as an intern by the state board of pharmacy.
 - b. Upon receipt of the completed, "Application for Internship Registration" form, the state board of pharmacy will issue to the intern a wallet size identification card and instruct the intern that this card must be carried on the intern's person at all times while on duty in the preceptor pharmacy or other location of instruction.

2. Changes in internship program sites. An intern must notify the board of pharmacy at least five days in advance of any changes in internship program locations. In this notice, the new internship program site must be identified by pharmacy name, address, and registered pharmacist/preceptor who will supervise the learning activities of the intern.
3. Internship time requirement.
 - a. In addition to other requirements, fifteen hundred clock hours of pharmacy practice experience must be certified to the state board of pharmacy, to be eligible for registration as a pharmacist.
 - b. Of this total, a maximum of eight hundred clock hours of experience may be concurrent time. The maximum clock hours allowed for the externship program is four hundred hours and the maximum hours for the clerkship program is four hundred hours.
 - c. No intern will receive credit for less than twenty-four hours nor more than forty-eight hours of internship experience in any given week.
 - d. No credit will be allowed for experience gained while an intern is enrolled as a full-time student. This restriction is also applied to experience gained during periods when the university or college is not in session, e.g., weekends, quarter breaks, and holiday recesses.
4. Internship reports and records.
 - a. During the internship, externship, and clerkship programs, the intern will maintain a weekly record of activities in a form designated by the state board of pharmacy.
 - b. Progress report forms, provided by the board of pharmacy, must be completed by the intern and submitted to the secretary of the state board of pharmacy at the completion of each calendar quarter of internship program experience or termination of internship experience and at the completion of each externship program experience.
 - c. Affidavits, provided by the state board of pharmacy, must be completed and notarized by the intern and submitted to the secretary of the state board of pharmacy at the completion of each calendar quarter of internship program experience or termination of internship experience and at the completion of each externship program experience.
 - d. The progress reports and notarized affidavits do not need completion during the clerkship program by the intern.

History: Effective August 1, 1983.

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

Law Implemented: NDCC 28-32-03, 43-15-10(12), 43-15-10(14)

61-03-03-03. Registered pharmacist/preceptor responsibilities.

1. Registered pharmacist/preceptor.

- a. A preceptor is an "educator". As such, the registered pharmacist/preceptor must possess a desire to teach and be willing and able to devote an appropriate amount of time to the instructional process.
- b. The designated registered pharmacist/preceptor, or another registered pharmacist delegated this responsibility, shall be physically present within the preceptor pharmacy or other location whenever an intern is on duty.
- c. After considering the limitations of the preceptor pharmacy or other location the pharmacist/preceptor shall develop learning objectives in all possible areas of pharmacy practice including medication dispensing, medication compounding, pharmacy law and ethics, patient consultation, nonprescription drugs and prescription accessories, hospital practice, pharmacy management, nursing home service, industrial practice and drug information retrieval. The registered pharmacist/preceptor, after consultation with the intern, shall develop a schedule of activities that will facilitate accomplishment of these learning objectives.

2. Qualifications of the preceptor pharmacy.

- a. A preceptor pharmacy must certify, if requested by the board of pharmacy, that a minimum of five thousand medication orders are being filled during each calendar year.
- b. The preceptor pharmacy must receive a satisfactory rating as defined in the board of pharmacy inspection and rating report.
- c. The pharmacy must be operated in a professional manner. "In a professional manner", as used in this section, means being operated within federal, state, and local laws.
- d. The preceptor pharmacy must routinely provide verbal patient medication counseling which shall include instructions regarding the name and intended use of medication, preventable side effects, the dosage schedule and any special administration techniques.

- e. The preceptor pharmacy shall maintain a patient profile system.
- f. The preceptor pharmacy must be licensed by the state board of pharmacy in the state where located.

History: Effective August 1, 1983.

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

Law Implemented: NDCC 28-32-03, 43-15-10(12), 43-15-10(14)

CHAPTER 61-04-02 PHYSICIAN EXEMPTION

Section
61-04-02-01 Physician Exemption

61-04-02-01. Physician exemption. The exemption contained in subsection 1 of North Dakota Century Code section 43-15-02 for a duly licensed practitioner of medicine supplying the practitioner's own patients with such remedies as the practitioner may desire shall exempt such practitioners who dispense remedies as an incident to the practice of their profession for a patient's immediate needs, which would be those drugs required for a seventy-two-hour time period, but shall not exempt such a practitioner who regularly engages in dispensing such remedies to the practitioner's patients for which such patients are charged either separately or together with charges for other professional services, from recordkeeping, dispensing, labeling, counseling as required by North Dakota Century Code section 43-15-31.2, patient profile system as required by North Dakota Century Code section 43-15-31.1, and all other requirements of the practice of pharmacy as set forth in this chapter or by federal and state laws as they pertain to the regulation of the practice of pharmacy. Documented charts shall meet the requirements of the patient profile system.

History: Effective August 1, 1983.

General Authority: NDCC 19-02.1-02(2), 19-02.1-14, 28-32-02, 43-15-10(12), 43-15-10(14)

Law Implemented: NDCC 19-02.1-02(2), 19-02.1-14, 28-32-03, 43-15-10(12), 43-15-10(14)

ARTICLE 61-05

RADIOPHARMACEUTICAL SERVICES

Chapter
61-05-01 Radiopharmaceutical Services

CHAPTER 61-05-01
RADIOPHARMACEUTICAL SERVICES

Section	
61-05-01-01	Purpose and Scope
61-05-01-02	Definitions
61-05-01-03	General Requirements for Pharmacies Providing Radiopharmaceutical Services
61-05-01-04	General Requirements for Pharmacists to Manage a Pharmacy Providing Radiopharmaceutical Services
61-05-01-05	Library
61-05-01-06	Minimum Equipment Requirements

61-05-01-01. Purpose and scope. It is unlawful to receive, possess, or transfer radioactive drugs, except in accordance with North Dakota Century Code chapter 43-15. It is also unlawful for any person to provide radiopharmaceutical services unless that person is a pharmacist or a person acting under the direct supervision of a pharmacist acting in accordance with North Dakota Century Code chapter 43-15 and state board of pharmacy regulations and regulations of the North Dakota department of health, with the exception of a medical practitioner for administration to the practitioner's patients. No person may receive, acquire, possess, use, transfer, or dispose of any radioactive material except in accordance with the conditions of any radioactive material license required by the North Dakota department of health pursuant to North Dakota Century Code chapters 23-20 and 23-20.1. The requirements of this chapter are in addition to, and not in substitution for, other applicable provisions of regulations of the state board of pharmacy and the North Dakota department of health.

History: Effective August 1, 1983.

General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(11),
43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

Law Implemented: NDCC 28-32-02, 43-15-10(9), 43-15-10(11),
43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

61-05-01-02. Definitions.

1. "Authentication of product history" includes identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical.
2. "Internal test assessment" includes conducting those tests of a quality assurance necessary to ensure the integrity of the test.

3. "Radiopharmaceutical quality assurance" includes the performance of appropriate chemical, biological, and physical tests on potential radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history, and the keeping of proper records.
4. "Radiopharmaceutical service" includes the compounding, dispensing, labeling, and delivery of radiopharmaceuticals; the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals; the maintenance of radiopharmaceutical quality assurance; the responsibility for advising, where necessary or where regulated, of therapeutic values, hazards, and use of radiopharmaceuticals; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of radiopharmaceuticals.

History: Effective August 1, 1983.

General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

Law Implemented: NDCC 28-32-02, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

61-05-01-03. General requirements for pharmacies providing radiopharmaceutical services.

1. A pharmacy providing radiopharmaceutical services shall only be managed by a qualified nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radioactive drugs shall be under the direct supervision of the nuclear pharmacist. The nuclear pharmacist is responsible for all operations of the licensed area and shall be in personal attendance at all times that the pharmacy is open for business. In emergency situations, in the pharmacist's absence, the pharmacist may designate one or more other qualified licensed professionals to have access to the licensed area. These individuals may obtain single doses of radiopharmaceuticals for the immediate emergency and must document such withdrawals in the control system.
2. Pharmacies providing radiopharmaceuticals shall have adequate space, commensurate with the scope of services required and provided, meeting minimal space requirements established for all pharmacies in the state. The area shall be separate from the pharmacy areas for nonradioactive drugs and shall be secured from unauthorized personnel. All pharmacies handling radiopharmaceuticals shall provide a radioactive storage and product decay area, occupying at least twenty-five square feet

[2.32 square meters] of space, separate from and exclusive of the hot laboratory, compounding, dispensing, quality assurance, and office area. A pharmacy handling radioactive drugs exclusively may be exempted from the general space requirements for pharmacies by obtaining a waiver from the state board of pharmacy. Detailed floor plans shall be submitted to the state board of pharmacy before approval of the license.

3. Pharmacies providing radiopharmaceutical services shall only dispense radiopharmaceuticals which comply with acceptable standards of radiopharmaceutical quality assurance.
4. Pharmacies providing radiopharmaceutical services shall maintain records of acquisition and disposition of all radioactive drugs.
5. Pharmacies providing radiopharmaceutical services shall comply with all applicable laws and regulations of federal and state agencies, including those laws and regulations governing nonradioactive drugs.
6. Radioactive drugs are to be dispensed only upon a prescription from a medical practitioner authorized to possess, use, and administer radiopharmaceuticals. A pharmacist providing radiopharmaceutical services may transfer to authorized persons radioactive materials not intended for drug use, in accordance with North Dakota rules and regulations pertaining to radiation control.
7. A prescription for a radiopharmaceutical shall be for an individual patient. A pharmacy may furnish radiopharmaceuticals for office use only to medical practitioners authorized to possess, use, and administer radiopharmaceuticals for an individual patient.
8. In addition to any labeling requirements of the state board of pharmacy for nonradioactive drugs, the immediate outer container of a radioactive drug to be dispensed shall also be labeled with: (a) the standard radiation symbol; (b) the words "Caution--Radioactive Material"; (c) the radionuclide; (d) the chemical form; (e) the amount of radioactive material contained, in millicuries or microcuries; (f) if a liquid, the volume in cubic centimeters; (g) the requested calibration time for the amount of radioactivity contained.
9. The immediate container shall be labeled with: (a) the standard radiation symbol; (b) the words "Caution--Radioactive Material"; (c) the name, address, and telephone number of the pharmacy; and (d) the prescription number.

10. The amount of radioactivity shall be determined by radiometric methods for each individual dose immediately prior to dispensing.
11. Pharmacies may redistribute national drug administration approved radioactive drugs if the pharmacy does not process the radioactive drugs in any manner nor violate the product packaging.

History: Effective August 1, 1983.

General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

Law Implemented: NDCC 28-32-02, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

61-05-01-04. General requirements for pharmacists to manage a pharmacy providing radiopharmaceutical services. A qualified nuclear pharmacist shall:

1. Meet minimal standards of training for medical uses of radioactive material.
2. Be a currently licensed pharmacist in this state.
3. Have received a minimum of ninety contact hours of didactic instruction in nuclear pharmacy from an accredited college of pharmacy.
4. Attain a minimum of one hundred sixty hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy providing nuclear pharmacy services, or in a structured clinical nuclear pharmacy training program in an accredited college of pharmacy.
5. Submit an affidavit of experience and training to the state board of pharmacy.

History: Effective August 1, 1983.

General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

Law Implemented: NDCC 28-32-02, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

61-05-01-05. Library. Each pharmacy providing radiopharmaceutical services shall have current editions or revisions of:

1. United States Pharmacopoeia, with supplements.
2. National Formulary, with supplements.

3. State laws and regulations relating to pharmacy.
4. State and federal regulations governing the use of applicable radioactive materials.
5. United States public health service, Radiological Health Handbook.
6. Nuclear Medicine--by Bland.
7. Medical Radiation Physical--by Hendree.
8. Medical Radiation Biology--by Pizzarello and Wetcofske.
9. P.D.R. for Radiology and Nuclear Medicine.
10. Principles of Radiosotope Methodology--by Chase and Rabinwotz.
11. Current issues of Journal of Nuclear Medicine.

The board of pharmacy recognizes that the library needed will depend on the type of radiopharmaceutical services offered. Variations in the required library may be granted by the board of pharmacy.

History: Effective August 1, 1983.

General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(11),
43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

Law Implemented: NDCC 28-32-02, 43-15-10(9), 43-15-10(11),
43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

61-05-01-06. Minimum equipment requirements. Each pharmacy providing radiopharmaceutical services shall have the following equipment:

1. Radiation laboratory monitor (a stationary one away from activity).
2. Gamma counter.
3. Portable ionization chamber (to determine contamination and other physic procedures).
4. Sufficient quantity of lead bricks, leaded glass of high density, and leaded syringe shields.
5. Refrigerator with freezer.
6. Class A prescription balance or balance of greater sensitivity.
7. Single channel scintillation counter.

8. Pyrogen oven.
9. Portable radiation survey meter capable of detecting 0.005 microcuries of the radionuclides in question.
10. Chromatographic equipment.
11. Fumer hood.
12. Chemical exhaust hood.
13. Electronic balance.
14. Lighted microscope.
15. Auto clave--for steam sterilization.
16. Dry heat oven (for heat sterilization and to dry glassware).
17. Hotplate.
18. Lead shielded water bath.
19. Glassware.
20. Other equipment necessary for radiopharmaceutical services provided as required by the board of pharmacy.

The board of pharmacy recognizes that the equipment needed will depend on the type of radiopharmaceutical services offered. Variations for required equipment may be granted by the board of pharmacy.

History: Effective August 1, 1983.

General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(11),
43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

Law Implemented: NDCC 28-32-02, 43-15-10(9), 43-15-10(11),
43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

TITLE 67

Public Instruction, Superintendent of

JANUARY 1984

67-02-01-01. Student teachers. A student teacher is one who teaches in a regular classroom situation as part of the requirements in professional preparation.

1. All college students in education shall have classroom related preprofessional experience prior to student teaching. This experience should be provided as early as possible.
2. The student teacher should be assigned by a college or university to a cooperating school on a full-time block. A full-time block is construed as a full day for nine consecutive weeks with exceptions documented. The student teacher shall be placed in a classroom where the cooperating teacher is regularly assigned.
3. In the event of an emergency, the student teacher may be used as a substitute teacher in the student teacher's regularly assigned classroom for a period of time not to exceed two consecutive days.
4. Student teachers shall be placed only in ~~accredited~~ approved schools.

History: Amended effective November 1, 1980; January 1, 1984.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67-02-07-04. Endorsements and restrictions. The North Dakota educator's professional certificate is issued to those who hold a bachelor's degree from an accredited college or university approved as a teacher training institution. This degree must include twenty semester hours or thirty quarter hours in education. The coursework in education must include successful student teaching. This certificate qualifies

the holder for regular classroom teaching or for functioning in specialized areas with the proper endorsements and restrictions as assigned. The endorsements are elementary, preschool or kindergarten, and secondary. The restrictions are psychology (master's degree with major in school psychology), speech therapy, mental retardation, deaf education, visually impaired, early childhood education preschool handicapped, and reserve officers' training corps. All other special education categories require regular elementary or secondary qualifications.

History: Amended effective November 1, 1980; August 1, 1981; January 1, 1984.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

TITLE 69
Public Service Commission

NOVEMBER 1983

69-05.3-01-01. Definitions.

1. "Emergency" means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal abandoned mine reclamation program procedures.
2. "Reclamation activities" means ~~restoration~~, reclamation, abatement, control, or prevention of adverse effects of mining.

History: Effective January 1, 1980; amended effective November 1, 1983.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-02

69-05.3-01-06. Affected lands - Right of entry - Notice. The commission shall give at least ~~thirty~~ five days' notice before entry upon property pursuant to North Dakota Century Code section 38-14.2-09.

History: Effective January 1, 1980; amended effective November 1, 1983.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-09

69-05.3-01-08. Entry for studies or exploration - Notice.

1. If the owner of the land to be entered under North Dakota Century Code section 38-14.2-08 will not provide consent to entry, the commission shall give notice in writing to the owner of its intent to enter for purposes of study and exploration to determine the existence of adverse effects of

past coal mining or noncoal mining practices which may be harmful to the public health, safety, or general welfare.

2. The notice shall be by mail to the owner, if known, and shall include a statement of the reasons why entry is believed necessary.
3. If the owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in the official newspaper of each county and in other daily newspapers of general circulation in each county wherein the land lies.
4. Notice shall be given at least ~~thirty~~ thirty five days before entry.
5. Entry required to investigate and explore reported emergency conditions will be governed by the provisions of subsection 3 of section 69-05.3-01-09.

History: Effective January 1, 1980; amended effective November 1, 1983.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-08

69-05.3-01-11. Land acquisition - Procedures.

1. An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained ~~from an independent professional appraiser by the commission~~ by the commission from an independent professional appraiser. The appraisal shall be acknowledged before a notary public or other officer authorized by law to administer oaths and shall state the fair market value of the land as adversely affected by past coal or noncoal mining and shall otherwise conform to generally accepted appraisal practices.
2. When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past coal or noncoal mining.
3. When necessary, land or interests in land may be acquired by condemnation pursuant to the procedures of North Dakota Century Code chapter 32-15 and other laws governing eminent domain. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interest in land from a willing seller.

4. The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [Pub. L. 91-646; 42 U.S.C. 4601 et seq.] shall be followed for all real property acquisitions and on relocation of persons, businesses, and farms.

History: Effective January 1, 1980; amended effective November 1, 1983.
General Authority: NDCC 38-14.2-03
Law Implemented: NDCC 38-14.2-10

69-05.3-01-12. Acceptance of gifts of land.

1. The commission may accept donations of title to land or interest in land that is necessary for reclamation activities.
2. A donation shall not be accepted if the terms and conditions of acceptance are inconsistent with the objectives or requirements of the abandoned mine reclamation program or North Dakota Century Code chapter 38-14.2.
3. Offers to make a gift of such land or interest in land shall be in writing and shall include:
 - a. A statement of the interest which is being offered.
 - b. A legal description of the land and a description of any improvements on it.
 - c. A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor.
 - d. A statement that:
 - (1) The offeror is the record owner of the interest being offered.
 - (2) The interest offered is free and clear of all encumbrances except as clearly stated in the offer.
 - (3) There are no adverse claims against the interest offered.
 - (4) There are no unredeemed tax deeds outstanding against the interest offered.
 - (5) There is no continuing responsibility for reclamation by an operator or permittee under North Dakota Century Code chapter

~~38-14.1~~ or other North Dakota reclamation laws.

e- An itemization of any unpaid taxes or assessments levied, assessed, or due which could operate as a lien on the interest offered.

3. Offers to make a gift of such land or interest in land shall be in writing and shall comply with the provisions of North Dakota Century Code section 1-08-04.

4. If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under North Dakota Century Code chapter 38-14.2." Title to donated land shall be in the name of the state of North Dakota.

History: Effective January 1, 1980; amended effective November 1, 1983.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-10

69-05.3-01-14. Disposition of ~~reclaimed~~ acquired lands.

1. Prior to the disposition of any land acquired under North Dakota Century Code section 38-14.2-10, the commission shall:
 - a. Publish a notice which describes the proposed disposition of the land in the official newspaper of each county and in other daily newspapers of general circulation in each county wherein the land lies once a week for four successive weeks.
 - (1) The notice shall provide at least thirty days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted.
 - (2) The notice shall also state that a public hearing will be held if requested by any person.
 - b. Hold a public hearing if requested as a result of the public notice.
 - (1) The commission may determine that a hearing is appropriate even if a request is not received.
 - (2) The hearing shall be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate.

- (3) The time and place of the hearing shall be advertised in the official newspaper in each county and in other daily newspapers of general circulation in each county wherein the land lies at least thirty days before the hearing.
 - (4) All comments received at the hearing shall be recorded.
- c. Make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, state, or federal laws or regulations which apply.
2. The commission may transfer, with the approval of the ~~regional~~ director of the office of surface mining reclamation and enforcement, United States department of the interior, the administrative responsibility for land acquired under North Dakota Century Code section 38-14.2-10 to any agency or political subdivision of the state of North Dakota, with or without cost to that agency or political subdivision. The agreement, including amendments, under which a transfer is made shall specify:
 - a. The purposes for which the land may be used; and
 - b. That the administrative responsibility for the land will revert to the commission if, at any time in the future, the land is not used for the purposes specified.
3. The commission may, with approval by the ~~regional~~ director of the office of surface mining reclamation and enforcement, United States department of the interior, transfer title to abandoned and unreclaimed land to the United States to be reclaimed and administered by the office of surface mining reclamation and enforcement.
 - a. The commission shall have a preference right to purchase such land from the office of surface mining reclamation and enforcement after reclamation is completed.
 - b. The price to be paid by the commission shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the commission.
4. The commission, with the approval of the ~~regional~~ director of the office of surface mining reclamation and enforcement, United States department of the interior, may sell land acquired under North Dakota Century Code section 38-14.2-10 by public sale if such land is suitable for industrial, commercial, residential, or recreational development and if

such development is consistent with local or state land use plans, if any, for the area in which the land is located.

5. Land may be sold by public sale by the commission pursuant to North Dakota Century Code section 38-14.2-12 only if it is found that retention by the commission, or disposal under other subsections of this section, is not in the public interest.
6. All moneys received from disposal of land under this section shall be deposited in the state abandoned mine reclamation fund.

History: Effective January 1, 1980; amended effective November 1, 1983.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 39-14.2-12, 38-14.2-13

69-05.3-01-15. Appraisals.

1. An appraisal of the fair market value of land to be reclaimed which may be subject to a lien shall be obtained by the commission from an independent professional appraiser. The appraisal shall be acknowledged before a notary public or other officer authorized by law to administer oaths and shall conform to generally accepted appraisal practices. The appraisal shall be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. If work must start because of an emergency, the appraisal shall be completed at the earliest practical time and before related nonemergency work is commenced. The appraisal shall state the fair market value of the land as adversely affected by past coal or noncoal mining.
2. An appraisal of the fair market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall be obtained in accordance with subsection 1 and shall state the market value of the land as reclaimed.
3. ~~For reclamation on private lands, the~~ The landowner, if known, shall be provided with a statement of the increase in market value, an itemized statement of reclamation expenses, and notice that a lien ~~will or will not be~~ is being or has been filed in accordance with North Dakota Century Code section 38-14.2-14.
4. Appraisals for ~~privately owned~~ land which fall under subdivisions a, b, and c of subsection 1 ~~and subsection 2~~ of North Dakota Century Code section 38-14.2-14 may be obtained from either an independent or staff professional appraiser.

History: Effective January 1, 1980; amended effective November 1, 1983.
General Authority: NDCC 38-14.2-03
Law Implemented: NDCC 38-14.2-07, 38-14.2-14

TITLE 75
Department of Human Services

OCTOBER 1983

STAFF COMMENT: Chapter 75-04-05 contains all new material but is not underscored so as to improve readability.

AGENCY SYNOPSIS: Chapter 75-04-05. Reimbursement for Providers of Services to Developmentally Disabled Persons.

75-04-05-01. Definitions. Defines 23 terms used in the proposed new chapter.

75-04-05-02. Eligibility for reimbursement. States the basic requirements for providers who would seek reimbursement for services to developmentally disabled persons.

75-04-05-03. Startup costs. Provides a mechanism to pay startup costs for initial contract providers.

75-04-05-04. Application for advancement of startup costs. Establishes provisions which initial contract provider who seeks startup costs must meet.

75-04-05-05. Allowable startup costs. Requires department to determine which reported costs are essential to the startup.

75-04-05-06. Reimbursement requirements - Startup costs. Includes the startup costs in the payment rate for the first year of a facility's operation.

75-04-05-07. Grants-in-aid. Authorizes the department to make grants to providers to pay startup costs in certain circumstances.

75-04-05-08. Financial reporting requirements. Establishes recordkeeping, accounting, reporting, and auditing requirements with respect to providers who seek reimbursement.

- 75-04-05-09. Rate payments. In 18 subsections, identifies various factors which affect the rate payment and establishes an adjustment and appeal procedure.
- 75-04-05-10. Reimbursement. In three subsections, establishes a mechanism by which a final rate is determined, establishes a mechanism for making settlements, and sets certain limitations.
- 75-04-05-11. Cost report. Establishes specific requirements for the contents of the facility's report of its cost.
- 75-04-05-12. Adjustment to cost and cost limitation. In seven subsections, explains the adjustments the department will make to reported costs in order to determine those costs subject to reimbursement.
- 75-04-05-13. Nonallowable costs. Specifies 47 areas or types of costs which will not be reimbursed.
- 75-04-05-14. Profit motivated entities - Return on investment. Authorizes the reimbursement rate to include a return of eight and one-half percent of net investment and fixed assets to profit motivated providers.
- 75-04-05-15. Depreciation. Sets forth provisions which establish the way and amount in which depreciation will be regarded as a cost.
- 75-04-05-16. Interest expense. Sets forth the amount and ways in which interest expense will be regarded as a cost.
- 75-04-05-17. Related organization. Establishes mechanism for identifying and evaluating costs of services, facilities, and supplies furnished to a provider by a related organization.
- 75-04-05-18. Rental expense paid to a related organization. Sets forth a mechanism for identifying the actual cost of rent paid by a provider which leases a facility from a related organization.
- 75-04-05-19. Taxes. Identifies those taxes which are reimbursable and those which are not. In general, income taxes, penalties, taxes (such as special assessments) which represent improvements and taxes where exemptions are available but not used are not reimbursable as an expense. Taxes which reflect improvements may be amortized over the life of the improvement.
- 75-04-05-20. Personal incidental funds. Establishes requirements for the management of client funds when that management is entrusted to the facility.
- 75-04-05-21. Transfer, discharge, and expulsion of clients. Distinguishes between proper and improper client transfers and authorizes the department to withhold payment for services

furnished in violation of state law provisions granting certain rights to clients.

75-04-05-22. Staff to client ratio. Sets forth the staff to client ratios which form the basis for determining the rate of reimbursement.

75-04-05-23. Staff hours. Describes the way in which the calculation of the total number of employees necessary to meet staff to client ratios can be made.

75-04-05-24. Application. Describes the point at which the chapter will be applied to any given provider in terms of the provider's fiscal year.

CHAPTER 75-04-05 REIMBURSEMENT FOR PROVIDERS OF SERVICES TO DEVELOPMENTALLY DISABLED PERSONS

Section

75-04-05-01	Definitions
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75-04-05-15	Depreciation
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75-04-05-18	Rental Expense Paid to a Related Organization
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75-04-05-20	Personal Incidental Funds
75-04-05-21	Transfer, Discharge, and Expulsion of Clients
75-04-05-22	Staff to Client Ratio
75-04-05-23	Staff Hours
75-04-05-24	Application

75-04-05-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Allowable cost" means the program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations.
3. "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable which were created or acquired in providing services.
4. "Clients" means eligible developmentally disabled persons on whose behalf services are provided or purchased.
5. "Consumer" means a developmentally disabled person.
6. "Consumer representative" means a parent, guardian, or relative, to the third degree of kinship, of a developmentally disabled person.
7. "Continuing contract provider" means a legal entity subject to licensure by the department who is and has been under contract authorizing the provisions of a service eligible for state financial participation.
8. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of an institution are divided for purposes of cost assignment and allocations.
9. "Cost finding" means the process of analyzing the data derived from the accounts ordinarily kept by the provider to ascertain costs of the various types of services rendered; it is the determination of these costs by the allocation of direct costs and proration of indirect costs.
10. "Department" means department of human services.
11. "Documentation" means the furnishing of written records including, but not limited to, original invoices, timecards, and workpapers prepared to complete reports or for filing with the department.
12. "Fair market value" means value at which an asset could be sold in the open market in an arms-length transaction between unrelated parties.
13. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.

14. "Historical cost" means those costs incurred and recorded on the facility's accounting records as a result of an arm-length transaction between unrelated parties.
15. "Individual habilitation team" means an interdisciplinary and multiagency individual plan development team, which includes the developmentally disabled individual or that individual's representative, or both, convened to identify the provision of services for that individual.
16. "Initial contract provider" means a legal entity, subject to licensure by the department, entering into its first contract authorizing the provision of a service eligible for state financial participation.
17. "Interest" means the cost incurred with the use of borrowed funds.
18. "Net investment in fixed assets" means the cost, less accumulated depreciation and the balance of notes and mortgages payable.
19. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.
20. "Related organization" means an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the action or policies of an organization or institution.
21. "Service" means the provision of living arrangements and programs of daily activities subject to licensure by the department.
22. "Staff training" means an organized program to improve staff performance.
23. "Units of service" means, in residential settings, one person served for one 24-hour day and in day service settings, one person served for one 8-hour day, Monday through Friday.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-02. Eligibility for reimbursement.

1. Providers of service are eligible for reimbursement for the costs of rendered services contingent upon the following:
 - a. The provider holds a current valid license, issued pursuant to the provisions of chapter 75-04-01 authorizing the delivery of the service, the cost of which is subject to reimbursement.
 - b. The provider's clients have on file with the department a current individual habilitation plan.
 - c. The provider has a current valid contract with the department authorizing the reimbursement.
 - d. The provider adopts and uses a system of accounting prescribed by the department.
 - e. The provider participates in the utilization review process established by the department.
 - f. The provider is in compliance with chapter 75-04-02.
 - g. The provider governing board of directors consists of members whose nontemporary place of residence is within the service area in which the provider is located and consists of at least one-third consumer or consumer representatives, except for elected or appointed governmental boards or commissions.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-03. Startup costs. Initial contract providers incur costs incidental to the preparation of a program of services prior to the admission of clients. These costs cannot be allocated to services as there is no client to receive a service. The initial contract provider may be eligible for state financial assistance for startup costs incidental to program establishment, exclusive of the cost of construction, reconstruction, or acquisition of property and improvements.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-04. Application for advancement of startup costs. The prospective initial contract provider seeking a state advancement of funds shall provide information in a form and manner prescribed by the department sufficient to enable the department to determine:

1. The basic service proposed.
2. The number of clients to be served.
3. That client referrals are identified in sufficient numbers to verify the feasibility of the service.
4. That a facility or facilities necessary to the provision of the service are or will be under the effective control of the provider.
5. The estimated startup costs for the period ending upon the first day of entry by eligible clients into the service.
6. That the service proposed is consistent with the implementation plan of the department, is cost effective, and does not represent an unnecessary duplication of services.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-05. Allowable startup costs. The department shall determine, upon a review of the submissions of the prospective provider, those costs essential to the completion of the startup phase. These startup costs are subject to audit.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-06. Reimbursement requirements - Startup costs. Actual startup costs are a reimbursable cost that will be included in the determination of the payment rate for the first year of a facility's operation.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-07. Grants-in-aid.

1. Grants may be approved by the department, subject to the availability of funds, and pursuant to the rules applicable to the advancement of funds, to reimburse providers for startup costs.
2. Grants approved for applicants for the purpose of accessing funds from non-state sources to achieve a state goal may, subject to the approval of the department, be exempt from

section 75-04-05-06, and the prohibition of section 75-04-05-03 regarding the cost of construction, reconstruction, or acquisition of real property.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-08. Financial reporting requirements.

1. Records.

- a. The provider shall maintain on the premises the required census records and financial information sufficient to provide for a proper audit or review. For any cost being claimed on the cost report, sufficient data must be available as of the audit date to fully support the report item.
- b. Where several programs are associated with a group and their accounting and reports are centrally prepared, additional fiscal information shall be submitted for costs, undocumented at the reporting facility, with the cost reporting plan or provided to the local program prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost.
- c. Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report to the department, financial and statistical records of the period covered by such cost report which are accurate and in sufficient detail to substantiate the cost data reported. If an audit has begun, but has not been finally resolved, the financial and statutory records relating to the audit shall be retained until final resolution. Each provider shall make such records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives thereof.

2. Accounting and reporting requirements.

- a. The accounting system must be double entry.
- b. The basis of accounting for reporting purposes must be accrual.
- c. To properly facilitate auditing, the accounting system must be maintained in such a manner that cost accounts will be grouped by cost center and be readily traceable to the cost report.

- d. The forms for annual reporting for reimbursement purposes must be the report forms designated by the department. The statement of budgeted costs must be submitted to management services division, provider audit unit, at least sixty days before the end of the facility's normal accounting year reflecting budgeted costs and units of service for establishing an interim rate in the subsequent year. The statement of actual costs must be submitted on or before the last day of the third month following the end of the facility's normal accounting year. The report must contain the actual costs, adjustments for nonallowable costs, and units of service for establishing the final rate.
- e. The mailing of cost reports by registered mail, return receipt requested, will ensure documentation of the filing date. If a facility fails to file the required financial and statistical report on or before the due date, the department shall, for the subsequent rate period, certify a rate using the following calculation:
 - (1) After the last day of the fourth month following the program's accounting year, there will be a nonrefundable penalty of ten percent of any amount claimed for reimbursement.
 - (2) The penalty is automatically applied each month past the deadline and continues through the month the report is received.
 - (3) The penalty may be waived by the department upon a showing of good cause for delay.
- f. Costs reported must include all actual costs and adjustments for nonallowable costs. Adjustments required by the audit unit, to attain allowable cost, though not meeting the criteria of fraud or abuse on their initial identification, may be considered as possible fraud or abuse. The audit unit will forward all such items identified to the appropriate investigative unit.

3. **Auditing.** In order to properly validate the accuracy and reasonableness of cost information reported by the contract provider, the department will provide for audits as necessary.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-09. Rate payments.

1. Except for intermediate care facilities for the developmentally disabled, payment rate limits will be established for services, room, and board.
2. Interim rates based on budgeted data, as approved, will be used for payment of services during the year.
3. Room and board rates will be established by the department at a rate no higher than the maximum supplemental security income payment less twenty-five dollars for the personal incidental expenses of the resident, plus the average dollar value of food stamps to the eligible clientele in the facility.
4. In residential facilities where rental assistance is available to individual residents or the facility, the rate for room costs chargeable to individual residents will be established by the governmental unit providing the subsidy.
5. In residential facilities where energy assistance program benefits are available to individual residents or the facility, room and board rates will be reduced to reflect the average annual dollar value of such benefits.
6. Income from client production must be applied to client wages and the cost of production. The department will not participate in the gains or losses associated with client production conducted pursuant to the applicable provision of 29 CFR 525.
7. The final rate established is payment of all allowable, reasonable, and actual costs for all elements necessary to the delivery of a basic service to eligible clients subject to limitations and cost offsets of this chapter.
8. No payments may be solicited or received by a provider from a client or any other person to supplement the final rate of reimbursement.
9. The rate of reimbursement established must be no greater than the rate charged to a private payor for the same or similar service.
10. Providers, as a condition of eligibility for reimbursement for the cost of services for developmentally disabled persons, must accept, as payment in full, sums paid in accordance with the final rate of reimbursement.
11. The department will determine interim and final rates of reimbursement for continuing contract providers based upon cost data from the:
 - a. Submission requirements of section 75-04-05-02; and

- b. Field and desk audits.
12. Rates of continuing contract providers will be based upon ninety-five percent of the rated occupancy established by licensure or actual occupancy, whichever is greater. A daily census report must be maintained by the provider.
 13. The rate of reimbursement for initial contract providers shall be established by review of cost reports:
 - a. To establish an initial interim rate;
 - b. Upon completion of one hundred eighty days of provider operation to establish an interim rate; and
 - c. Upon completion of one year of provider service and the conduct of a field audit to establish the final rate of reimbursement.
 14. Payments to initial contract providers will be disbursed in equal monthly installments for the duration of the initial contract period.
 15. The rate of payment will be sufficient to provide for the conversion of the initial contract provider to a reimbursement schedule upon completion of the initial twelve months of operation.
 16. The initial contract provider must project the anticipated units of service, subject to the approval of the department, which will be used in establishing the rate of reimbursement for the purpose of determining monthly payments.
 17. If vacancies continue to exist sixty days after the date of occupancy, the department may notify the initial contract provider of its intent to place developmentally disabled persons into those vacancies. The provider must, within ten days of such notification, either demonstrate, to the satisfaction of the department, that the department should not invoke its authority under this provision, or accept referred clients.
 18. Adjustments and appeal procedures are as follows:
 - a. Rate adjustments may be made to correct errors subsequently determined and shall also be retroactive to the beginning of the facility's fiscal year.
 - b. A final adjustment will be made for those facilities which have terminated participation in the program and have disposed of all its depreciable assets. Federal medicare regulations pertaining to gains and losses on disposable assets will be applied.

- c. Any requests for reconsideration of the rate may be submitted to management services division within ten days of the date of the rate notification.
- d. A provider may appeal a decision by requesting a fair hearing within thirty days after mailing of the rate notification or the written notice of the decision on a request for reconsideration of the rate.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-10. Reimbursement. Reported allowable costs will be included in determining the interim and final rate. The method of finalizing the reimbursement rate per unit will be through the use of the retrospective ratesetting system.

1. Retrospective ratesetting requires that an interim rate be established prior to the year in which it will be effective. The determination of a final rate for all services begins with the reported cost of the provider's operations for the previous fiscal year. Once it has been determined that reported costs are allowable, reasonable, and client-related, those costs are compared to the reimbursements received through the interim rate.
2. Settlements will be made through a rate reduction or refund to the department for an overpayment, or an additional payment to the provider for an underpayment.
3. Limitations.
 - a. The department will accumulate and analyze statistics on costs incurred by providers. These statistics may be used to establish reasonable ceiling limitations for efficiency and economy based on a determination of the standards of operations necessary for efficient delivery of needed services. These limitations may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs, on the costs of providing services, or on the costs of specific areas of operations. The department may implement such ceilings at any time, based upon the statistics available, or as required by guidelines, regulations, or statutes concerning title XIX of the Social Security Act.
 - b. Providers, to maintain reasonable rates of reimbursement, must deliver units of service at or near their rated capacity. Upon a finding by the department that an excess idle capacity exists and has existed, the cost of which is borne by the department, the provider will be notified of

the department's intention to reduce the level of state financial participation or invoke the cancellation provisions of the provider agreement. The provider must, within ten days of such notification, demonstrate, to the satisfaction of the department, that the department should not invoke its authority under this provision, or accept the department's finding.

- c. Providers will not be reimbursed for services, rendered to clients, which exceed the rated occupancy of any facility as established by a fire prevention authority.
- d. Providers of residential services must offer services to each resident three hundred and sixty-five days per year except for leap years in which three hundred and sixty-six days must be offered. Costs and budget data must be reported on this basis and rates of reimbursement will be established on the same basis. Providers will not be reimbursed for those days in which services are not offered to residents.
- e. Providers of day services must offer services to each client two hundred and sixty days per year except for leap years in which two hundred and sixty-one days may be offered. Costs and budget data must be reported on this basis and rates of reimbursement will be established on the same basis. Providers will not be reimbursed for those days services are not offered to the clients. State recognized holidays will be treated as days in which services are offered.
- f. Services exempted from the application of subdivisions d and e are:
 - (1) Emergency services.
 - (2) Respite care.
 - (3) Extended respite care.
 - (4) Infant evaluation.
 - (5) Vocational evaluation.
 - (6) Family subsidy.
- g. (1) Days of services in facilities subject to the application of subdivision d must be provided for a minimum of three hundred and thirty-five days per year per resident. A reduction of payment to the provider in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability

coordinator determines that a failure to meet the minimum was justified.

(2) Days of services in facilities subject to the application of subdivision e must be provided for a minimum of two hundred and forty days per year per client. A reduction of payment to the provider in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability coordinator determines that a failure to meet the minimum was justified.

(3) For purposes of this subdivision, the fiscal year of the facility will be used, and all days before the admission, or after the discharge of the resident or client will be counted towards meeting the minimum.

h. Salary and fringe benefit cost limits, governing the level of state financial participation, may be established by the department by calculating:

(1) Comparable salaries and benefits for comparable positions, by program size and numbers served, and programs in and out of state;

(2) Comparable salaries and benefits for comparable positions in state government;

(3) Comparable salaries and benefits for comparable positions in the community served by the provider; or

(4) Data from paragraphs 1, 2, and 3, taken in combination.

By using private funds, providers may establish higher salaries and benefit levels than those established by the department.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-11. Cost Report.

1. The cost report provides for the identification of the allowable expenditures and basic services subject to reimbursement by the department. Where costs are incurred solely for a basic service, the costs must be assigned directly to that basic service. Where costs are incurred jointly for two or more basic services, the costs will be allocated as follows:

- a. **Personnel.** The total cost of all staff identified in payroll records must be listed by position title and distributed to basic services subject to the approval of staff client ratios by the department. Time studies may be performed for one week at least quarterly for allocation. Where no time studies exist, the applicable units must be used for allocation.
 - b. **Fringe benefits.** The cost of fringe benefits must be allocated to basic services based on the ratio of the basic service personnel costs to total personnel costs. Personnel costs on which no fringe benefits are paid will be excluded.
 - c. **Equipment.** The total cost of all equipment, whether rented, leased, purchased, or depreciated, must be distributed to basic service based on usage or applicable units.
 - d. **Real property expense.** The total of all property costs, whether rented, leased, purchased, or depreciated, must be allocated based on direct square footage. Where multiple usage of direct use area occurs, the allocation will first be done by square footage and then by applicable units.
 - e. **Travel.** The total of all unassigned travel costs, which must not exceed the state rate of reimbursement, must be included in administrative costs.
 - f. **Supplies.** The total of all unassigned supply costs must be included with administrative costs.
 - g. **Food services.** The total of all food costs should be allocated based on meals served. Where the number of meals served has not been identified, applicable units must be used.
 - h. **Insurance and bonds.** The total of all such costs except insurance costs representing real property expense must be included as administrative costs.
 - i. **Contractual services.** The total of all contractual costs must be allocated based upon applicable units or, if appropriate, included as part of the administrative costs.
 - j. **Administrative costs.** Administrative costs must be allocated to the basic service costs based upon the ratio of the basic service costs to total cost excluding administrative costs.
2. Identification of the means of financing is to be as follows:

- a. Budget reports require the disclosure of all revenues currently used to finance costs and those estimated to finance future costs, inclusive of the provider's estimate of state financial participation.
- b. Revenues must be distributed on the appropriate budget report by program. Where private contributions are used to supplement or enrich services, the sum may be distributed accordingly. Where contributions are held in reserve for special purposes, it may be described by narrative.
- c. The department may determine that the provider is including costs which are more appropriately financed from another source. Upon a finding by the department that available alternative sources of financing exists, but are not used, reimbursement may be reduced subject to notification of the provider thirty days in advance of the imposition of the reduction.
- d. The disclosure of contract income and production costs is required to establish a rate of reimbursement supplemental to, and not duplicative of, these revenues and costs.
- e. State financial participation in the habilitative costs associated with production activities where contract income is realized shall not exceed the percentage difference between the mean productivity of the clients, as determined pursuant to 29 CFR 525, and one hundred percent.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-12. Adjustment to cost and cost limitation.

1. Providers under contract with the department to provide services to developmentally disabled persons must submit no less than annually, a statement of costs, both current and estimated, on the cost report.
2. Providers must disclose all costs and all revenues.
3. Providers must identify income to offset costs where applicable in order that state financial participation not supplant or duplicate other funding sources. These sources, and the cost to be offset, must include, but are not limited to, the following:

- a. Fees, the cost of the service or time for which the fee was imposed excluding those fees based on cost as established by the department.
 - b. Insurance recoveries income, costs reported in the current year to the extent of costs allowed in the prior or current year for that loss.
 - c. Purchase discounts, costs of items or services discounted.
 - d. Rebates and refunds, cost of items or services reduced in cost.
 - e. Rental income, cost of space in facilities or for equipment included in the rate of reimbursement.
 - f. Telephone and telegraph income from clients, staff, or guests, cost of the service.
 - g. Rental assistance or subsidy when not reported as third party income, total costs.
 - h. Interest or investment income, interest expense.
 - i. Medical payments, cost of medical services included in the rate of reimbursement as appropriate.
 - j. Respite care income when received for a reserved bed, room, board, and staff costs.
 - k. Other income to the provider from local, state, or federal units of government may be determined by the department to be an offset to cost.
4. Payments to a provider by its vendor will be considered as discounts, refunds, or rebates in determining allowable costs under the program even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. However, such payments may represent a true donation or grant, and as such will not be offset against costs. Examples include, but are not limited to, when:
- a. Payments are made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited.
 - b. Payments are in addition to discounts, refunds, or rebates, which have been customarily allowed under arrangements between the provider and the vendor.
 - c. The volume or value of purchases is so nominal that no relationship to the contribution can be inferred.

- d. The contributor is not engaged in business with the provider or a facility related to the provider.
5. Where an owner or other official of a provider directly receives from a vendor monetary payments or goods or services for the owner's or official's own personal use as a result of the provider's purchases from the vendor, the value of such payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.
6. Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates should be credited to the costs of the provider in accordance with the instructions above. These should not be treated as income of the central purchasing function or used to reduce the administrative costs of that function. Such administrative costs are, however, properly allocable to the facilities serviced by the central purchasing function.
7. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased. They should be used to reduce the specific costs to which they apply. If possible, they should accrue to the period to which they apply. If not, they will reduce expenses in the period in which they are received. The reduction to expense for supplies or services must be used to reduce the total cost of the goods or services for all clients without regard to whether the goods or supplies are designated for all clients or a specific group.
 - a. "Purchase discounts" include cash discounts, trade, and quantity discounts. "Cash discount" is for prepaying or paying within a certain time of receipt of invoice. "Trade discount" is a reduction of cost granted certain customers. "Quantity discounts" are reductions of price because of the size of the order.
 - b. Allowances are reductions granted or accepted by the creditor for damage, delay, shortage, imperfection, or other cause, excluding discounts and refunds.
 - c. Refunds are amounts paid back by the vendor generally in recognition of damaged shipments, overpayments, or return purchases.
 - d. Rebates represent refunds of a part of the cost of goods or services. Rebates differ from quantity discounts in that it is based on dollar value of purchases, not quantity of purchases.

- e. "Other cost-related income" includes amounts generated through the sale of a previously expensed item, e.g., supplies or equipment.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-13. Nonallowable costs. Nonallowable costs include, but are not necessarily limited to:

1. Advertising to the general public exclusive of procurement of personnel and yellow page advertising limited to the information furnished in the white page listing.
2. Amortization of noncompetitive agreements.
3. Bad debt expense.
4. Barber and beautician services.
5. Basic research.
6. Capital improvements by the provider to the buildings of a lessor.
7. Compensation of officers, directors, or stockholders other than reasonable and actual expenses related to client services.
8. Concession and vending machine costs.
9. Contributions or charitable donations.
10. Corporate costs, such as organization costs, reorganization costs, and other costs not related to client services.
11. The cost of direct-care staff in residential settings for eight hours each night, except where the provider has demonstrated, to the satisfaction of the department, that:
 - a. The clients served have been determined incapable of taking action for self-preservation;
 - b. The clients require the supervision of a medical practitioner without which a serious threat to health may occur;
 - c. The clients of a residence have contracted an infectious or contagious disease resulting in quarantine;

- d. A resident manifests maladaptive behavior representing a threat to the health or safety of himself or another resident;
 - e. There has occurred a calamity, natural disaster, or emergency of such gravity that continuous supervision is required to maintain the health and safety of the residents;
 - f. A single building is of sixteen or more licensed beds; or
 - g. Staff are awakened by the residents and are compensated for those specified time periods, subject to the applicable requirements of the department of labor 29 CFR section 785, et seq.
12. Costs of functions performed by clients in a residential setting which are typical of functions of any person living in their own home, such as keeping the home sanitary, performing ordinary chores, lawnmowing, laundry, cooking, and dishwashing. These activities shall be an integral element of an individual program plan consistent with the client's level of function.
 13. Costs of participation in professional, civic, charitable or fraternal organizations.
 14. Depreciation on assets acquired with federal or state grants.
 15. Education or training costs not approved by the department.
 16. Employee benefits not offered to all full-time employees.
 17. Entertainment costs.
 18. Expense of litigation or liabilities established through or under threat of, litigation; provided, that reasonable insurance expense shall not be limited by this subsection.
 19. Federal and other governmental income taxes.
 20. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose.
 21. Funeral and cemetery expenses.
 22. Goodwill.
 23. Home office costs when unallowable if incurred by facilities in a chain organization.
 24. Housekeeping staff or service costs.

25. In-state travel not directly related to industry conferences, state or federally sponsored activities, or client services.
26. Interest cost related to money borrowed for funding depreciation.
27. Items or services, such as telephone, television, and radio, which are located in a client's room and which are furnished solely for the convenience of the clients.
28. Key man insurance.
29. Laboratory salaries and supplies.
30. Matriculation fees and fees associated with the granting of college credit.
31. Meals and food service in day service programs.
32. Miscellaneous expenses not related to client services.
33. Out-of-state travel expense not directly related to client services.
34. Penalties, fines, and related interest and bank charges other than regular service charges.
35. Personal purchases.
36. Pharmacy salaries.
37. Physician salaries.
38. Production costs.
39. Religious salaries, space, and supplies.
40. Room and board costs in residential services other than an intermediate care facility for the developmentally disabled, except when such costs are incurred on behalf of persons who have been found not to be disabled by the social security administration, but who are certified by the department as indigent and appropriately placed. Allowable room and board cost shall not exceed the room and board rate established pursuant to subsections 2 and 3 of section 75-04-05-09. Services offering room and board temporarily, to access medical care, vocational evaluation, respite care, or similar time limited purposes are or may be exempt from the effect of this provision.
41. Salary costs of employees determined by the department to be inadequately trained to assume assigned responsibilities, but

where an election has been made to not participate in appropriate training approved by the department.

42. Salary costs of employees who fail to meet the functional competency standards established or approved by the department.
43. Travel of clients visiting relatives or acquaintances in or out of state.
44. Undocumented expenditures.
45. Value of donated goods or services.
46. Vehicle and aircraft costs not directly related to provider business or client services.
47. X-ray salaries and supplies.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-14. Profit motivated entities - Return on investment.

Eight and one-half percent of net investment in fixed assets related to client care will be allowed annually, as a return on investment, to profit motivated entities.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-15. Depreciation.

1. The principles of reimbursement for provider costs require that payment for services should include depreciation on depreciable assets that are used to provide allowable services to clients. This includes assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity.
2. Depreciation methods are as follows:
 - a. The straight-line method of depreciation must be used. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and

detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different than that submitted on the cost report, a reconciliation must be prepared.

- b. The depreciable life of an asset is its expected useful life to the provider; not necessarily the inherent useful or physical life. If a difference is considered, a salvage value should be established prior to the application of the depreciation rate. The useful life is determined in the light of the provider's experience and the general nature of the asset and other pertinent data. In projecting a useful life, providers are to follow the useful life guidelines published by the United States internal revenue service. A different useful life may be used; however, when the useful life selected differs significantly from that established by the guidelines, the deviation must be based on convincing reasons supported by adequate documentation, generally describing the realization of some unexpected event. A composite useful life may be used for a class or group of assets.
3. Acquisitions are treated as follows:
 - a. If a depreciable asset has, at the time of its acquisition, an estimated useful life of at least two years and historical cost of at least three hundred dollars, or if it is acquired in quantity and the cost of the quantity is at least five hundred dollars, its cost must be capitalized and depreciated over the estimated useful life of the asset. Cost during the construction of an asset, such as architectural, consulting and legal fees, interest, etc., should be capitalized as a part of the cost of the asset.
 - b. Major repair costs on equipment or buildings must be capitalized if the repairs have increased the useful life of the asset by at least two years.
 4. Proper records will provide accountability for the fixed assets and also provide adequate means by which depreciation can be computed and established as an allowable client-related cost.
 5. The basis for depreciation is as follows:
 - a. The amount of historical costs shall not exceed the lower of:
 - (1) Current reproduction costs less straight-line depreciation over the life of the asset to the time of purchase; or

(2) Fair market value at the time of purchase.

In the case of a trade-in, the historical cost will consist of the sum of the book value of the trade-in plus the cash paid.

- b. For depreciation purposes, donated assets may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal must be made. An appraisal made by a recognized appraisal expert will be accepted for depreciation.
 - c. No provision shall be made for increased costs due to the sale of a facility.
6. Providers which finance facilities pursuant to North Dakota Century Code chapter 6-09.6, subject to the approval of the department, may elect to be reimbursed based upon the mortgage principle payments rather than depreciation. Once an election is made by the provider, it may not be changed without department approval.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-16. Interest expense.

1. In general:

- a. To be allowable under the program, interest must be:
 - (1) Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required;
 - (2) Identifiable in the provider's accounting records;
 - (3) Related to the reporting period in which the costs are incurred; and
 - (4) Necessary and proper for the operation, maintenance, or acquisition of the provider's facilities used therein.
- b. In such cases where it was necessary to issue bonds for financing, any bond premium or discount shall be accounted for and written off over the life of the bond issue.

2. Interest paid by the provider to partners, stockholders, or related organizations of the provider is not allowable as a cost except when interest expense is incurred subject to North Dakota Century Code chapter 6-09.6.
3. A provider may combine or "pool" various funds in order to maximize the return on investment. Where funds are pooled, proper records must be maintained to preserve the identity of each fund in order to permit the earned income to be related to its source. Income earned on gifts and grants does not reduce allowable interest expense.
4. Funded depreciation requirements are as follows:
 - a. Funding of depreciation is the practice of setting aside cash or other liquid assets to be used for replacement of the assets depreciated or for other capital purposes. The deposits are, in effect, made from the cash generated by the noncash expense depreciation.
 - b. Deposits to the funded depreciation account are generally in an amount equal to the depreciation expense charged to costs each year. In order to qualify for all provisions of funding depreciation, the minimum deposits to the account must be fifty percent of the depreciation expensed that year. Deposits in excess of accumulated depreciation are allowable; however, the interest income generated by the "extra" deposits will be considered as a reduction of allowable interest expense. This provision is recommended as a means of conserving funds for the replacement of depreciable assets. It is expected that the funds will be invested to earn revenues. The revenues generated by this investment will not be considered as a reduction of allowable interest expense provided such revenues remain in the fund.
 - c. Monthly or annual deposits representing depreciation must be in the funded depreciation account for six months or more to be considered as valid funding transactions. Deposits of less than six months are not eligible for the benefits of a funded depreciation account. However, if deposits invested before the six-month period remain in the account after the six-month period, the investment income for the entire period will not reduce the allowable interest expensed in that period. Total funded depreciation in excess of accumulated depreciation on client-related assets will be considered as ordinary investments and the income therefrom will be used to offset interest expense.
 - d. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on these assets and for

other capital expenditures are on a first-in, first-out basis.

- e. The provider may not use the funds in the funded depreciation account for purposes other than the improvement, replacement, or expansion of facilities or equipment replacement or acquisition related to client services.
- f. Existing funded depreciation accounts must be used for all capital outlays in excess of three hundred dollars except with regard to those assets purchased exclusively with donated funds or from the operating fund, provided no amount was borrowed to complete the purchase. Should funds be borrowed, or other provisions not be met, the entire interest for the funded depreciation income account will be offset up to the entire interest expense paid by the facility for the year in question.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-17. Related organization.

1. Costs applicable to services, facilities, and supplies furnished to a provider by a related organization shall not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. Providers must identify such related organizations and costs in the cost report. An appropriate statement of cost and allocations must be submitted with the cost report. For cost reporting purposes, management fees will be considered administrative costs.
2. A chain organization consists of a group of two or more program entities which are owned, leased, or through any other device, controlled by one business entity.
3. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their member facilities. Although the home office of a chain is normally not a provider in itself, it may furnish to the individual provider, central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual cost of providing such services is includable in the provider's allowable costs under the program. Any services

provided by the home office which are included in cost as payments to an outside provider will be considered a duplication of costs and not be allowed.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-18. Rental expense paid to a related organization.

1. A provider may lease a facility from a related organization within the meaning of the principles of reimbursement. In such a case, the rent paid to the lessor by the provider is not allowable as a cost, except for providers subject to chapter 75-04-03, whose rent payments shall not exceed the actual cost of mortgage payments of principal and interest. The cost of ownership of the facility would, however, be an allowable cost to the provider. Generally, these would be costs such as depreciation, interest on the mortgage, real estate taxes, and other expenses attributable to the leased facility. The effect is to treat the facility as though it were owned by the provider. Therefore, the owner's equity in the leased assets is includable in the equity capital of the provider.
2. In order to be considered an allowable cost, the home office cost must be directly related to those services performed for individual providers and relate to client services. An appropriate share of indirect costs will also be considered. Documentation as to the time spent, the services provided, the hourly valuation of services and the allocation method used must be available to substantiate the reasonableness of the cost.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-19. Taxes.

1. General.

- a. Taxes assessed against the provider, in accordance with the levying enactments of the several states and lower levels of government and for which the provider is liable for payment, are allowable costs. Tax expense may not include fines, penalties, or those taxes listed in subsection 2.
2. **Taxes not allowable as costs.** The following taxes are not allowable as costs:

- a. Federal income and excess profit taxes, including any interest or penalties paid thereon.
- b. State or local income and excess profit taxes.
- c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes in the issuance of bonds, property transfers, issuance or transfers of stocks, etc. Generally, these costs are either amortized over the life of the securities or depreciated over the life of the asset. They are not, however, recognized as tax expense.
- d. Taxes from which exemptions are available to the provider.
- e. Special assessments on land which represent capital improvements, such as sewers, water, and pavements, should be capitalized and may be depreciated.
- f. Taxes on property which is not used in the provision of covered services.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-20. Personal incidental funds.

1. Each client is allowed to retain a specific monthly amount of income for personal needs. These personal needs include such items as clothes, tobacco, or other day-to-day incidentals. This monthly allowance is not to be applied toward the resident's cost of care. Generally, the source of income for personal needs is from social security, veterans benefits, private income, economic assistance, or supplemental security income (SSI).
2. Providers managing client funds must maintain a current client account record in a form and manner prescribed by the department. Copies of the client account record must be provided to the client without charge.
3. The department will conduct audits of random samples of client account records in conjunction with regular field audits.
4. Adult client funds may be disbursed with the client's permission in the absence of a guardian or declaration of incompetency.
5. The department uses the amount of a resident's income to determine:

- a. Eligibility for medical assistance benefits.
 - b. Amount of income and other resources which must be applied toward the resident's care.
 - c. Amount of income and other resources which can be retained by the resident.
6. The following personal incidental items, supplies, or services furnished as needed or at the request of the resident, may be paid for by the resident from his personal incidental allowance or by outside sources, such as relatives and friends:
- a. Outside barber and beautician services, if requested by the resident for regular shaves, haircuts, etc.
 - b. Personal supplies, such as toothbrushes, toothpaste or powder, mouthwashes, dental floss, denture cleaners, shaving soap, cosmetic and shaving lotions, dusting powder, cosmetics, personal deodorants, hair combs and brushes, and sanitary pads and belts for menstrual periods.
 - c. Drycleaning of personal clothing.
 - d. Recliner chairs, standard easy chairs, radios, television sets, etc., that the resident desires for his personal use.
 - e. Special type wheelchairs, e.g., motorized, permanent leg support, hand controlled, if needed by resident, recommended by his attending physician, and if no other payment resource is available.
 - f. Personal clothing, including robes, pajamas, and nightgowns.
 - g. Miscellaneous items, such as tobacco products and accessories, beverages and snacks served at other than mealtime except for supplemental nourishment, television rental for individual use, stationery supplies, postage, pens and pencils, newspapers and periodicals, cable television, and long-distance telephone services. Nonprescription vitamins or combinations of vitamins with minerals may be paid when ordered by the attending physician and the resident, parent, guardian, or responsible relative approves such use of the resident's funds.
7. Charges by the program for items or services furnished clients will be allowed as a charge against the client or outside sources, only if separate charges are also recorded by the

facility for all clients receiving these items or services directly from the program. All such charges must be for direct, identifiable services or supplies furnished individual clients. A periodic "flat" charge for routine items, such as beverages, cigarettes, etc., will not be allowed. Charges may be made only after services are performed or items are delivered, and charges are not to exceed charges to all classes of clients for similar services.

8. Residents' private property must be clearly marked with his name. The facility must keep a record of private property. If items are lost, the circumstances of disappearance must be documented in the facility's records.
9. If client funds are deposited in a bank, they must be deposited in an account separate and apart from any other bank accounts of the facility. Any interest earned on this account will be credited to the applicable resident's accounts.
10. Residents' funds on deposit with the facility must be available to residents on their request. No funds may be withdrawn from accounts of residents capable of managing their own funds without their permission.
11. Should a disagreement exist as to whether a resident is capable of managing the resident's own funds, a joint determination will be made by the individual habilitation team, parent, guardian, or responsible relative in settling this dispute. The decision must be documented in the provider's records.
12. On discharge, the facility must provide the resident with a final accounting of personal funds, and remit any balance on deposit with the facility.
13. Upon death, the balance of a resident's personal incidental funds along with name and case number, will be maintained in an interest-bearing account for disposition by the resident's estate. Personal property, such as television sets, radios, wheelchairs, and other property of more than nominal value, will be maintained for disposition by the resident's estate.
14. Upon sale or other transfer of ownership interest of a facility, both transferor and transferee must transfer client's personal incidental funds moneys and records in an orderly manner.
15. Failure to properly record the receipt and disposition of personal incidental funds will constitute grounds for suspension of provider payments.
16. Client personal incidental funds must not be expended for the purchases of meals served in licensed day service programs nor

may the purchase of such meals be a condition for admission to such programs.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-21. Transfer, discharge, and expulsion of clients.

1. Movement of clients between levels of service by a provider or between providers must be pursuant to a determination by an individual habilitation team. Reimbursement for the cost of the new service must be contingent upon the timely submission to the department of a revised individual habilitation plan.
2. Movement of clients must be subject to the policies and procedures of the North Dakota case management system and the approval of the department.
3. Any emergency movement may be initiated by the provider only with immediate notification of the department, parent, guardian, and advocate. The movement will be subject to the subsequent review by the department which will determine if:
 - a. An emergency existed;
 - b. The rights of the client were protected and preserved;
 - c. Documentation exists in support of the provider's action;
 - d. A prognosis of the client's potential for returning has been made; and
 - e. Services required to maintain the client in a habilitative setting least restrictive of liberty have been provided prior to movement.
4. The department will determine whether a payment should be stopped as a consequence of the vacancy caused by movement of a client.
5. Upon a finding, by the department, that movement of a client constituted a violation of any right secured to the client by North Dakota Century code chapter 25-01.2, the department may withhold payment for services provided during the period of time that the violation existed.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-22. Staff to client ratios.

1. The following direct-care staff to client ratios shall form the basis for the determination of the rate of reimbursement for providers of service to developmentally disabled persons. Additional staff may be necessary to meet the needs of the clients and may be added subject to the approval of the department.
 - a. Intermediate care facilities for the developmentally disabled shall be subject to the direct-care staffing requirements of 42 CFR 442.445.
 - b. Transitional community living facility shall maintain a one to eight direct-care staff to client ratio during those periods when the clients are awake and on the premises, and a one to sixteen ratio when clients are asleep.
 - c. Minimally supervised living arrangements and providers congregate care for the aged shall maintain one direct-care staff onsite when clients are present, but in no case shall the direct-care staff to client ratio be less than one to sixteen.
 - d. In minimally supervised apartment living arrangements, one direct-care staff shall be onsite when clients are present, but in no case shall the direct-care staff to client ratio be less than one to twenty.
 - e. Supported living arrangements shall maintain a direct-care staff to client ratio of one to twenty-five.
 - f. Developmental day activity shall maintain a direct-care staff to client ratio of one to five.
 - g. Developmental work activity shall maintain a direct-care staff to client ratio of one to five for the first fifteen clients and one to ten for additional clients.
 - h. Vocational development shall maintain a direct-care staff to client ratio of three to twenty for the first twenty clients and one to ten for additional clients.
 - i. Vocational evaluation shall maintain one work evaluator for sixty evaluations per annum.
 - j. Infant development shall maintain one therapist for every fifteen children.
 - k. Adult day care shall maintain a direct-care staff to client ratio of one to eight.

- l. On-the-job training and work adjustment training shall maintain a staff to client ratio of one to twenty.
- m. Congregate living arrangements for children shall maintain a direct-care staff to client ratio of one to four.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-23. Staff hours.

1. A calculation of the total number of employees necessary to meet staff to client ratios is made on the basis of a full-time equivalent employee. Assuming that a full-time employee has fifty-two working weeks of five days each, twelve holidays, ten vacation days and ten sick days per year, the actual number of days worked is two hundred and twenty-eight per year. Providers who grant fewer paid absences must use a full-time equivalent calculation which reflects a higher number of working days.
2. Assuming a two hundred twenty-eight day work year:
 - a. Staffing for the three hundred sixty-five day service provided by a residential service provider each year requires 1.6 full-time equivalent staff persons for each shift slot to be filled at all times (two hundred twenty-eight times 1.6 equals three hundred sixty-five).
 - b. Staffing for the two hundred sixty days of service provided by a day service provider each year requires 1.14 full-time equivalent staff persons for each staff required by the ratio (two hundred twenty-eight times 1.14 equals two hundred sixty).
3. To calculate the number of duty hours in a week, eight hours per day for five days (day services) and eight hours per night for seven nights (sleep time) are subtracted from the total hours of the week for residential service providers.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

75-04-05-24. Application. This chapter will be applied to providers of services to developmentally disabled persons, starting the first day of a facility's first fiscal year which begins after July 1, 1984; provided, however, that neither this section, nor the effective date, shall preclude the application and implementation of some or all

of the provisions of this chapter through contract or through official statements of department policy.

History: Effective July 1, 1984.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-15-01, 25-16-10, 50-24.1-01

NOVEMBER 1983

STAFF COMMENT - Section 75-02-01-08 (County administration and share of assistance costs): Adds two new subsections which would provide for administration of AFDC benefits by the county in which the applicant or recipient lives. Also amends an existing subsection to provide a mechanism by which a county can appeal the decision of another county which designates it to participate in financing of AFDC payments.

75-02-01-08. ~~County's~~ County administration and share of assistance cost.

1. Except as provided in subsection 2, the county where the families with dependent children unit is physically present will be responsible for the administration of the program with respect to that unit.
2. Where a family unit receiving assistance moves from one county to another, the outgoing county continues to be responsible for the administration of the program with respect to that unit until the last day of the month after the month in which the unit assumes physical residence in an incoming county.
- ± 3. For purposes of apportioning the county's share of assistance costs in the aid to families with dependent children program, all of the following principles shall govern:
 - a. The county in which the person has resided for the past year, provided the person has not received assistance from another county during that time, except in the instance described in subdivision d.
 - b. A person who has lived in the state for at least a year but not in any one county shall be ascribed to the county

in which the person has longest resided within the twelve months prior to application.

- c. The county's portion of aid to families with dependent children costs for a child who is a resident of the state but not a particular county, by virtue of not having lived in the state for a year, shall be borne by the county in which the child becomes in need. An exception to this subdivision exists if the child is committed to a state institution before establishing legal residence in a county and is subsequently returned to a community. In this instance, the child is the financial responsibility of the county from which the child was committed.
- d. A child whose mother marries a man having residence in a county different from their own follows that of the stepfather regardless of whether or not the child was a recipient at the time of the marriage. If the child was a recipient and eligibility continues after the marriage, financial responsibility shall be promptly transferred to the new county of residence in such manner that no lapse in assistance occurs.
- e. Similarly a stepchild and the stepchild's parent who moves with the stepchild's stepparent to another county shall become a resident of the new county if the stepparent (or any person residing with the stepparent whom the stepparent is legally responsible to support) becomes a resident therein by residing there a year without receiving assistance from another county.
- f. An aid to families with dependent children program family whose assistance from North Dakota is properly terminated because of a supposedly permanent move to another state may move back to North Dakota within a relatively short time but to a county other than the one originally providing assistance. For assistance purposes the family shall be regarded as new state residents and dealt with in the manner described in subdivision c.

2- 4. When the county of cost responsibility is in doubt, the county in which the child is living at the time of the request for aid to families with dependent children unit is physically present shall process the application promptly and designate the county to participate in the financing of any payments until the residence issue can be resolved. A county so designated may appeal the decision to the department pursuant to the provisions of chapter 75-01-03.

History: Amended effective November 1, 1983.

General Authority: NDCC 50-09-02

Law Implemented: NDCC 50-09-02, 50-09-21

STAFF COMMENT - 75-02-02-08: Amends two subdivisions which relate to nursing home services to allow such services to be furnished in "swing-bed" hospitals.

75-02-02-08. Amount, duration, and scope of medical assistance.

1. Within the limits of legislative appropriations, eligible recipients may obtain the following medical and remedial care and services:
 - a. Inpatient hospital services (other than services in an institution for mental diseases). "Inpatient hospital services" are those items and services ordinarily furnished by the hospital for the care and treatment of inpatients provided under the direction of a physician or dentist in an institution maintained primarily for treatment and care of patients with disorders other than tuberculosis or mental diseases and which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation; and which has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under title XIX of the Act.
 - b. Outpatient hospital services. "Outpatient hospital services" are those preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an outpatient by an institution which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
 - c. Other laboratory and x-ray services. "Other laboratory and x-ray services" means professional and technical laboratory and radiological services ordered by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and provided to a patient by, or under the direction, of a physician or licensed practitioner, in an office or similar facility other than a hospital outpatient department or a clinic, and provided to a patient by a laboratory that is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.

- d. Skilled nursing home services (other than services in an institution for mental diseases) for individuals twenty-one years of age or older. "Skilled nursing home services" means those items and services furnished by a licensed and otherwise eligible skilled nursing home or swing-bed hospital maintained primarily for the care and treatment of inpatients with disorders other than mental diseases which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law.
- e. Intermediate nursing care (other than services in an institution for mental diseases). "Intermediate nursing care" means those items and services furnished by a currently licensed intermediate care facility or swing-bed hospital maintained for the care and treatment of inpatients with disorders other than mental diseases which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law.
- f. Early and periodic screening and diagnosis of individuals under twenty-one years of age, and treatment of conditions found. Early and periodic screening and diagnosis of individuals under the age of twenty-one who are eligible under the plan to ascertain their physical or mental defects, and health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Federal financial participation is available for any item of medical or remedial care and services included under this subsection for individuals under the age of twenty-one. Such care and services may be provided under the plan to individuals under the age of twenty-one, even if such care and services are not provided, or are provided in lesser amount, duration, or scope to individuals twenty-one years of age or older.
- g. Physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home or elsewhere. "Physician's services" are those services provided, within the scope of practice of the physician's profession as defined by state law, by or under the personal supervision of an individual licensed under state law to practice medicine or osteopathy.
- h. Medical care and any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law. This term means any medical or remedial care or services other than physicians' services, provided within the scope of practice as defined by state

law, by an individual licensed as a practitioner under state law.

- i. Home health care services. "Home health care services" in addition to the services of physicians, dentists, physical therapists, and other services and items available to patients in their homes and described elsewhere in these definitions, are any of the following items and services when they are provided on recommendation of a licensed physician to a patient in the patient's place of residence, but not including as a residence a hospital or a skilled nursing home:
 - (1) Intermittent or part-time nursing services furnished by a home health agency.
 - (2) Intermittent or part-time nursing services of a professional registered nurse or a licensed practical nurse when under the direction of the patient's physician, when no home health agency is available to provide nursing services.
 - (3) Medical supplies, equipment, and appliances recommended by the physician as required in the care of the patient and suitable for use in the home.
 - (4) Services of a home health aide who is an individual assigned to give personal care services to a patient in accordance with the plan of treatment outlined for the patient by the attending physician and the home health agency which assigns a professional registered nurse to provide continuing supervision of the aide on the aide's assignment. "Home health agency" means a public or private agency or organization, or a subdivision of such an agency or organization, which is qualified to participate as a home health agency under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
- j. Private duty nursing services. "Private duty nursing services" are nursing services provided by a professional registered nurse or a licensed practical nurse, under the general direction of the patient's physician, to a patient in the patient's own home or extended care facility when the patient requires individual and continuous care beyond that available from a visiting nurse or that routinely provided by the nursing staff of the hospital, nursing home, or extended care facility.
- k. Dental services. "Dental services" are any diagnostic, preventive, or corrective procedures administered by or under the supervision of a dentist in the practice of the

dentist's profession. Such services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual. "Dentist" means a person licensed to practice dentistry or dental surgery.

1. Physical therapy and related services. "Physical therapy and related services" means physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders, and the use of such supplies and equipment as are necessary.
 - (1) "Physical therapy" means those services prescribed by a physician and provided to a patient by or under the supervision of a qualified physical therapist. A qualified physical therapist is a graduate of a program of physical therapy approved by the council on medical education of the American medical association in collaboration with the American physical therapy association, or its equivalent, and where applicable, is licensed by the state.
 - (2) "Occupational therapy" means those services prescribed by a physician and provided to a patient and given by or under the supervision of a qualified occupational therapist. A qualified occupational therapist is registered by the American occupational therapy association or is a graduate of a program in occupational therapy approved by the council on medical education of the American medical association and is engaged in the required supplemental clinical experience prerequisite to registration by the American occupational therapy association.
 - (3) "Services for individuals with speech, hearing, and language disorders" are those diagnostic, screening, preventive or corrective services provided by or under the supervision of a speech pathologist or audiologist in the practice of the pathologist's or audiologist's profession for which a patient is referred by a physician. A speech pathologist or audiologist is one who has been granted the certificate of clinical competence in the American speech and hearing association, or who has completed the equivalent educational requirements and work experience necessary for such a certificate, or who has completed the academic program and is in the process of accumulating the necessary supervised work experience required to qualify for such a certificate.
- m. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases

of the eye or by an optometrist, whichever the individual may select.

- (1) "Prescribed drugs" are any simple or compounded substance or mixture of substances prescribed as such or in other acceptable dosage forms for the cure, mitigation, or prevention of disease, or for health maintenance, by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's professional practice as defined and limited by federal and state law. With respect to "prescribed drugs" federal financial participation is available in expenditures for drugs dispensed by licensed pharmacists and licensed authorized practitioners in accordance with North Dakota Century Code chapter 43-17. When dispensing, the practitioner must do so on the practitioner's written prescription and maintain records thereof.
- (2) "Dentures" are artificial structures prescribed by a dentist to replace a full or partial set of teeth and made by, or according to the directions of, a dentist.
- (3) "Prosthetic devices" means replacement, corrective, or supportive devices prescribed for a patient by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for the purpose of artificially replacing a missing portion of the body, or to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.
- (4) "Eyeglasses" are lenses, including frames when necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye, or by an optometrist, whichever the patient may select, to aid or improve vision.

n. Other diagnostic, screening, preventive, and rehabilitative services.

- (1) "Diagnostic services" other than those for which provision is made elsewhere in these definitions, include any medical procedures or supplies recommended for a patient by the patient's physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, as necessary to enable the physician or practitioner to identify the

existence, nature, or extent of illness, injury, or other health deviation in the patient.

- (2) "Screening services" consist of the use of standardized tests performed under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations or to identify suspects for more definitive studies.
 - (3) "Preventive services" are those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability and other health deviations or their progression, prolong life and promote physical and mental health and efficiency.
 - (4) "Rehabilitative services" in addition to those for which provision is made elsewhere in these definitions, include any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.
- o. Care and services in a certified mental institution for individuals under twenty-one years of age or sixty-five years of age or over.
- p. Any other medical care and any other type of remedial care recognized under state law, specified by the secretary. This term includes but is not limited to the following items:
- (1) Transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the agency to be necessary in the individual case. "Travel expenses" are defined to include the cost of transportation for the individual by ambulance, taxicab, common carrier or other appropriate means; the cost of outside meals and lodging en route to, while receiving medical care, and returning from a medical resource; and the cost of an attendant may include transportation, meals, lodging, and salary of the attendant, except that no salary may be paid a member of the patient's family.

- (2) Family planning services, including drugs, supplies, and devices, when such services are under the supervision of a physician. There will be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals can choose in accordance with the dictates of their consciences.
 - (3) Whole blood, including items and services required in collection, storage, and administration, when it has been recommended by a physician and when it is not available to the patient from other sources.
 - (4) Skilled nursing home services, as defined in subdivision d, provided to patients under twenty-one years of age.
 - (5) Emergency hospital services which are necessary to prevent the death or serious impairment of the health of the individual and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital available which is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act, or definitions of inpatient or outpatient hospital services set forth in subdivisions a and b.
2. The following limitations exist with respect to medical and remedial care and services covered or provided under the medical assistance program.
- a. Coverage will not be extended and payment will not be made for diet remedies prescribed for eligible recipients.
 - b. Coverage will not be extended and payment will not be made for alcoholic beverages prescribed for eligible recipients.
 - c. Coverage will not be extended and payment will not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.
 - d. Coverage and payment for eye examinations and eyeglasses for eligible recipients shall be limited to examinations and eyeglass replacements necessitated because of visual impairment. Coverage and payment for eyeglass frames shall not exceed forty-four dollars per pair. A recipient is responsible for copayment of three dollars for the replacement of eyeglasses when the replacement is occasioned by loss or breakage.

3. Remedial services provided by licensed homes for the aged and infirm, licensed foster care homes or facilities, and specialized facilities are not covered services but expenses incurred in securing such services must be deducted from countable income in determining financial eligibility. For the purposes of this section, "remedial services" means those services, provided in the above-identified facilities, which produce the maximum reduction of physical or mental disability and restoration of a recipient to the recipient's best possible functional level.

History: Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04; 42 CFR 431.53, 42 CFR 431.110, 42 CFR 435.1009, 42 CFR Part 440, 42 CFR Part 441, subparts A, B, & D, 45 CFR 435.732

STAFF COMMENT: 75-02-02-13 (Limitations on out-of-state care): With exceptions, limits the receipt of out-of-state care by medical assistance recipients to those types of care which are not available in the state. Exceptions are provided for emergency care, care which is furnished when recipient is traveling outside of North Dakota, care for recipients whose regular place of abode is outside of the state, and care furnished where it can be demonstrated that out-of-state care is superior to instate care.

75-02-02-13. Limitations on out-of-state care.

1. For the purposes of this section:

- a. "North Dakota board certified specialist" means a physician board certified in the medical field required who regularly practices within North Dakota or at a site within fifty statute miles [80.45 kilometers] of the nearest North Dakota border.
- b. "Out-of-state care" means care or services furnished by any individual, entity, or facility, pursuant to a provider agreement with the division of medical services, at a site located more than fifty statute miles [80.45 kilometers] from the nearest North Dakota border.
- c. "Primary physician" means the individual physician who has assumed responsibility for the advice and care of the recipient.

2. Except as provided in subsection 3, no payment for out-of-state care, including related travel expenses, will be made unless:

- a. The medical assistance recipient was first seen by that recipient's primary physician;
 - b. The primary physician determines that it is advisable to refer the recipient for care or services which the primary physician is unable to render;
 - c. A request for active treatment is first made to a North Dakota board certified specialist in the medical field required;
 - d. The North Dakota board certified specialist advises the primary physician that the patient should be referred to an appropriate out-of-state provider because necessary care or services are unavailable in state; and
 - e. The claim for payment sufficiently identifies the North Dakota board certified specialist who authorized the referral for out-of-state care.
3. a. A referral for emergency care, including related travel expenses, to an out-of-state provider can be made by the primary physician. A determination that the emergency requires out-of-state care may be made at the primary physician's discretion, but is subject to review by the medical services division. Claims for payment for such emergency services must contain the name of the referring physician.
- b. Claims for payment for care for a medical emergency or surgical emergency, as those terms are defined in section 75-02-02-12, which occurs when the affected medical assistance recipient is traveling outside of North Dakota, will be paid unless payment is denied pursuant to limitations contained in section 75-02-02-12.
 - c. Claims for payment for any covered service rendered to an eligible medical assistance recipient who is a resident of North Dakota for medical assistance purposes, but whose regular place of abode is outside of North Dakota, will not be governed by this section.
 - d. Claims for payment for any covered service rendered to an eligible North Dakota medical assistance recipient who makes a showing, satisfactory to the department, that particular circumstances and conditions warrant the receipt of out-of-state care, and that the proposed out-of-state care is of a quality superior to that available instate or that the proposed out-of-state care is likely to enhance the recipient's health to a greater extent than similar instate care.

History: Effective November 1, 1983.

General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-02

STAFF COMMENT - 75-02-02-14 (County administration): Creates a new section on county administration which makes the county where a medical assistance unit is physically present responsible for administration of program benefits with respect to that unit. Also allows a county designated, by another county, to participate in the financing of medical assistance program payments to appeal that decision.

75-02-02-14. County administration.

1. Except as provided in subsection 2, the county where the medical assistance unit is physically present will be responsible for the administration of the program with respect to that unit.
2. Where a family unit receiving assistance moves from one county to another, the outgoing county continues to be responsible for the administration of the program with respect to that unit until the last day of the month after the month in which the unit assumes physical residence in an incoming county.
3. Where the county of cost responsibility is in doubt, the county where the medical assistance unit is physically present shall process the application promptly and designate the county to participate in the financing of any payments. A county so designated may appeal the decision to the department pursuant to the provisions of chapter 75-01-03.

History: Effective November 1, 1983.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-01-09

STAFF COMMENT - 75-02-05-05(20) - (Grounds for sanctioning providers): Adds to the list of grounds upon which medical assistance providers may be sanctioned, the authority to suspend providers upon issuance of a search warrant by law enforcement agencies seeking evidence of a crime of fraud against the medical assistance program.

75-02-05-05. Grounds for sanctioning providers. Sanctions may be imposed by the division of medical services against a provider who:

1. Presents or causes to be presented for payment any false or fraudulent claim for care or services.
2. Submits or causes to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled.

3. Submits or causes to be submitted false information for the purpose of meeting prior authorization requirements.
4. Submits a false or fraudulent application to obtain provider status.
5. Fails to disclose or make available to the division of medical services or its authorized agent records of services provided to medicaid recipients and records of payments received for those services.
6. Fails to provide and maintain services to medicaid recipients within accepted medical community standards as adjudged by a body of peers.
7. Fails to comply with the terms of the provider certification agreement which is printed on the medicaid claim form.
8. Overutilizes the medicaid program by inducing, furnishing, or otherwise causing a recipient to receive care and services not required by the recipient.
9. Rebates or accepts a fee or portion of a fee or charge for a medicaid patient referral.
10. Is convicted of a criminal offense arising out of the practice of medicine in a manner which resulted in death or injury to a patient.
11. Fails to comply and to maintain compliance with all regulations and statutes, both state and federal, which are applicable to the applicant's/licensee's profession, business, or enterprise.
12. Is suspended or involuntarily terminated from participation in medicare.
13. Is suspended or involuntarily terminated from participation in any governmentally sponsored medical program such as workmen's compensation, crippled children's services, rehabilitation services, and medicare.
14. Bills or collects from the recipient any amount in violation of section 75-02-05-04.
15. Fails to correct deficient provider operations within a reasonable time, not to exceed thirty days, after receiving written notice of these deficiencies from the division of medical services, other responsible state agencies, or their designees.
16. Is formally reprimanded or censured by an association of the provider's peers for unethical practices.

17. Fails to change or modify delivery patterns and services within a reasonable period after receipt of a request so to do by a peer review committee whose jurisdiction includes the provider.
18. Is convicted of a criminal offense arising out of the making of false or fraudulent statements or omission of fact for the purpose of securing any governmental benefit to which the provider is not entitled, or out of conspiring, soliciting, or attempting such an action.
19. Refuses to repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments. A refusal of repayment exists if no repayment or arrangement for repayment is made within thirty days of the date written notice of discrepancy was sent.
20. Is served with a search warrant by a member of any law enforcement agency for the purpose of obtaining evidence of a crime of fraud committed, by that provider, against the medical assistance program or is charged with such a crime, provided that no provider may be terminated from participation in the medical assistance program on such grounds.

History: Effective July 1, 1980; amended effective November 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 12.1-11-02; 42 CFR 455.11, 42 CFR 455.13

DECEMBER 1983

AGENCY SYNOPSIS: Amended definitions of terms "reasonable cost" and "related organization" to conform with related federal regulations.

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. "Allowable cost" means the ~~facilities~~ facility's actual cost after appropriate adjustments as required by medical assistance ~~regulation are made, and also means the cost to be reimbursed under the medical assistance program regulations.~~
3. "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable ~~which were created or acquired in providing services.~~
4. "Charity allowances" means the reductions in charges made by the provider of services because of ~~the patient~~ patient indigence ~~or medical indigence of the patient.~~
5. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of ~~an institution~~ a facility are divided for purposes of cost assignment and allocations.
6. "Cost finding" means the process of ~~recreating~~ analyzing the data derived from the accounts ordinarily kept by the provider to ascertain costs of the various types of services rendered;

it is the determination of these costs by the allocation of direct costs and proration of indirect costs.

7. "Courtesy allowance" means a reduction in charges in the form of allowances to physicians, clergy, and others for services received from the provider.
8. "Consumer price index rate (CPI)" means the ~~rate which will be applied to variable costs, excluding salaries, in computing the economic condition and trend factor within the rate~~ "all items" index for United States city average.
9. "Department" means the department of human services.
10. "Facility" means a skilled nursing or intermediate nursing care facility or a distinct part thereof in of a hospital providing skilled or intermediate nursing care or distinct parts of state institutions for the mentally retarded which are certified as intermediate care facilities for the mentally retarded. It does not otherwise mean an intermediate care facility for the mentally retarded.
- ~~10-~~ 11. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
12. "Fringe benefits" means all nonsalary employee benefits, including, but not limited to, self-employment (FICA) taxes, unemployment insurance, workmen's compensation, pensions, bonuses, health and life insurance premiums, and accrued compensation for absences.
- ~~11-~~ 13. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
- ~~12-~~ 14. "Historical cost" means those costs reported on the cost statement which were incurred and recorded ~~on in~~ in the facilities facility's accounting records during the past fiscal year.
- ~~13-~~ 15. "Intermediate care" means the level of care in which ~~an~~ intermediate care a licensed facility provides professional nursing services and personal care services to individuals requiring these services at least eight hours per day, seven days per week.
- ~~14-~~ 16. "Interest" means the cost incurred with the use of borrowed funds.

- ~~15-~~ 17. "Level of care" means the placement of patients by the level and amount of determination of the services required.
- ~~16-~~ 18. "Patient day" means, for cost determination purposes, all days that the facility has received payment. Hospital days, therapeutic days, and reserved bed days ~~shall~~ must be included. The day of admission will be counted, but not the day of discharge. The day of death shall be counted.
19. "Professional nursing service" means a service which must be furnished by or under the immediate personal supervision of licensed nursing personnel (registered nurse or licensed practical nurse) and under the general direction of the physician.
- ~~17-~~ 20. "Reasonable cost" means the cost, including all necessary and proper costs, incurred in rendering the services subject to the principles related to specific items of revenue and 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 cost takes into account both direct and indirect cost of providers of services. Implicit in the intention that actual costs be paid to the extent they are reasonable is the expectation 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. Within this definition costs must be related to patient care. Patient care costs would be those costs which are necessary and proper and which are common and expected occurrences in the field of the providers activity.
- ~~18-~~ 21. "Related organization" means an organization with which a provider is, to a significant extent, associated or with, affiliated with or has, able to control of, or is controlled by the organization furnishing the, and which furnishes services, facilities, or supplies to the provider. Control may be obtained either through ownership, management, or contractual arrangements exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or facility.
- ~~19-~~ 22. "Screening" means the method of patient review used by the social service board department to determine the level of care required by individuals residing in a facility.
- ~~20-~~ 23. "Skilled nursing care" means a level of care in which a skilled nursing licensed facility provides skilled

professional nursing services and personal care services to individuals requiring these services on a twenty-four-hour daily basis, seven days per week.

- 21- "Skilled and intermediate nursing service" means a service which must be furnished by or under the immediate personal supervision of licensed nursing personnel (registered nurse or licensed practical nurse) and under the general direction of the physician.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32);

42 CFR 447-272

42 CFR Part 447

AGENCY SYNOPSIS: Amended subsection on auditing to require long-term care facilities to provide annual financial statements as audited by a CPA, including the auditor's opinion.

75-02-06-02. Financial reporting requirements.

1. Records.

- a. The facility shall maintain on the premises the required census records and financial information which will be sufficient to provide for a proper audit or review. For any cost being claimed on the annual cost report, sufficient data must be available as of the audit date to fully support the report item. The accounting system ~~shall~~ must be double entry.
- b. Where several facilities are associated with a group and their accounting and reports are centrally prepared, added information must be submitted, for those items known to be lacking support at the reporting facility, with the annual cost report or must be provided to the local facility prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost. Home office cost reporting and cost allocation ~~shall~~ must be in conformance with HIM-15 paragraphs 2150 and 2153.
- c. Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report form to the state agency, financial and statistical records of the period covered by such cost report which are accurate and in sufficient detail to substantiate the cost data reported. Each provider shall make such records available upon reasonable demand to representatives of the ~~state agency~~ department or to

the secretary of health and human services or representatives thereof.

2. Accounting and reporting requirements.

- a. The accrual basis of accounting must be used for reporting purposes ~~shall be accrual~~. A facility may maintain its accounting records on a cash basis during the year but adjustments must be made to reflect proper accrual accounting procedures at year end and subsequently reported in the annual cost statement. Specific items to be accounted for are:

- (1) ~~Inventories.~~
- (2) ~~Accounts and notes receivable.~~
- (3) ~~Accounts and notes payable.~~
- (4) ~~Payroll and fringe payable.~~

Generally accepted accounting principles ~~shall~~ will prevail unless alternative treatment is specified in this chapter.

- b. To properly facilitate auditing, the accounting system should be maintained in such a manner that cost accounts will be grouped by cost center and be readily traceable to the reporting form 674 cost report.
- c. The form for annual reporting of costs for reimbursement purposes shall be form 674 prescribed by the department. This report ~~shall~~ must be filed with the management services division, provider audit unit, on or before the last day of the third month following the end of the facility's normal accounting year. The mailing of cost reports by registered mail, return receipt requested, will ensure documentation of the filing date. In the event a facility fails to file the required financial and statistical report on or before the due date, the medical services division shall, for the subsequent rate period, certify a rate using the following calculation:
- (1) After the last day of the fourth month following the facility's accounting year, there will be a nonrefundable penalty of ten percent of any amount claimed for reimbursement to the ~~board~~ department.
 - (2) The penalty is automatically applied each month past the deadline and continues through the month the report is received.

(3) The penalty may be waived by the executive director of medical services of the ~~social service board~~ department upon a showing of good cause for a delay.

(4) Penalty appeals shall be available only through the procedures set forth in North Dakota Administrative Code chapter 75-01-03.

d. The facility shall make all adjustments, allocations, and projections necessary to calculate, and shall calculate a daily rate consistent with these rules.

~~d-~~ e. Costs reported on form 674 shall reflect allowable must include total costs and be adjusted to allowable costs. Adjustments required by the audit unit, to attain allowable cost, though not meeting the medicaid state agency or the state medicaid investigative group criteria of fraud or abuse on their initial identification, could, if repeated on future cost filings, be considered as possible fraud or abuse. The audit unit will forward all such items identified to the appropriate medicaid investigative group.

3. Auditing. For fiscal years beginning after September 30, 1983, each facility shall provide the department with a copy of its annual financial statements as audited by a certified public accountant, including the auditor's opinion, as part of its annual cost report. Compilation or other reports will not be acceptable. Each facility shall make all necessary adjustments, allocations, projections, and calculations necessary to determine a daily rate. The bases used to determine the daily rate must be reviewed by the certified public accountant to determine compliance with this chapter and consistency of cost finding processes.

a. In order to properly validate the accuracy and reasonableness of cost information reported by the facilities, the state agency department will provide for at least a minimum number of necessary audits each year as follows:-

a- Annual field audits will be made on at least fifteen percent of the facilities which are deemed representative of all facilities and selected as follows:-

(1) At least five percent of participating facilities selected at random:-

(2) At least ten percent of participating facilities selected by profiles of costs or other factors established by the state agency:-

b. In all years, all cost reports, form 674, will be desk audited and exception audits will be performed as deemed necessary.

c. The state agency will accumulate the necessary statistics and data which report the number of field audits conducted and the results thereof.

d. b. The state agency department will perform audits directly and retain all audit-related documents, including cost reports, working papers, and internal reports on rate calculations which are utilized and generated by audit staff in performance of audits and establishing rates. Audits will meet generally accepted audit standards.

4. Penalties for fraud and incorrect filings. Any person who has committed a crime, including, but not limited to, fraud, making a false statement, or misrepresentation of a material fact in an application for reimbursement, may, upon conviction thereof, be fined ~~not more than twenty-five thousand dollars~~ or imprisoned ~~for not more than five years, or both,~~ all according to in accordance with the provisions of 42 U.S.C. 1396h and North Dakota Century Code title 12.1.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32), 42 USC 1396h;
42 CFR 447-274, 42 CFR 447-275, 42 CFR 447-277
42 CFR Part 447, Subpart C

75-02-06-03. Depreciation.

1. The principles of reimbursement for provider costs require that payment for services should include depreciation on all depreciable type assets that are used to provide ~~covered~~ necessary services to medical assistance recipients. This includes assets that may have been fully (or partially) depreciated on the books of the provider, but are in use at the time the provider enters the program. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity.

2. Depreciation methods.

a. The straight-line method of depreciation must be used. All accelerated methods of depreciation are unacceptable. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and

detailed schedules of individual assets shall be maintained. If the books of account reflect depreciation different than that submitted on the ~~form 674~~ cost report, a reconciliation ~~shall~~ must be prepared by the facility.

- b. The depreciable life of an asset is its expected useful life to the provider; not necessarily the inherent useful or physical life. If a difference is considered, a salvage value should be established prior to the application of the depreciation rate. The useful life is determined in the light of the provider's experience and the general nature of the asset and other pertinent data. In projecting a useful life, providers are to follow the useful life guidelines published by the American hospital association. A different useful life may be used; however, when the useful life selected differs significantly from that established by the guidelines, the deviation must be based on convincing reasons supported by adequate documentation, generally describing the realization of some unexpected event. The depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used for purposes of reimbursement. A composite useful life may be used for a class or group of assets.
3. Acquisitions.
 - a. If a depreciable asset has, at the time of its acquisition, an estimated useful life of at least two years and historical cost of at least ~~three~~ five hundred dollars, ~~or if it is acquired in quantity and the cost of the quantity is at least five hundred dollars,~~ its cost must be capitalized and depreciated over the estimated useful life of the asset. Cost during the construction of an asset, such as architectural, consulting and legal fees, interest, etc., should be capitalized as a part of the cost of the asset.
 - b. Depreciable assets acquired by donation may be depreciated provided the asset is valued at the fair market value and the basis for determining such value is reported and determined to be reasonable.
 - ~~b=~~ c. Major repair costs in excess of one thousand dollars on equipment or buildings must be capitalized if the repairs have increased the useful life of the asset by at least two years.
4. Proper records will provide accountability for the fixed assets and also provide adequate means by which depreciation can be computed and established as an allowable

patient-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. Basis for depreciation.

- a. ~~Historical~~ Depreciable costs are those costs which are incurred by the present owner in acquiring and preparing the asset for use. This amount shall may not exceed the lower of:
- (1) Current reproduction costs less straight-line depreciation over the life of the asset to the time of purchase; ~~or~~
 - (2) Fair market value at time of purchase; or
 - (3) In the case of a trade-in, ~~the historical cost will consist of~~ the sum of the book value of the trade-in plus the cash paid.
- b. For depreciation purposes, donated assets may be recorded and depreciated based on their fair market value. ~~The fair market value is considered the price the asset would bring by a bona fide bargaining between the well-informed buyers and sellers at the date of acquisition.~~ In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal must be made. The appraisal will be made by a recognized appraisal expert and will be accepted for depreciation and return on investment purposes. The facility may elect to forego depreciation on donated assets thereby negating the need for a fair market value determination.
- c. Purchase of a facility and its depreciable assets as an ongoing operation.
- (1) 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. The cost basis of a facility and its depreciable assets acquired as an ongoing operation ~~in a bona fide sale~~ is limited to the lowest of the following:
 - (a) Current reproduction cost of the assets, depreciated on a straight-line basis over its useful life to the time of the sale;

- (b) Price paid by the purchaser (actual cost); ~~or~~
 - (c) Fair market value of the facility or asset at the time of the sale; or
 - (d) Where the purchaser acquires the facility or assets in In a sale not bona fide, ~~the cost basis is also limited by the seller's cost basis, less accumulated depreciation, if this is lower than~~ subparagraphs a, b, and c.
- (2) The seller shall always use the sale price in computing the gain or loss on the disposition of assets.
- ~~d-~~ (3) Appraisal guidelines. To properly provide for costs or valuations of fixed assets, an appraisal will be required if the provider:
- ~~(1)~~ (a) Has no historical cost records or has incomplete records of depreciable fixed assets; or
 - ~~(2)~~ (b) Purchases a facility without designation of purchase price for the classification of assets acquired. Prior to having an appraisal made, the provider must inform the state that it intends to have the appraisal made. At this time the provider shall also set forth the reasons for the appraisal and will make available to the state department the agreement between the provider and the appraiser. The appraisal agreement should contain the appraisal date, the estimated date of completion, the scope of the appraisal, and the statement that the appraisal will conform to the current medicare regulation on principles of reimbursement for provider cost.
- ~~e-~~ (c) Limitation. The state department will recognize appraised value not to exceed cost basis for tax purposes. In all cases of major change, proper authority for expenditure shall be obtained.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); 42 CFR 447-276
42 CFR Part 447, Subpart C

AGENCY SYNOPSIS: Amended provisions regarding funded depreciation accounts to make clear the requirement that, where such accounts exist, they are to be used in the purchase or improvement of capital assets.

75-02-06-04. Interest expense.

1. General.

a. To be allowable under the program, interest must be:

- (1) Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required;
- (2) Identifiable in the provider's accounting records;
- (3) Related to the reporting period in which the costs are incurred; ~~and~~
- (4) Necessary and proper for the operation, maintenance, or acquisition of the provider's facilities ~~used therein-~~ as set forth in HIM-15 paragraphs 202.2 and 202.3; and
- (5) Unrelated to funds borrowed to purchase assets in excess of cost or fair market value.

b. In such cases where it was necessary to issue bonds for financing, any bond premium or discount shall be ~~accounted for and written off~~ amortized over the life of the bond issue.

2. Interest paid by the provider to partners, stockholders, or related organizations of the provider is not allowable as a cost. Where the owner uses the owner's own loans funds in to a business facility, the funds are considered ~~invested funds or~~ capital, rather than borrowed funds.

3. Where the provider has invested funds from gifts or grants which are unrestricted as to use, and these funds are commingled with other funds so that identity is lost, the provider's allowable interest expense is reduced by the amount of investment income earned by the fund. Any investment income in excess of interest expense will not be used to offset other operating expenses. However, if the unrestricted gifts and grants are not commingled with other funds or identity is maintained as in a "pool", the investment income earned by the fund does not reduce allowable interest expense.

4. Restricted gifts will be treated in a manner consistent with HIM-15, Section 600.

5. If a facility incurs interest expense because of late payments by patients and charges the patients a service charge or interest for late payments, such income must be offset against interest expense.

4- 6. Funded depreciation.

- a. Funding of depreciation is the practice of setting aside cash or other liquid assets, in a fund separate from the general funds of the provider, to be used for replacement of the assets depreciated, or for other capital purposes. The deposits are, in effect, made from the cash generated by the noncash expense depreciation.
- b. Deposits to the funded depreciation account are generally in an amount equal to the depreciation expense charged to costs each year. In order to qualify for all provisions of funding funded depreciation, the minimum deposits, exclusive of interest income to the account shall, must be fifty percent of the depreciation expensed that year. Deposits in excess of accumulated depreciation are allowable; however, the interest income generated by the "extra" deposits will be considered as a reduction of allowable interest expense. This provision is recommended as a means of conserving funds for the replacement of depreciable assets and purchase of capital assets. It is expected that the funds will be invested to earn revenues. The revenues generated by this investment will not be considered as a reduction of allowable interest expense, provided the interest remains in the funded depreciation account.
- c. Monthly or annual deposits representing depreciation must be in the funded depreciation account for six months or more to be considered as valid funding transactions. Deposits of less than six months are not eligible for the benefits of a funded depreciation account. However, if deposits invested before the six-month period remain in the account after the six-month period, the investment income for the entire period will not reduce the allowable interest expensed in that period. Total funded depreciation in excess of accumulated depreciation on patient-related assets will be considered as ordinary investments and the income therefrom will be used to offset interest expense.
- d. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on these assets and for other capital expenditures are on a first-in, first-out basis. Withdrawals for general operating purposes or for loans to the general fund are made on a last-in, first-out basis. Such loans must meet the "necessary and proper" requirements for need of the loan. Interest paid ~~for~~ from the general fund to the funded depreciation account on the loan is an allowable cost, except as mentioned in subdivision c, where the deposit has not been in the fund for the six-month period, the interest paid on the loan is not an allowable cost. Loans made to the general fund

~~shall~~ may not be made for a period or term which is longer than three years. Documentation on prevailing interest rates at the time of the loan shall be maintained on file. The necessary and proper requirements set forth in HIM-15 paragraph paragraphs 202.2 and 202.3 will apply to all loans made.

- e. The provider may use the funds in the funded depreciation account for purposes other than the improvement, replacement, or expansion of facilities or equipment related to patient care. However, allowable interest expenses for the period of withdrawal will be reduced to adjust for offsets not made in prior years for earnings applicable to such funds. For example, if the provider withdraws funds equal to two years' deposits, using the last-in, first-out method, any earnings applicable to these deposits during the two-year period are applied as a reduction of interest expense incurred during the period of withdrawal. When funded depreciation accounts are used for capital and noncapital purchases, the total interest income will be offset.
- f. When money is borrowed to fund depreciation, interest paid by the provider on the money borrowed for this purpose is not an allowable cost.
- g. Funded depreciation is to be used both for the replacement of existing assets and for expansion. These funds must be used for all capital outlays in excess of ~~three~~ five hundred dollars except with regard to those assets purchased exclusively with donated funds, and cannot be restricted for a specific or future purpose. For example, restricting the account to funding depreciation for "building" would negate the intent of funding depreciation as defined by this section.
- h. When capital purchases are made with borrowed funds rather than funds from the funded depreciation account, the entire interest income for funded depreciation will be offset up to the entire interest expense.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); 42 CFR 447-276
42 CFR Part 447, Subpart C

AGENCY SYNOPSIS: Amended the "reasonableness" test for managerial and administrative compensation so as to make tests identical for all persons whose compensation is subject to the test, and identified the specific categories of persons whose compensation would be subject to the test.

Amended the provisions relating to the allowability of board of directors fees to identify 12 meetings per fiscal year as normal, and to limit additional compensation for employees who serve on the board of directors.

75-02-06-05. Compensation.

- 1- The allowance of compensation for services of sole proprietors and partners is the amount determined to be the reasonable value of the services rendered regardless of whether there is any actual distribution of the profits of the business. Subdivision b of subsection 2 shall be used in determining reasonableness.
- 2- Compensation in corporate facilities.
 - a- For purposes of determining whether the total compensation paid is reasonable, compensation as defined herein means remuneration paid regardless of the form in which it is paid. Compensation may be included in allowable provider costs only to the extent that it represents reasonable remuneration for managerial, administrative, professional, and other services related to the operation of the facility and rendered in connection with patient care. Services rendered in connection with patient care include both direct and indirect activities in the provision and supervision of patient care, such as administration, management, and supervision of the overall institution. Compensation of this type must be documented, especially in circumstances where there is an administrator of the facility that would normally be charged with the direct and indirect activities. Services which are not related to either direct or indirect patient care are those primarily for the purpose of managing or improving the owners financial investment, and will not be recognized as an allowable cost.

1. Compensation may be included in allowable provider costs only to the extent that it represents reasonable remuneration for managerial, administrative, professional, or other services related to the operation of the facility and rendered in connection with patient care. Services which are not related either to direct or indirect patient care are primarily accomplished for the purpose of managing or improving the owner's financial investment and are not allowable. Data necessary to establish the rendering of patient care must

include the hours, types and valuation basis of the work performed.

- b- a. Reasonableness requires that the compensation allowance be such an amount as would ordinarily be paid for comparable services by comparable institutions depending upon the facts and circumstances of each case. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, an institution would have had to employ another person to perform them. The services must be pertinent to the operation and sound conduct of the institution. The social service board shall determine reasonable administrator compensation by survey, every two years, to be the least of (1) the compensation actually paid, (2) the ninetieth percentile cost per licensed bed per year, or (3) the ninetieth percentile salary. Percentiles shall be calculated separately for facilities of less than seventy-five beds, and those of seventy-five or more beds. Reasonable compensation data will be revised at least annually to reflect changes in the consumer price index (all items - U.S. city average). The facility shall demonstrate reasonableness of compensation. The department may use internal revenue service guidelines as the basis for determining reasonableness.
- e- b. Items which are considered compensation and includable in the test for reasonable compensation received by an administrator any person identified in subdivision c include, but are not limited to, the following:
- (1) Salary amounts paid for managerial, administrative, professional, and other services.
 - (2) Amounts paid by the institution for the personal benefits of the administrator or owner-administrator person, e.g., housing allowance, flat-rate automobile allowance.
 - (3) The cost of assets and services which the owner-administrator or administrator person receives from the institution.
 - (4) Deferred compensation (pension and annuities).
 - (5) Supplies and services for the personal use of the administrator or owner-administrator person.
 - (6) The wages cost of a domestic or other employee who works in the home of the administrator or owner-administrator person.

- (7) Insurance Life and health insurance premiums paid for the owner-administrator or administrator (life and health insurance) person.

c. Persons whose compensation will be tested under this subsection include, but are not limited to:

- (1) The provider's administrator.
- (2) Any person who has an interest in the facility as a sole proprietor, partner, corporate stockholder, or organizer of a nonprofit corporation.
- (3) Any person who occupies any position on the provider's governing board or group, however constituted.
- (4) Any person who is a bondholder or creditor, or an officer in a corporate bondholder or creditor, to whom or which the provider is obligated to pay in excess of five thousand dollars.
- (5) Any person who has an ownership interest in, or is an officer of, any related organization.
- (6) Any person within the third degree of relationship to any person identified in paragraphs 1 through 5.

d. The department will determine reasonable administrator compensation by survey of free standing facilities every two years. Survey data will be revised at least annually to reflect changes in the consumer price index. Any limits implemented in section 75-02-06-16 will also apply to compensation.

3- 2. Travel costs which are incurred in the course of normal operations of the nursing facility and result in providing the required transportation of the residents of the home will be considered. The cost must be patient related and reasonable. All travel costs not related to local transportation needs will require documentation to justify the cost and to indicate how the expenditure is patient related for transportation of residents are allowable. The facility may include the amount authorized by North Dakota Century Code section 54-06-09 for mileage or may charge actual cost in accordance with internal revenue service guidelines for employee mileage with depreciation calculated on the straight-line basis. The facility shall support travel costs with sufficient documentation to establish the purpose of the travel and that it is patient related.

- a. Travel costs for administrators will be allowed in order that they staff may attend meetings which pertain to patient care, home office visits, and board meetings for associations. Allowable travel costs shall not exceed the maximum allowed pursuant to North Dakota Century Code ~~section~~ sections 44-08-04 and 54-06-09.
- b. The fees paid to members of a board of directors for meetings attended shall be allowed in an amount not to exceed the compensation paid, per day, to members of the legislative council, pursuant to North Dakota Century Code section 54-35-10, plus travel at a rate not to exceed the maximum allowed pursuant to North Dakota Century Code ~~section~~ sections 44-08-04 and 54-06-09. Normally, no more than ~~twenty-four~~ twelve meetings per fiscal year will be considered reasonable. Any exceptions to the stated number of meetings must be presented for the consideration of the auditor in charge during the onsite audit. A determination of the reasonableness of any additional meeting expenses will be made at that time. No additional compensation will be allowed for service of employees on the board of directors.
- 4- 3. All plans within the definition of deferred compensation and pension plans set forth in HIM-15 sections 2140.1 and 2142.1, respectively, shall be considered in the determination of allowable costs. No provisions of these plans may discriminate in favor of certain employees, such as employees who are officers, stockholders, supervisors, or highly paid personnel. In order to be considered an allowable cost, the payment reported must benefit all eligible employees and be based on the same payment structure.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); 42 CFR 447-276
42 CFR Part 447, Subpart C

75-02-06-06. Return on investment. For a return on investment for proprietary homes, an allowance of eight and one-half percent of average net investment of fixed assets relating to patient care will be established. The "net investment of fixed assets relating to patient care" means the cost, less accumulated depreciation and the balance of notes and mortgages payable, pertaining to the fixed assets relating to patient care. The allowance for the return on an investment will be made on form 674, annual statement of reimbursable cost the cost report. The allowance shall not exceed the amount allowable under section 1200 of HIM-15.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32)

AGENCY SYNOPSIS: Amended provisions relating to the home office costs of chain organizations to require a demonstrated cost savings by such an organization which wishes to include any component of home office costs in the individual facility's rate.

75-02-06-07. Related organization.

1. Costs applicable to services, facilities, and supplies furnished to a provider by ~~organizations related to the provider by common ownership or control shall a~~ related organization may not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. Providers ~~must~~ shall identify such related organizations and costs in the cost report. An appropriate statement of cost and allocations ~~must~~ shall be submitted with the annual cost report ~~674~~. For cost reporting purposes, management fees will be considered as administrative costs.
2. A chain organization consists of a group of two or more health care facilities which are 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.
3. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their member facilities. Although the home office of a chain is normally not a provider in itself, it may furnish to the individual provider, central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual cost of providing such services is includable in the provider's allowable costs under the program. Any services provided by the home office which are also included in cost as payments to an outside provider will be considered a duplication of costs and not be allowed. The related organization shall clearly demonstrate a cost savings to the department in order to include each component of home office costs in the rate for individual facilities.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); ~~42 CFR 447-276, 42 CFR 447-284~~ 42 CFR Part 447, Subpart C

75-02-06-08. Rental expense paid to a related organization.

1. A provider may lease a facility from a related organization within the meaning of the principles of reimbursement. In such case, the rent paid to the lessor by the provider is not allowable as cost. The provider, however, would include the cost of ownership of the facility. Generally, these would be costs such as depreciation, interest on the mortgage, real estate taxes, and other expenses attributable to the leased facility. The effect is to treat the facility as though it were owned by the provider. Therefore, the owner's equity in the leased assets is includable in the equity capital of the proprietary provider.
2. In order to be considered an allowable cost, the home office cost must be directly related to those services performed for individual providers and relate to patient care. An appropriate share of indirect costs will also be considered. Documentation as to time or services provided must be available to substantiate cost.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); ~~42 CFR 447-276~~, ~~42 CFR 447-284~~ 42 CFR Part 447, Subpart C

75-02-06-09. Taxes.

1. General.
 - a. Taxes assessed against the provider, in accordance with the levying enactments of the several states and lower levels of government and for which the provider is liable for payment, are allowable costs. Tax expense may not include fines, penalties, or those taxes listed in subsection 2.
 - b. Whenever exemptions to taxes are legally available the provider is to take advantage of them. If the provider does not take advantage of available exemptions, the expense incurred for such taxes ~~are~~ is not recognized as allowable costs under the program.
2. ~~Taxes not allowable as costs.~~ The following taxes, which are levied on providers, are not allowable as costs:
 - a. Federal income and excess profit taxes, including any interest or penalties paid thereon.
 - b. State or local income and excess profit taxes.

- c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes in the issuance of bonds, property transfers, issuance or transfers of stocks, etc. Generally, these costs are either amortized over the life of the securities or depreciated over the life of the asset. They are not, however, recognized as tax expense.
- d. Taxes ~~from~~ such as real estate and sales tax for which exemptions are available to the provider.
- e. Special assessments on land which represent capital improvements, such as sewers, water, and ~~pavements,~~ should pavement, must be capitalized and may be depreciated over their useful life.
- f. Taxes on property which is not used in the ~~retention~~ provision of covered services.
- g. Taxes, such as sales taxes, levied against the patient and collected and remitted by the provider.
- h. Self-employment (FICA) taxes applicable to individual proprietors, partners, members of a joint venture, etc.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); 42 CFR 447-276
42 CFR Part 447, Subpart C

75-02-06-10. Bad debts. Bad debts, charity, and courtesy allowances ~~shall~~ may not be included in allowable costs.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); 42 CFR 447-282, 42 CFR 447-283 42 CFR Part 447, Subpart C

75-02-06-11. Startup costs. In the first stages of operation, a new institution incurs certain costs in developing its ability to care for patients prior to admission of patients. Staff is obtained, organized, and other operating costs are incurred during this time of preparation which cannot be allocated to patient care during that period because there are no patients receiving services. Therefore, it is proper that such actual costs, commonly referred to as startup costs, be considered as deferred charges under the program and allocated over a number of periods which benefit from such costs. Where a provider has properly capitalized startup costs as a deferred charge, amortization of such costs will be recognized as allowable costs depreciated over sixty

consecutive months starting with the month in which the first patient is admitted for treatment.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); 42 CFR 447-276
42 CFR Part 447, Subpart C

AGENCY SYNOPSIS: Amended provision making costs incurred in the form of dues to charitable or civic organizations nonallowable so as to allow up to \$150 per year with no specific showing the costs are patient related, and to allow amounts in excess of \$150 per year upon a clear showing of patient relatedness.

Added a provision which requires the facility to demonstrate the actual proportion of the use of any equipment by a facility where that equipment is not exclusively used by the facility.

75-02-06-12. Adjustment to cost and cost limitation.

1. Income to offset cost.

a. Several items of income to the home will be considered as offsets against various costs as recorded in the books of the facility. Any income which is received by the home for reimbursements of cost, with the exception of the basic daily rate and income from charges to private pay patients for care items which are included in the title XIX rate, will be offset against costs to the extent it does not exceed costs reported. Any reimbursement not listed below, which may be classified as an offset, must be shown as such on the cost report form 674 and costs reduced accordingly. Items of income, whether in cash or in any other form, to offset cost include, but are not limited to, the following:

- (1) "Activities income." Income from the activities department and the gift shop ~~to the extent that~~ it does not exceed the expenses as reported.
- (2) "Confections income." All income from the sale of pop, candy, or other items.
- (3) "Dietary income." Amounts received from or on behalf of employees, guests, or other nonpatients for lunches, meals, or snacks.
- (4) "Drugs or supplies income." ~~All revenues~~ Amounts received from employees, doctors, or others not admitted as patients.

- (5) "Insurance recoveries income." Any amount received from insurance for a loss incurred shall be offset against costs reported in the current year ~~to the~~ extent of costs allowed in prior or current year for that loss if the facility did not adjust the basis for depreciable assets.
- (6) "Interest or investment income." Interest received on investment ~~to the extent that it does not~~ exceed the total interest cost for the year except amounts allowable as funded depreciation or from earnings on restricted gifts or donations.
- (7) "Laundry income." All amounts received for services rendered to or on behalf of employees, doctors, or others.
- (8) "Maintenance of personnel." The cost ~~(to be~~ determined) of providing meals and lodging to nursing home personnel living on premises.
- (9) "Nonrelated depreciation expense." All depreciation reported in costs expense for facility assets which is not related to patient care.
- (10) "Private duty nurse reimbursement." All reimbursement received for the providing of a private duty nurse ~~if the cost is included in the~~ reimbursement report.
- (11) "Purchase discounts." All discounts received from vendors on purchases included in costs.
- (12) "Rebates and refunds income." Any refund Amounts received on expense or cost item shall items must be offset against the appropriate cost.
- (13) "Rentals of nursing home space income." Any revenues received from outside sources for the use of nursing home space and equipment.
- (14) "Telegraph and telephone income." All revenues received from patients, guests, or employees.
- (15) All therapy and other professional services revenue unless services rendered to medical assistance program eligible patients and outpatients are identified and revenue from those services offset to the related cost.

- b. Payments to a provider by its vendor will be considered as discounts, refunds, or rebates in determining allowable costs under the program even though these payments may be

treated as "contributions" or "unrestricted grants" by the provider and the vendor. However, such payments may represent a true donation or grant. Examples include, but are not limited to, when: (1) they are made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited; (2) they are in addition to discounts, refunds, or rebates, which have been customarily allowed under arrangements between the provider and the vendor; (3) the volume or value of purchases is so nominal that no relationship to the contribution can be inferred; (4) the contributor is not engaged in business with the provider or a facility related to the provider.

- c. Where an owner or other official of a provider directly receives from a vendor monetary payments or goods or services for the owner's or official's own personal use as a result of the provider's purchases from the vendor, the value of such payments, goods, or services constitutes a type of refund or rebate and ~~should~~ must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.
- d. Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates ~~should~~ must be credited to the costs of the provider in accordance with the instructions above. These should not be treated as income of the central purchasing function or used to reduce the administrative costs of that function. Such administrative costs are, however, properly allocable to the facilities serviced by the central purchasing function.
- e. Amounts paid by a supplier for the use of space or equipment in a hospital or long-term care facility will ordinarily be found to constitute a form of discount, whether paid as a percentage of charges or as a flat amount per bed or per time period. Payments made by a supplier to a provider in recognition of the fact that the supplier is relieved of the need to collect individual bills from the patients of the provider, sometimes called "accounting fees" or "collection fees", are considered a form of discount, refund, or rebate and ~~should~~ must be used to reduce the costs of the goods or services purchased from the supplier.
- f. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased. They are not to be considered a form of income. They ~~should~~ must be used to reduce the specific costs to which they apply. If possible, they should accrue to the period to which they apply. If not, they will reduce expenses in

the period in which they are received. The reduction to expense for supplies or services must be used to reduce the total cost of the goods or services for all patients without regard to whether the goods or supplies are designated for all patients or a specific group, e.g., medicare or nonmedicare.

- (1) "Purchase discounts" include cash discounts, trade, and quantity discounts. "Cash discount" is for prepaying or paying within a certain time of receipt of invoice. "Trade discount" is a reduction of cost granted certain customers. "Quantity discounts" are reductions of price because of the size of the order.
 - (2) Allowances are reductions granted or accepted by the creditor for damage, delay, shortage, imperfection, or other cause, excluding discounts and refunds.
 - (3) Refunds are amounts paid back by the vendor generally in recognition of damaged shipments, overpayments, or returned purchases.
 - (4) Rebates represent refunds of a part of the cost of goods or services. Rebates differ from quantity discounts in that it is based on dollar value of purchases not quantity of purchases.
 - (5) "Other cost-related income" includes amounts generated through the sale of a previously expensed item, e.g., supplies or equipment.
2. Costs not related to patient care are costs which are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Such costs are not allowable in computing reimbursable costs. They include, but are not limited to, the following:
- a. Costs which are unallowable when incurred by a facility are also unallowable for a home office and cannot be allocated to facilities in a chain organization.
 - b. Certain corporate costs, such as stockholder servicing costs, organization costs, or reorganization costs are not related to patient care and are not allowable.
 - c. Costs incurred in the form of dues or contributions paid to all charitable or civic organizations, ~~i.e.,~~ the boy scouts and girl scouts, cancer foundation, league for the blind, disabled American veterans, and the lung association are not related to patient care and are not considered

an allowable cost in excess of one hundred fifty dollars per year will be allowed only upon a clear showing that they are patient related.

- d. The full cost of items or services such as telephone, television, and radio which are located in patient accommodations and which are furnished solely for the personal comfort of the patients are not includable in allowable costs.
 - e. Fundraising costs, including salaries, advertising, promotional or publicity costs incurred for such a purpose are not includable in allowable costs.
 - f. Costs of advertising to the general public which seek to increase patient utilization of the provider's facilities are not allowable. Included in these unallowable costs are brochures, newspaper ads for purposes other than procurement of personnel, promotional type items such as pens and pencils, exclusive of personnel procurement and yellow page ads except those limited to the information furnished in the white page listing, advertising in journals or through radio and television or other media in the telephone directory.
 - g. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates, to the satisfaction of the department, that any particular use of equipment was related to patient care.
3. All costs for services reimbursed by the department directly to the provider, e.g., pharmacy and therapies, must be excluded from the rate calculation.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); 42 CFR 447-276; 42 CFR 447-284 42 CFR Part 447, Subpart C

AGENCY SYNOPSIS: Added a provision requiring the allocation of medical records costs, in facilities combining hospital and nursing home services, by number of admissions, and including these costs as administrative costs.

Amended allocation provisions to allow adjustments where the federal Medicare program may have allocated a cost already allocated by the state's Medical Assistance Program.

75-02-06-13. Cost allocation.

1. Where services of the various cost centers are jointly used by any combination of facilities ~~not related to a hospital~~ or in the event that services are provided which result in costs that are not includable in allowable costs, the following cost allocation methods must be used. In cases where more than one method of allocation is available within a or among cost center centers, management services the department shall have discretion to apply the method which, in its opinion, reflects the most reasonable cost based upon the data available at the time of audit.
 - a. ~~Nursing service-~~ Nursing salaries must be reported on actual costs. Other nursing service costs ~~shall~~ must be allocated on patient days.
 - b. Dietary costs ~~shall~~ must be allocated on the basis of meals served to patients.
 - c. Housekeeping costs ~~shall~~ must be allocated on the basis of patient days or on usable square footage.
 - d. Laundry and linen costs ~~shall~~ must be allocated on the basis of patient days or on pounds [kilograms] of laundry if records are maintained to reflect a study which is performed at regular intervals on an ongoing basis.
 - e. Plant operation costs ~~shall~~ must be allocated on the basis of available bed days, or on the basis of usable square footage of space.
 - f. Property costs ~~shall~~ must be allocated on the basis of available bed days, or on the basis of usable square footage of space.
 - g. Administration costs ~~shall~~ must be allocated on the basis of percentage of total cost, other than administration, in each facility. Administrative cost ~~shall~~ must be limited to fifteen percent of total allowable nursing home costs exclusive of administrative costs.
 - h. In facilities combining hospital and nursing home services, medical record costs must be allocated by number of admissions and included as administrative costs.
2. If certain costs within a particular cost center can be directly identified with the nursing home, then they ~~shall~~ are not be subject to allocation procedures as previously outlined. The remaining costs within that cost center ~~shall~~ must be allocated according to cost allocation methods as described previously. In no case shall the costs allocated by the methods above exceed those costs which are nursing home

costs on the medicare report. The medicaid rate may be subsequently adjusted to recognize adjustments by medicare.

3. Allocation procedures for nursing homes combined with a hospital ~~shall~~ will be those set forth in this chapter.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); 42 CFR 447-276
42 CFR Part 447, Subpart C

AGENCY SYNOPSIS: Adds a new subsection identifying how the level of care provided to patients will be identified in the event the facility does not document the level of care.

75-02-06-14. Patient census.

1. A patient day is any day that the facility has received remuneration for the available bed. The amount of remuneration has no bearing on whether a day should be counted or not. Examples of days that must be included in census, providing they have been paid for, are hospital days and therapeutic leave days. In the case where a private room has been made ~~of~~ from a previously utilized double room and a rate has been charged that does not correspond to a normal private room rate, two patient days would be counted for this room.
2. A daily census record must be prepared and maintained by the facility to allow for proper audit of the census data.
3. Census days will be segregated by the level of care provided. If the facility does not document the level of care provided, the rate charged to the resident may be used by the department to establish the level of care.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); 42 CFR 447-276, 42 CFR ~~447-277~~ 42 CFR Part 447, Subpart C

75-02-06-15. Nursing care. Routine nursing care services are those services included by the provider in a daily services charge usually referred to as the room and board charge. The following types of items and services in addition to room dietary and medical social services ~~shall~~ must be considered to be routine for purposes of medicaid cost reporting even though they may be considered ancillary by the facility:

1. All general nursing services including but not limited to administration of oxygen and related medication, hand feeding, incontinency care, tray service, enemas, etc.
2. Items which are furnished routinely and relatively uniformly to all patients, e.g., patients' gowns, water pitchers, basins, bedpans, etc.
3. Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, e.g., alcohol, applicators, cotton balls, bandaids, antacids, aspirins, (and other nonlegended drugs ordinarily kept on hand), suppositories, tongue depressors, paper tissues, deodorants, mouthwashes, kleenex, toothpaste, denture cleaner, etc.
4. Items which are utilized by individual patients which are reusable and expected to be available in the facility providing a skilled or intermediate level of care, e.g., ice bags, bedrails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.
5. Items which, while not listed above, came within the definitions set forth in the personal needs guidelines of the Guidelines for Routine Drugs, Supplies, and Equipment for Skilled Nursing and Intermediate Care Facilities as issued by the medical services division for any items which may not have been covered in the above but may come within the definitions set forth in the personal needs guidelines.
6. Special dietary supplements used for tube feeding or oral feeding such as elemental high nitrogen diet, even if written as a prescription item by a physician ~~(because these supplements have been classified by the food and drug administration as a feed rather than a drug)~~.
7. Laundry services considered necessary for the proper care and appearance of the patient.

History: Effective September 1, 1980; amended effective December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); ~~42 CFR 447-276, 42 CFR 447-281~~ 42 CFR Part 447, Subpart C

AGENCY SYNOPSIS: Amended provisions used to project salary and fringe benefit costs so as to use the facility's reasonable patient related costs from the previous fiscal year, adjusted by a specific Consumer Price Index.

Amended provisions relating to the facility's charging of an excess rate for Medical Assistance cases so as to require the facility

to report the overcharge, remit overcharged amounts within 30 days, and pay interest on amounts not repaid within 30 days.

Amended provisions relating to the establishment of an interim rate to allow the facility to identify and request the rate believed appropriate, based upon an adjustment letter to be issued by the department.

Amends the provision relating to the establishment of the "desk rate" to require the department to furnish that rate within one month of the facility's having filed a timely and complete cost report.

Creates a new subsection which designates the method of establishing partial year rates for facilities changing ownership during the fiscal year, facilities adding beds during the fiscal year, for new facilities, and for facilities adding beds on the first day of the fiscal year.

75-02-06-16. Reimbursement.

1. The method of determining the reimbursement rate per day will be through the use of the prospective ratesetting system. The system requires that the rate be established during the year in which it will be effective with retroactive adjustment to the beginning of the facility's fiscal year.
2. The determination of a prospective rate for all accommodations begins with the actual cost of the facility's operations for the previous fiscal year. Once ~~it has been determined~~ that the reasonable patient-related costs from the previous year are, in fact, reasonable patient-related costs determined, adjustments are then applied to the historical cost to determine the prospective rate. Reasonable patient-related costs will be determined with reference to health insurance manual 15 (HIM-15) and instructions issued by the department.
3. The historical costs combined with the adjustments take into consideration the economic conditions and trends during the period to be covered by the rate. Costs which are incurred to meet certification standards shall be allowable and included in the determination of the rate. Rate adjustments to provide appropriate compensation may be requested where major unforeseeable expenses are incurred. Such requests may be made to the director of medical services, who shall determine if the expense is patient related and beyond the control of those responsible for the management of the facilities. The following adjustment methods will be used:
 - a. Salary and fringe benefit costs will be determined as follows-

- (1) Establish an upper salary limit by dividing the basic salary for the first two months by the number of days in the payroll period, multiplying by the number of days in the fiscal year, and adding salary costs for replacements due to prior year vacations.
- (2) Add a percentage of any increase over the prior year's salary costs to reflect costs of fringe benefits. The percentage used will be determined by the agency on an annual basis.
- (3) At the end of a facility's fiscal year, a calculation will be made to determine the actual salary costs. Any facility which limits salary cost to less than the upper limit, but not less than ninety-five percent of the upper limit, will be permitted to treat salary costs as being at the upper limit. If a facility limits its salary cost to less than ninety-five percent of the upper limit, the facility will be permitted to treat salary costs as actual costs plus five percent of the upper limit, and the paid rate will be adjusted to reflect this cost figure.

Salary and fringe benefit costs of the facility will be projected based upon the reasonable patient-related salary and fringe benefit costs incurred in the facility's previous fiscal year plus the unadjusted annual percent increase, if any, of the consumer price index for urban wage earners and clerical workers, nonfood expenditure categories, United States city average, as itemized under the subheading "other professional services" of the heading "medical care services", as of the ending date of that fiscal year.

- b. Property costs will be included in the rate at the historical amount unless there has been a major change in ownership or construction of the facility requiring certificate of need procedures adjusted in accordance with these rules.
- c. The other costs of the facility will be projected based upon the historical cost plus the annual percent of increase, if any, in the consumer price index as of the facility's fiscal year end. The consumer price index (CPI-U) percentage used is that considered as "all items." (United States city average.)

4. Limitations.

a. The appropriate division of the social service board department shall accumulate and analyze statistics on costs incurred by the nursing facilities. These 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. These 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. It shall be the option of the social service board department to implement the ceilings so mentioned at any time based upon the statistics information available and under guidelines required within the regulations of title XIX. The methods used in determining limitations will be consistent for any or all classes of facilities. Approval will be received from health and human services regional office prior to implementation of additional limitations.

b. At such time as federal regulations establish a ceiling on medical rates for skilled nursing facilities, that ceiling shall also be considered the maximum for title XIX payment.

c. A facility is expected to maintain an average annual occupancy rate which is based upon its size. Facilities with zero up to forty licensed beds should maintain an eighty-five percent occupancy rate; facilities with forty-one to sixty licensed beds should maintain a ninety percent occupancy rate; and facilities with sixty-one and more licensed beds should maintain a ninety-five percent occupancy rate. For facilities with less than the stated percentage for the period under consideration, the number of patient days for rate computation will be computed using the required percentage instead of the lower actual percentage of occupancy. The computed patient days will apply only to the following areas:

- (1) Administrative costs;
- (2) Plant operation costs; and
- (3) Property costs.

A reserved paid bed will be counted as an occupied bed. A waiver to the minimum bed occupancy allowance may be made for new facilities or existing facilities which add new beds under a certificate of need during the first year of operation. Consideration will be given in these circumstances to the facts available.

- d. Administrative cost shall be limited to fifteen percent of total allowable nursing home costs exclusive of administrative costs.
 - e. For facilities which do not have an adequate accounting system to allocate costs to the various levels of care, the following methodology is used:
 - (1) In calculating nursing care cost per day, total patient days are rated at a ratio of 1.0 for total skilled care days, .67 for total intermediate care days, and .12 for total custodial care days.
 - (2) Costs other than nursing are prorated over total patient days. (Subject to occupancy requirement.)
5. Rate payments.
- a. The rate as established shall be considered as payment for all accommodations and includes all items designated as routine services for each level of care. No payments may be solicited or received from the patient or any other person to supplement the rate as established.
 - b. The rate as established shall only be paid if the private pay patients' rates for semiprivate accommodations equal or exceed the established rate for medical services patients. The rate being charged private pay patients at the time the services ~~are being or~~ were provided ~~shall~~ will govern. In cases where private pay patients are not charged a daily rate, the daily charge will be computed by dividing the total private pay charges for each month by the private pay census for each month. At no time shall the rate paid by medical services exceed the lesser of cost or private pay charges as previously defined. If at any time the facility discounts the private pay ~~patients~~ rate for those periods of time that the patient is not in the facility, the discounted rate ~~may not be lower than the rate as established for~~ will be the maximum chargeable to medical services patients. If the discounting policy ~~does create~~ creates a situation in which the private rate is less, then all medical assistance patients shall be afforded a discount in the amount of the difference between the discounted private ~~patient~~ rate and the established medical assistance rate.
 - c. If the medical assistance reimbursement rate exceeds the private payment rate for a particular level of care, on any given date, the ~~social service board shall request a refund from the provider 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 requested shall will be the difference between the private pay rate and medical assistance rate times the number of medical assistance patient days paid during the period in which the medical assistance reimbursement rate exceeded the private pay rate 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 will also apply to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs. It shall be the responsibility of the facility to notify medical services if the rate paid is more than that charged private pay patients.

- d. Overpayments found in audits will be accounted for on the HCFA-64 report no later than the second quarter following the quarter in which found, as provided for in federal regulations.
- e. Participation in the program will be limited to providers of service who accept, as payment in full, the amounts paid in accordance with the rate structure.

- f. Rate payments to the facility will be made on a schedule detailed as follows:

- (1) During the last month of each facility's (LTC) fiscal year, a letter will be mailed to them indicating the estimated amount of increase for all homes whose fiscal year ends that month. The home, by responding to this statement in writing, may indicate any amount of increase up to and including the amount specified in the letter. The amount specified in the letter will be based upon the percent of increase in rates determined from the audits of the prior six-month period ending December thirty-first or June thirtieth. In accepting the amount the facility appropriate adjustment to be used for the upcoming year. The facility may then request a change in its rate. The rate adjustment should consider the private pay rate in the facility at that time and their best estimate of cost to be reflected in the ratesetting procedure the medicaid rate for the next fiscal year. The rate so indicated by the facility will be reviewed and, if deemed reasonable, will then be implemented effective the first of that facility's fiscal year. This rate is only an interim rate.

- (2) Each facility must file an annual report 674 within three months of the end of its fiscal year. Within one month of the receipt of each form 674 report, it will be reviewed for completeness and accuracy. If the report is filed in a timely manner and if all information requested is present on the report, it will be used as a basis for establishing an interim rate for the facility within one month of filing. The rate so calculated will be based upon the costs as reported plus the percentage of increase in the consumer price index during the twelve-month period ended with the facility's fiscal year. The rate so calculated will be placed in effect as of the start of that facility's fiscal year and shall be considered an interim rate as the result of a desk review.
- (3) An onsite audit of the facility will may be done as a final step in the procedure. At that time the actual rate will be established retroactive to the start of the home's fiscal year. The rate so calculated will be considered the final rate.

6. Partial Year.

- a. For facilities changing ownership during the fiscal year, the rate established for the previous owner will be retained.
- b. For facilities adding beds during the year, the reimbursement rate for the new beds will be the same as for the other similarly licensed beds in the facility.
- c. For new facilities and beds added on the first day of the fiscal year, the facility will calculate, subject to departmental approval, an interim rate. The department may adjust this rate after the end of the fiscal year.

6- 7. Adjustments and appeal procedures.

- a. Rate adjustments may be made to correct errors subsequently determined and shall also be retroactive to the beginning of the facility's fiscal year.
- b. A final An adjustment shall must be made for those facilities which have terminated participation in the program and have disposed of all its depreciable assets or which have changed ownership. In this case the regulations pertaining to gains and losses on disposable assets shall will be effective.

- c. Any requests for reconsideration of the rate should be filed with the division of management services for administrative consideration within thirty days of the date of the rate notification.
- d. An appeal may be initiated by indicating a desire for an appeal hearing to the appeals referee supervisor, ~~social~~ service board of North Dakota department of human services, state capitol. The appeal will be governed by ~~the provisions of~~ chapter 75-01-03.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983.

General Authority: NDCC 50-24.1-04

Law Implemented: 42 USC 1396a(a)(32); 42 CFR 447-276,
 42 CFR 447-279, 42 CFR 447-290, 42 CFR 447-291,
 42 CFR 447-292, 42 CFR 447-293, 42 CFR 447-294,
 42 CFR 447-295, 42 CFR 447-296, 42 CFR 447-301 - 306
 42 CFR Part 447, Subpart C

JANUARY 1984

AGENCY SYNOPSIS: The Department of Human Services, and its predecessor agencies, the Social Service Board of North Dakota and the Public Welfare Board of North Dakota, have conducted administrative hearings since 1935. In 1979, the policies for the conduct of such hearings were first promulgated in rule form. Such hearings were originally required as a consequence of federal law in public assistance programs. State law now requires the department to conduct such hearings as a part of the "due process" rights of persons who find themselves aggrieved by decisions which the department, or the county social service boards, may have made. As a matter of policy, the department has extended the availability of administrative hearings to virtually all persons who seek to challenge or question the department's decisions.

Since the 1979 promulgation of these administrative hearing rules, numerous changes have taken place in federal requirements. Additionally, the department has been able to improve, and make more economical, the hearing process. These cumulative factors lead to the drafting of a series of amendments to Chapter 75-01-03. Virtually all of the changes are technical and relate to the administration of the hearings.

Three of the changes are not technical. They are found at subsection 1 of section 75-01-03-05, new subdivisions s and t of subsection 4 of section 75-01-03-08, and new subsection 3 of section 75-01-03-16.

75-01-03-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Administrative ~~fraud~~ disqualification hearing" means an administrative procedure established pursuant to federal regulation [7 CFR 273.16] and to subsection 18 of North Dakota Century Code section 50-06-05.1, providing a manner of

determining whether or not fraud was committed an individual has committed an intentional program violation.

- 2- "Administrative hearing officer" means a person designated by the executive director of the board to conduct fair hearings and administrative fraud hearings and to prepare recommendations.
- 3- 2. "Appeal" means a specialized type of complaint in which the specific request for departmental review, by a dissatisfied applicant, recipient, registrant, or licensee makes a specific request for review by the board, of concerning a decision, made by the a county agency, by the board, or by a division thereof of the department.
3. "Appeals referee" means a person designated by the executive director of the department to conduct fair hearings and administrative disqualification hearings and to prepare recommendations.
4. "Appeals referee supervisor" means the official designated by the department to be responsible for the administration of this chapter.
- 4- 5. "ATP" means authorization to participate and refers to a document issued to a household certified for the purchase allotment of food stamp coupons.
- 5- 6. "Authorized representative" means an individual, including an attorney at law, who has been authorized in writing by the claimant or is authorized in person by the claimant at the hearing to act for and represent the claimant in any and all aspects of the fair a hearing. The written authorization is any statement addressed to the executive director signed by the claimant, which names the individual authorized to act for the claimant. The claimant need not designate an authorized representative, and may represent oneself at all stages of the fair a hearing process.
- 6- "Board" means the social service board of North Dakota.
7. "Claimant" means a person who has requested a fair hearing and is either:
 - a. An applicant for aid, services, registration or licensing;
 - b. A recipient of aid or services;
 - c. A holder of a registration certificate or license; or

d. A representative or heir of a deceased applicant or recipient.

- 8- "Complaint" means any expression of dissatisfaction by or on behalf of an applicant for or a recipient of public assistance, medical assistance, food stamps or services, by or on behalf of an applicant seeking registration of or licensing for the provision of any service where such registration or licensing is the responsibility of a county social service board or a division of the social service board of North Dakota, or by or on behalf of anyone so registered or licensed, concerning any action or nonaction on his or her case by a county social service board or by the social service board of North Dakota.
- 9- 8. "County agency" means a county social service board.
9. "Date of action" means the date upon which an action is intended to become effective.
10. "Department" means the North Dakota department of human services.
- ~~10-~~ 11. "Fair hearing" means an administrative procedure established pursuant to federal regulations [~~7 CFR 275-15~~ 273.15, 42 CFR Part 431, subpart D, and 45 CFR 205.10, and 45 C.F.R. 1361-46) and to North Dakota Century Code chapter 28-32, providing a dissatisfied claimant an opportunity to present the claimant's case directly to the social service board of North Dakota department for formal decision.
- ~~11-~~ 12. "Filing date" of the claimant's request for a fair hearing, in all cases except food stamp appeals, means the date the claimant mails or delivers the request to the office of the executive director of the board department. The filing date of a request for fair hearing or administrative disqualification hearing in food stamp matters means the date the request is received in the office of the executive director of the board department.
- ~~12-~~ "Fraud" means any action by an individual to knowingly, willfully, and with deceitful intent:
- a- intentionally create a false impression or make a false statement to the county agency, to the board, or to a division of the board, either orally or in writing, to obtain benefits to which the claimant is not entitled;
 - b- Conceal information to obtain benefits to which the claimant is not entitled;

- e- Alter ATP's to obtain benefits to which the household is not entitled;
- d- Use coupons to buy expensive or conspicuous nonfood items;
- e- Use or possess improperly obtained coupons or ATP's; or
- f- Trade or sell coupons or ATP's.

13. "Household" means an individual or group of individuals receiving or applying for food stamp benefits.

14. "Intentional program violation" means any:

- a. Intentionally made false or misleading statement, or misrepresented, concealed, or withheld fact; or
- b. Intentionally committed act that constitutes a violation of the Food Stamp Act [7 U.S.C. 2011-2027], the food stamp program regulation [7 CFR parts 270-282], or any provision of the North Dakota Century Code or North Dakota Administrative Code relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons or ATPs.

~~14-~~ 15. "Regional office" means ~~the regional office of the division of vocational rehabilitation in all cases of appeals from decisions of that division. In all other cases "regional office" means the area social service center/~~ regional human service center.

~~15-~~ 16. "Request for administrative review" means a clear expression of dissatisfaction with a decision of the division of vocational rehabilitation which sets forth the reasons for dissatisfaction and which is filed with the ~~executive director of the division of vocational rehabilitation~~ director of a regional human service center in the manner provided for such requests. Such a request must be made and acted upon before a request for a fair hearing can be accommodated.

~~16-~~ 17. "Request for an administrative fraud intentional program violation hearing" means a written statement from a county agency, filed at the office of the appeals referee supervisor, which contains the name, mailing address, and telephone number (if any) of the charged household members, a detailed statement of charges against household members, and copies of all available evidence. ~~The filing date of the county agency's request for an administrative fraud hearing is the date the agency mails or otherwise~~

submits such request to the office of the appeals referee supervisor.

17- 18. "Request for fair hearing" means a specialized appeal consisting of any clear written expression from a claimant, or the claimant's duly authorized representative, filed in the office of the executive director of the board department, that the claimant wants the board department to conduct a fair hearing to take action concerning the claimant's expressed reasons for dissatisfaction.

19. "Timely notice period" means that period beginning on the date a timely notice is mailed and concluding on the date of action.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: NDCC 50-06-01, 50-06-05.1, 50-09-01; 7 CFR 271.2, 7 CFR 273.15, 7 CFR 273.16, 34 CFR 361.48, 45 CFR 205.10

75-01-03-02. Division of vocational rehabilitation determinations - Administrative review procedures.

1. "Request for administrative review" forms are to be kept available in each regional office. This form will be given to any client or applicant that indicates a desire to appeal a decision. If the request results from a dissatisfaction over a decision, the appeal must be filed within thirty days of the receipt of written notice of such decision. However, appeals can be made because of a delay in decision at any time.
2. It is the duty of the regional office to assist the client in the preparation of this form if requested to do so. If so requested, the information which the client desires to have reported on the form as the grounds for appeal should be reported thereon as the client desires to have it reported.
3. Upon the client's request for the form on which the client may request administrative review, the client should be furnished three copies of the form. The client retains one copy and files the original and one copy with ~~either~~ the regional office ~~or the state office, whichever the client desires~~. The regional office, upon receipt of the original and one copy of the form from the client, will send ~~the original~~ a copy to the state office, likewise, the state office will send the duplicate to the regional office upon receipt of the form in duplicate in the state office.
4. Upon receipt of the request for administrative review, an immediate acknowledgment shall be sent to the client by the

regional ~~administrator~~ director advising the client of the date, place, and hour set for the review. If possible, this notice should be preceded by a telephone call to the client to determine time and place convenient to the client. All decisions of administrative reviews with which the client is not satisfied will be further reviewed by the state director. This may be in the form of another meeting with the client or simply a review of the findings. If an individual case is of such a nature that a regional administrator has had direct involvement prior to a request for administrative review, the regional administrator may waive review at the regional level and request that the initial review be conducted by the state director or the director's designee.

5. The review is attended by the client or the client's representative and any witnesses the client may request to have present who are able to provide pertinent information concerning the facts in question and by representatives of the regional office and the state office who may have been concerned with the case.
6. The purpose of the review is to provide an opportunity for all persons who have pertinent information to be heard as promptly as possible.
7. The state director shall be promptly furnished a record of proceedings after the administrative review has been held by the regional administrator. This will include date, time, and place, who was present and all pertinent information developed as well as the administrator's decision. The regional director shall advise the director of the division of vocational rehabilitation of all reviews conducted by the regional director and the outcome of each review. Upon a determination that the client is satisfied with the review or that the client will not be requesting a fair hearing, the director of the division of vocational rehabilitation shall be furnished a record of the administrative review. This record must include date, time, place, who was present, and all pertinent information developed as well as the regional division's decision.
8. The client will promptly be notified in writing of the administrator's regional director's decision. Information is to be included in the letter that further review will be carried out by the state director. The client is to be informed that redress will be considered by the state director of the client's right to a fair hearing before the director of vocational rehabilitation or the director's designee if the client is not satisfied.

9. If a client decides to withdraw a review request, ~~the form, "Notice of Decision not to Appeal" a written withdrawal~~ should be signed by the client. The client's acknowledgment of satisfactory adjustment or other reasons for withdrawal should be stated ~~and the form mailed to the state office.~~
10. Upon completion of administrative reviews and review by ~~the state director,~~ the client is entitled to a fair hearing by the ~~social service board of North Dakota if the administrative review is not to the client's satisfaction~~ director of the division of vocational rehabilitation.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 50-06-05.1, 50-06.1-04

Law Implemented: NDCC 50-06.1-10; 34 CFR 361.48'

75-01-03-03. Right to fair hearing.

1. An opportunity for a fair hearing is available to any applicant, recipient, registrant, or licensee who ~~request~~ requests a hearing in the manner set forth in this chapter and who is dissatisfied:
 - a. ~~because one's~~ Because an application was denied or not acted upon with reasonable promptness;
 - b. Because county agency action has resulted in the suspension, reduction, discontinuance, or termination of ~~one's~~ assistance; who is dissatisfied with
 - c. With any action of the ~~board~~ department or a division thereof relating to ~~one's~~ an application for or receipt of aid, services, registration or licensing; or ~~who is~~ dissatisfied with
 - d. With a determination ~~of the division of~~ in a vocational rehabilitation matter made in an administrative review.
2. ~~Because the board~~ The department may, on its own motion, review individual cases and make determinations which are binding upon the county agency, ~~an.~~ An applicant or recipient aggrieved by such determination shall upon request be afforded the opportunity for a fair hearing. All references in this chapter to appeals from decisions of county agencies shall be understood to include appeals taken from determinations made by the ~~board or by divisions thereof~~ department.

3. A fair hearing request may be denied or dismissed where the sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect benefit computation.
4. The claimant may first seek corrective ~~or other~~ appropriate action from the department or claimant's county agency before filing a request for a fair hearing with the executive director of the ~~board~~ department. A dissatisfied claimant of the services of the division of vocational rehabilitation must request and obtain an administrative review before the request for a fair hearing can be accommodated. A dissatisfied claimant is not otherwise required to seek ~~that~~ any corrective action before filing the request for a fair hearing.
5. If a claimant dies after a request for a fair hearing has been filed by the claimant, and before the decision of the board department has been rendered in the case, the proceedings may be continued on behalf of the claimant's estate, or by an heir of the claimant if a legal representative has not been duly appointed.
6. If a dissatisfied claimant dies before the claimant can file a request for a fair hearing, the duly appointed representative of the claimant's estate, or any heir of the claimant if no representative has been appointed, may file such request when the claimant was dissatisfied with the denial of the claimant's application for assistance, or was dissatisfied with the amount of the assistance the claimant was receiving prior to the claimant's death.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: NDCC 50-09-14, 50-11-08, 50-11.1-10, 50-12-12, 50-18-03, 50-19-13; 7 CFR 273.15, 45 CFR 205.10

75-01-03-04. Withdrawal of request for fair hearing before decision.

1. The claimant may withdraw the ~~claimant's~~ request for fair hearing at any time before a decision is made by the board department.
2. In cases where there appears to be a possibility for corrective action without further fair hearing proceedings, the claimant may file a conditional withdrawal of the ~~claimant's~~ request for a fair hearing. Such conditional withdrawal will not prohibit the claimant from filing a new request for a fair hearing if the claimant remains dissatisfied with any such corrective action. No hearing

shall be delayed or canceled because of this possibility unless the claimant consents to such delay.

3. The county agency shall provide the claimant with all information and assistance regarding this withdrawal procedure.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: 7 CFR 273.15(j)(2), 45 CFR 205.10(a)(5)(v)

AGENCY SYNOPSIS: This amendment requires that requests for "a fair hearing" be made in writing, except with respect to food stamp decisions. The rule formerly allowed oral requests in any case. The change reflects the fact that the only requirement that hearings be provided in response to oral requests is contained in federal food stamp law. It has been the department's experience that oral requests for fair hearings are extremely difficult to manage. On occasion, a person who makes a belated request for a hearing in writing will assert that timely request was made orally. This assertion will be based upon some general discussion with a department or county employee where the employee did not understand a request to have been made. Because no one has taken down the words of the conversation, it is impossible to know what was said, much less what was intended.

75-01-03-05. Claimant responsibility.

1. The claimant ~~may~~ must request a fair hearing in writing ~~or orally~~ unless the request concerns a food stamp program decision. A claimant may request a fair hearing concerning a food stamp program decision either orally or in writing. Oral requests must be clear expressions, made by the claimant or the claimant's authorized representative, to an employee of a county agency or the state agency to the effect that the claimant wishes to appeal a decision. The employee hearing such a request shall promptly reduce the request to writing and file it as provided by this section. The request may be filed on the back of a form 599 which gave notice of the proposed action which the claimant disputes; however, the request need not be in any particular form. The county agency shall assist the claimant in filing the claimant's request for a fair hearing. ~~A printed form provided by the board for such request may be given the claimant by the county agency upon the claimant's request for such action.~~
2. For the purpose of prompt action, the claimant shall be informed by the county agency that the claimant's request for a fair hearing should identify the aid program involved as well as the reason for the claimant's dissatisfaction with the particular action involved in the case.

History: Effective September 1, 1979; amended effective July 1, 1980; January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: NDCC 28-32-05

75-01-03-06. Time limit on request for fair hearing.

1. The request for fair hearing by a household aggrieved by any action of a county agency that affects participation in the food stamp program must be filed within ninety days after the order or action with which the claimant is dissatisfied. In all other cases, the request for fair hearing must be filed within thirty days after the order or action with which the claimant is dissatisfied.
2. The date of the order or action on which the request for fair hearing is based shall be the date on which notice of such order or action was mailed to the claimant with the following exceptions:
 - a. Where requests for a fair hearing concern the return of erroneous repayments, the date of collection or the date of the last installment payment is the determining date.
 - b. Where requests for a fair hearing concern the amount of the grant, the request must be filed within thirty days, but the period of review will extend back to the first of the month on which the first day of the thirty-day period occurred.
 - c. When the claimant is aggrieved by an action of the division of vocational rehabilitation, the date in which the final decision of the ~~state~~ regional director on the claimant's request for administrative review is mailed to the claimant shall be the determining date.
- 2- 3. In computing any period of time prescribed or allowed by this chapter, the day of the act, event, or determination from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: ~~NDCC 28-32-02~~ Rule 6(a) 42 CFR 431.205(d), 45 CFR 205.10(a)(1)(ii)

75-01-03-07. Explanation of right to fair hearing.

1. The county agency or regional office must explain the right to request a fair hearing, as well as the right to be represented and assisted by persons of one's own choosing an authorized representative, including legal counsel and an interpreter, to every applicant at the time of the applicant's application for assistance, and thereafter at any time when further county action respecting aid or services is taken. Such explanation shall be given in such manner as to be fully understood by the claimant.
2. Written notice of the right to a fair hearing shall be included in every notification to the applicant or recipient of the granting, denial, decrease, discontinuance, suspension or increase in aid, or request for repayment, or where there is a change in a prior determination regarding aid. In all cases, the notice shall be prepared and mailed to the claimant or recipient in language understandable to the person receiving such notification.
3. The county agency or regional office must help the claimant to submit and process the claimant's request for a fair hearing.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: 7 CFR 273.15(f), 45 CFR 205.10(a)(3)

AGENCY SYNOPSIS: Adds two subdivisions to the list of exceptions to the requirement that a county social service board give an advance notice of its intentions to decrease benefits to an assistance client. The new subdivisions reflect changes in the federal rules governing the AFDC Program.

75-01-03-08. Timely notice - Assistance pending hearing.

1. Except as provided in subsections 3 and 4, where county agency action would result in a discontinuance, termination, suspension, withholding, or reduction of an assistance grant program benefits, the county must mail to the person affected a timely and adequate written notice which will include:
 - a. An explanation of the type of proposed action.
 - b. An explanation of the reason for the proposed action; and the state regulatory or statutory basis relied upon manual provision, rule, or law upon which the action is based.

- c. An explanation of the person's right to request corrective ~~or other~~ action from the county and the department, the person's right to request a fair hearing, and the circumstances under which assistance will be continued if a fair hearing is requested.
2. ~~Such~~ A notice is timely if mailed at least five days prior to the ~~effective~~ date of any action based on suspected fraud, and at least ten days prior to the ~~effective~~ date of any other action.
3. Except in food stamp cases when the county obtains facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable ~~fraud~~ intentional program violation of the recipient, and, where possible, such facts have been verified through collateral sources, notice of such ~~grant~~ benefit adjustment shall be timely if mailed at least five days prior to the effective date of the proposed action. The notice shall be written and shall include information which would comply with subdivisions a, b, and c of subsection 1.
4. Timely notice is not required in the following instances, although the county shall send notice ~~not meeting the requirements of subsection 1~~ no later than the date of action containing the requirements of subsection 1:
 - a. The county has factual information confirming the death of the person affected.
 - b. The county receives a clear written statement signed by the person affected that the person no longer wishes assistance; or that gives information which requires discontinuance or reduction of assistance and the person has indicated, in writing, that the person understands that this must be the consequence of supplying such information.
 - c. The person affected has been admitted or committed to an institution, and further payments to that individual do not qualify for federal financial participation under the state plan.
 - d. The person affected has been placed in skilled nursing care, intermediate care, or long-term hospitalization.
 - e. The whereabouts of the person affected are unknown and county mail directed to the person has been returned by the post office indicating no known forwarding address. The person's aid payment must, however, be made available to him if the person's whereabouts become known during the payment period covered by the returned check.

- f. An aid to families with dependent children child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by the child's legal guardian.
- g. The person affected has been accepted for assistance in new jurisdiction and that fact has been established by the county previously providing assistance.
- h. A change in level of medical care is prescribed by the recipient patient's physician.
- i. A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period.
- j. The state or federal government initiates a mass change which uniformly and similarly affects all similarly situated applicants, recipients, and households.
- k. ~~The board determines~~ A determination has been made, based on reliable information, that all members of a household have died.
- l. ~~The board determines~~ A determination has been made, based on reliable information, that the household has moved from the project area.
- m. The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the increased allotment would terminate.
- n. The household's allotment varies from month to month within the certification period to take into account changes which were anticipated at the time of certification, and the household was so notified at the time of certification.
- o. The household jointly applied for public assistance and food stamp benefits and has been receiving food stamp benefits pending the approval of the public assistance grant and was notified at the time of certification that food stamp benefits would be reduced upon approval of the public assistance grant.
- p. A household member is disqualified for ~~fraud~~ an intentional program violation, or the benefits of the remaining household members are reduced or terminated, to reflect the disqualification of that household member.

- q. The household contains a member subject to a lockout or strike or signs a waiver of its right to notice of adverse action for purposes of receiving a longer certification period than is otherwise allowed for such households.
 - r. The state agency has elected to assign a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is contingent on its providing the verification which was initially postponed and that the state agency may act on the verified information without further notice.
 - s. The action is based upon information the recipient furnished in a monthly report.
 - t. The action is taken because the recipient has failed to submit a complete or timely monthly report without good cause.
5. In any case where assistance has been discontinued, suspended, withheld, or reduced without timely notice, if the person affected requests a fair hearing within ten days of the mailing of the notice of action, assistance shall be reinstated retroactively and the provisions of subsection 7 shall apply.
6. If, within the advance timely notice period, the person affected indicates the person's a wish for a conference, that person or that person's authorized representative will be given an opportunity by the county to discuss the problems, and will be given an explanation of the reasons for the proposed action, and will be permitted to show that proposed action is incorrect.
- a. During this conference, the person affected will be permitted to speak for oneself or be represented by legal counsel or by a friend or other spokesman.
 - b. The conference will not in any way diminish the person's right to a fair hearing.
7. Where the person affected is a recipient of aid or services and has filed the person's a request for a fair hearing within the requisite timely notice period, excepting those households whose certification period has expired, the assistance will be continued without change implementation of the proposed action, until the fair hearing decision is rendered, unless prior thereto the claimant unconditionally withdraws or abandons the fair hearing request or the board department determines, based upon the record of the claimant's fair hearing, that the issue involved in such hearing is one

of state or federal law or change in state or federal law and not one of incorrect grant benefit computation. Any assistance so continued is subject to recovery if the claimant does not prevail in the claimant's appeal.

8. Where a change affecting the recipient's grant benefits occurs during the hearing process and the recipient fails to file a timely fair hearing request after notice of such change, the county may implement its proposed action based upon the change.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: 7 CFR 273.15(d), 7 CFR 273.15(k), 42 CFR 431.211, 42 CFR 431.214, 42 CFR 431.230, 45 CFR 205.10(a)(4), 45 CFR 205.10(a)(6)

75-01-03-09. County agency and regional office responsibility prior to fair hearing.

1. Preliminary review and report to the appeals referee supervisor is required as follows:
 - a. Upon receipt of the notice from the appeals referee supervisor that a recipient has filed a request for a fair hearing with the supervisor's office, the county agency or regional office shall immediately ascertain whether the request for fair hearing was filed within ten days (five days in cases of suspected fraud) after the mailing by the county of the notice required by section 75-01-03-08 the timely notice period. If the request was not filed within that period, the county shall neither reinstate nor continue aid except that households appealing adverse food stamp program actions may have benefits continued if they can show good cause for the failure to file a request within ten days.
 - b. Upon receipt of notice of a request for fair hearing filed in accordance with subsection 4 of section 75-01-03-01, the county agency or regional office shall, no later than the fifth day after receiving the request, provide the office of the appeals referee supervisor with all information pertinent to such request. A copy of this information shall be provided to the person requesting the fair hearing.
2. Prior to the fair hearing, the county agency or regional office shall:
 - a. Review the applicable statutes, regulations, and policies in light of the evidence. When assistance of the board

department is required to clarify any question, such assistance shall be sought without delay.

- b. Organize all oral and written evidence and plan for its presentation at the hearing to avoid unnecessary delay or duplication. The county agency or regional office shall prepare a written basis of action statement setting forth ~~the county~~ its position on the issues to be heard for submission into the fair hearing record. Where ~~county~~ policy directives or instructions are involved in the matter, copies of those documents shall be presented at the hearing.
- c. Arrange for the attendance of all necessary witnesses and the availability of all documents for presentation of the case of the county agency's case agency or regional office, including notification to the appeals referee supervisor of any communication problem which the claimant may have.
- d. Prepare a complete final budget computation, month by month, for the period subject to review, and up to the date of hearing, if the issue is:
 - (1) Amount of aid;
 - (2) Grant adjustment; or
 - (3) Demand for repayment.
- e. Remain in touch with the claimant, and report without delay to the appeals referee supervisor any change in the claimant's address or in any other circumstances which might affect the necessity for or conduct of the hearing. The responsibility to report changes in the claimant's circumstances continues after the hearing until a decision is rendered.
- f. Arrange to have present at the hearing a county agency or regional office representative with full authority to make binding agreements and stipulations on behalf of the county agency or regional office.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: NDCC 50-01-09

75-01-03-11. Group hearings.

1. The administrative hearing officer appeals referee supervisor may schedule a series of individual requests for

fair hearing for a group hearing when the sole issue set forth in the request is one involving state or federal law or policy or changes in state or federal law, as the ~~office~~ supervisor may deem appropriate.

2. In all group hearings, each individual claimant shall be permitted to present his own case, and shall be permitted to be represented by any person the claimant may desire.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02

Law Implemented: 7 CFR 273.15(e), 45 CFR 205.10(a)(5)(iv)

75-01-03-12. Compliance with board department decisions. Immediately upon receipt of notice of the decision, the county shall comply with the decision.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 50-06-05.1

Law Implemented: NDCC 50-01-09, 50-09-14

75-01-03-13. Acknowledgment of request for fair hearing.

1. A request for fair hearing filed with the executive director shall be acknowledged by a written communication to the claimant and to the county agency.
2. The claimant shall also be provided with a list of all free legal service organizations which may be available to the claimant and which have authorized the board department to include their name, address, and telephone number on such list.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: 7 CFR 273.15(h), 45 CFR 205.10(a)(5)

75-01-03-14. Hearing - Place and notification.

1. The hearing shall be held in the county seat of the county in which the claimant is living at the time of the hearing ~~or~~, at the regional office serving such county, at any public building convenient to the parties, or at any other location which is agreeable to the parties. If the claimant is unable to travel to the county seat or the regional office hearing site because of the claimant's health, transportation problems, or other reasons, the claimant shall promptly notify

the administrative hearing officer county. The hearing shall be conducted at a reasonable time, date, and place to be set by the administrative hearing officer appeals referee supervisor.

2. The office of the appeals referee supervisor shall mail or deliver to the claimant and, the claimant's authorized representative, if any, and the county, a written notice of the time and place of the hearing. In all food stamp appeals, the notice shall be sent not less than ten days prior to the hearing unless the household should, in writing, request less advance notice to expedite the scheduling of the hearing.
3. The office of the appeals referee supervisor shall mail or deliver to the household and its authorized representative, if any, and the county, a written notice of the time and place of an administrative fraud a food stamp disqualification hearing not less than thirty days prior to the hearing.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: 7 CFR 273.15(1),

7 CFR ~~273-16(d)(3)~~

7 CFR ~~273-16(d)(4)~~ 7 CFR 273.16(e)(3)

75-01-03-15. Hearing - General rules and procedure.

1. Attendance at the hearing shall be limited to those directly concerned, namely, the claimant and the claimant's representative, interpreter, if any, and witnesses; representatives of the county agency; representatives of the board department, if any, and the referee. The administrative hearing officer appeals referee shall exclude unauthorized persons from the hearing unless both principals agree to their presence. The administrative hearing officer appeals referee may exclude persons whose actions cause substantial disruption of the hearing. Appearance by the claimant (in person or by representative) is required at a fair hearing unless the hearing is processed by questionnaire pursuant to section 75-01-03-16. County agency representation is also required.
2. The hearings may be conducted by telephone unless the person requesting the hearing demands to appear personally before the referee. In all food stamp telephone hearings, except food stamp intentional program violation hearings, the person requesting the hearing must be present at the county office or at the regional human center in the same location as the county representative. This provision may be expressly waived by the person requesting the hearing when illness, disability, travel difficulty, or other reason, makes attendance at county or regional center impracticable.

- ~~2-~~ 3. The hearing shall be conducted in an impartial manner. All testimony shall be submitted under oath or affirmation.
- ~~3-~~ 4. The proceedings at the hearing shall be reported or otherwise perpetuated by mechanical, electronic, or other means capable of reproduction or transcription.
- ~~4-~~ 5. The ~~administrative hearing officer~~ appeals referee shall not be bound by the rules of procedure or evidence applicable in courts but may exclude evidence determined to be irrelevant or unduly repetitive.
- ~~5-~~ 6. The claimant ~~of~~ or the claimant's authorized representative shall, upon request, be given the opportunity to examine at any time before and during the hearing, the claimant's entire case file and all evidence used by the county agency to support its decision and all documentary evidence that will be used at the hearing.
- ~~6-~~ 7. Before the hearing has commenced, the appeals referee supervisor or the supervisor's designee, shall, upon the request of the claimant or the claimant's duly authorized representative, or the county agency, issue a subpoena requiring the presence of any witness whose expected testimony has been shown to be necessary and material to the case, without being unduly repetitious, or a subpoena duces tecum requiring the production of documents shown to be relevant and material. After the hearing has commenced, the ~~administrative hearing officer~~ appeals referee assigned to the case shall issue such subpoenas as the ~~officer~~ referee may deem necessary and proper. The party requesting the subpoena is responsible for service of such document and all other fees and costs associated with the issuance of the subpoena.
- ~~7-~~ 8. An interpreter shall be provided by the state if the ~~administrative hearing officer~~ appeals referee determines this necessary.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: NDCC 50-06-15; 7 CFR 273.15(o), 7 CFR 273.15(p), 7 CFR 273.16(d), 45 CFR 205.10(a)

AGENCY SYNOPSIS: Adds a new subsection by which a claimant would be able to direct a questionnaire to a county social service board. The answers to the questionnaire would become a part of the record of the hearing.

75-01-03-16. Claimant living outside of North Dakota.

1. When a request for fair hearing is received from a person living outside of the state, it shall be acknowledged and reported in the same manner as other requests for fair hearing. Unless the claimant voluntarily offers to return to North Dakota for the hearing or authorizes a representative in North Dakota, the county ~~social service board~~ agency shall be advised that the hearing will be processed by questionnaire.
2. A questionnaire consists of a written series of questions to be answered by claimant in writing and sworn to before a notary. The completed questionnaire properly attested and submitted shall constitute the claimant's appearance and testimony in the hearing. The questions to be included in the questionnaire are to be prepared jointly by the county ~~social service board~~ agency and the ~~state board department~~. It shall be the responsibility of the ~~state board department~~ to initiate discussion with the county ~~social service board~~ agency regarding preparation of the questions to be included. The county ~~social service board~~ agency shall submit the questions it wants answered.
3. The claimant may prepare a questionnaire for submission to the county. The county shall answer all questions which, if answered, would furnish relevant, nonrepetitive evidence in the hearing. The county's response shall be sworn and may be made in writing or orally during the hearing.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: NDCC 50-06-05.1

75-01-03-17. Continuance for additional evidence. If, after a hearing has begun, the ~~administrative hearing officer~~ appeals referee conducting the hearing determines that additional evidence not available at the hearing is necessary for the proper determination of the case, the ~~officer~~ referee may ~~at the officer's discretion:~~

1. Continue the hearing to a later date. In connection therewith, the ~~officer~~ referee may order further investigation and may direct either party to produce the additional evidence.
2. In order to permit the reception of additional documentary evidence or written argument, close the hearing and hold the record open for a stated period, not to exceed thirty days, if the request for additional time is accompanied by a written waiver of the requirement that a decision be made within ninety days, as found at ~~7 CFR 273.16(d)(2)(iv)~~ 7 CFR 273.16(e)(2)(iv), 42 CFR 431.244(f), and 45 CFR 205.10(a)(16) or sixty days, as found at 7 CFR 273.15(c)(1). If the request

for additional time is not accompanied by such a written waiver, the record shall be held open for no more than three additional days. If an expedited hearing has been requested, no additional time may be granted unless a written withdrawal of the request for an expedited hearing accompanies the request for additional time.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: NDCC 50-06-05.1

75-01-03-18. Withdrawal or abandonment.

1. A request for a fair hearing shall not be dismissed without hearing unless the claimant ~~either~~ withdraws or abandons the request.
2. A withdrawal occurs when the referee is notified by the claimant that the claimant no longer wishes a hearing.
3. An abandonment occurs when:
 - a. The claimant or the claimant's authorized representative fails to appear at the hearing without good cause.
 - b. The claimant cannot be located through the claimant's last address of record, or through the claimant's authorized representative, and such inability to locate the claimant precludes the scheduling of a fair hearing.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: NDCC 50-06-05.1;

7 CFR 273.15(j),

45 CFR 205.10(a)(5)(v)

75-01-03-19. Disposition of fair hearing matters. All fair hearing matters will be set for hearing, heard, decided, and the decision implemented, within ninety days from the date of the request for fair hearing or if the fair hearing request concerns food stamp matters, within sixty days from the date of receipt of the request for fair hearing, except in those cases where the claimant withdraws or abandons ~~the claimant's~~ a request for hearing, ~~or~~ the matter is continued pursuant to subsection 2 of section 75-01-03-17, or the parties stipulate to a continuance and the stipulation includes a written waiver of the type described in subsection 2 of section 75-01-03-17. The overall time limits shall be extended only for the period of the continuance.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: 7 CFR 273.15(c), 45 CFR 205.10(a)(16)

75-01-03-20. Review of determinations affecting skilled nursing facilities and intermediate care facilities.

1. Whenever a skilled nursing facility or an intermediate care facility appeals a decision by the board department regarding the denial, termination, or nonrenewal of the facility's provider agreement under the medicaid program, the board department shall provide the facility with an opportunity for an informal reconsideration of the decision before the effective date of such decision.
2. The informal reconsideration shall include:
 - a. Written notice to the facility of the denial, termination, or nonrenewal of the provider agreement and the findings upon which such denial, termination, or nonrenewal is based.
 - b. An opportunity for the facility to refute, in writing, the board's department's finding.
 - c. Written affirmation or reversal of the denial, termination, or nonrenewal of the facility's provider agreement.
3. If, after the informal consideration, the facility is still dissatisfied with the board's department's decision, the facility may, within thirty days, request a full evidentiary hearing on the denial, termination, or nonrenewal of the facility's provider agreement. A request by a facility for a full evidentiary hearing will not delay or suspend the effective date of the proposed action concerning the provider agreement.
4. If a facility requests a full evidentiary hearing on the denial, termination, or nonrenewal of its provider agreement, the evidentiary hearing shall be completed within one hundred twenty days after the effective date of the action in question. The procedures for a full evidentiary hearing must include:
 - a. Timely written notice to the facility of the basis for the decision as well as disclosure of the evidence on which the decision was made.

- b. An opportunity for the facility or its representatives to appear before an administrative hearing officer appeals referee to refute the basis for the decision.
 - c. An opportunity for the facility to be represented by counsel or another representative.
 - d. An opportunity for the facility or its representatives to be heard in person, to call witnesses, and to present documentary evidence.
 - e. An opportunity for the facility or its representatives to cross-examine witnesses.
 - f. A written decision by the board department setting forth the reasons for the decision and the evidence upon which the decision is based.
5. If the board's department's action to deny, terminate, or not renew a provider agreement is based on the fact that the facility has been denied, terminated, or not renewed for participation in the medicare program, the board department shall advise the facility that the facility is entitled to the review procedures for medicare facilities set forth in 42 CFR 405, subpart O, which shall be in lieu of the procedure set forth in this section. A final decision entered under the medicare review procedures will be binding on the board department and the facility for purposes of medicaid participation.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: 42 CFR 431.151

75-01-03-21. Submission of proposed decision. After the hearing has been closed, the administrative hearing officer appeals referee shall issue the officer's proposed a recommended decision for review by the appeals referee supervisor and submission to the board executive director, the executive director's designee, or the director of the division of vocational rehabilitation.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: NDCC 50-06-05.1; 45 CFR 205.10(a)

75-01-03-22. Decision by board department.

1- The board, after receiving the proposed decision, may-

- a- ~~Adopt the decision in its entirety.~~
 - b- ~~Decide the matter itself on the record, with or without taking additional evidence.~~
 - c- ~~Order another hearing to be conducted by another administrative hearing officer, if overall time limitations for disposition of fair hearing matters so permit.~~
- 2- ~~The decision of the board shall be in writing. It shall include a statement of the facts and of the statutes and regulations involved and of the reasoning which supports the decision.~~
1. The decision of the department shall be made by the executive director, or the executive director's designee except in appeals from vocational rehabilitation decisions. In vocational rehabilitation matters, the decision shall be made by the director of the division of vocational rehabilitation, who shall notify the executive director of the decision.
2. The executive director, or the executive director's designee (or director of the division of vocational rehabilitation in vocational rehabilitation matters), after receiving the referee's recommended decision may:
- a. Adopt the recommended decision in its entirety.
 - b. Decide the matter on the record, with or without taking additional evidence.
 - c. Order another hearing to be conducted by the same or another referee, if overall time limitations for disposition of fair hearing matters permit.
3. The decision rendered for the department must be in writing. It must include a statement of the facts and of the statutes and regulations involved and the reasoning which supports the decision.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: NDCC 28-32-13; 34 CFR 361.48

75-01-03-23. Notice of decision. After the administrative hearing officer's proposed decision is adopted, or a decision is rendered by the board director of the division of vocational rehabilitation or the executive director, the office of the appeals referee supervisor shall mail a copy to the claimant and the county agency. The notice of decision shall also contain a statement

explaining the right to request a rehearing or reconsideration unless the decision is itself a decision on rehearing or reconsideration.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: NDCC 28-32-13

75-01-03-24. Preservation of record. The verbatim record of the testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the referee's proposed recommended decision shall constitute the exclusive record for decision and shall be available to the claimant and the county at any reasonable time for three years after the date of the board's department's decision in all food stamp cases, and for ninety days after the date of the board's department's decision in all other cases. A transcribed copy of recorded testimony requested within ninety days after the date of the board's department's decision shall be made available to the claimant or the county agency upon payment of a reasonable transcription fee.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: NDCC 28-32-12; 7 CFR 273.15(q), 45 CFR 205.10(a)

75-01-03-25. Rehearing and reconsideration.

1. A request for a rehearing or for reconsideration must be filed with the office of the executive director within fifteen days after a decision is issued by the board executive director. The request must be based upon new evidence indicating that an unjust or invalid determination has been made, or upon an allegation that the board director has incorrectly interpreted relevant statutory or case law.
2. If the request for rehearing is to permit presentation of additional evidence, the request shall:
 - a. Describe the additional evidence.
 - b. Show why it was not previously introduced.
 - c. Explain its materiality.
3. The board executive director may order a rehearing on its, or may reconsider, on the director's own motion.
4. The grant of a rehearing or reconsideration, either upon request or upon its the director's own motion, is a matter for the board's director's discretion.

5. If a request for a rehearing or reconsideration is granted, the ~~board~~ director may:
 - a. Order reconsideration of the decision on the basis of the evidence in the record.
 - b. Order the taking of additional evidence.
 - c. Order an entire new hearing.
6. A decision issued upon a request for rehearing or for reconsideration shall not be subject to further hearing.

History: Effective September 1, 1979; amended effective January 1, 1984.

General Authority: NDCC 28-32-02, 50-06-05.1

Law Implemented: NDCC 28-32-14