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**Prepared by the Legislative Council staff  
for the  
Administrative Rules Committee**

## TABLE OF CONTENTS

State Board of Massage (January 2005) .....	269
State Board of Medical Examiners (June 2005).....	279
Board of Nursing (August 2005).....	283
State Board of Pharmacy (January 2005).....	305
Public Service Commission (May 2005).....	319
State Seed Department (January 2005).....	337
Department of Human Services (June 2005).....	349
Private Investigative and Security Board (May 2005).....	461

**TITLE 49**  
**STATE BOARD OF MASSAGE**



JANUARY 2005

CHAPTER 49-01-01

**49-01-01-01. Organization of board of massage.**

1. **History and function.** The 1959 legislative assembly passed the Massage Registration Act, codified as North Dakota Century Code chapter 43-25. This chapter requires the governor to appoint the board of massage. The board, generally speaking, monitors the relationship and interaction between the licenseholder and the public. It is the responsibility of the board to protect the public against poorly trained massage therapists.
2. **Board membership.** The board consists of three massage therapist members and two consumer members appointed by the governor. ~~Members of the board~~ The massage therapist members serve three-year terms and the consumer members serve two-year terms, and not more than one term in each category expires each year.
3. ~~Executive secretary-treasurer~~ **Secretary-treasurer.** The executive secretary-treasurer of the board is appointed by the board and is responsible for administration of the board's activities.
4. **Inquiries.** Inquiries regarding the board may be addressed to the ~~executive secretary-treasurer:~~

~~Mr. Phil J. Reisenauer  
P.O. Box 704  
Dickinson, ND 58602-0704~~

Ms. Karen Wojahn  
State Board of Massage  
P.O. Box 218

Beach, ND 58621

**History:** Amended effective May 1, 1988; February 1, 1993; January 1, 2001;  
January 1, 2005.

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

**Law Implemented:** NDCC 28-32-02.1, 43-25-05

## CHAPTER 49-01-02

**49-01-02-01. Fees.** The board charges the following fees:

1. To receive a license, one hundred and fifty dollars.
2. To renew an annual license, fifty dollars. This fee must be paid on or before January first of each year. To renew an annual license after January first, one hundred dollars.
3. To retake an examination within six months of the initial failure to pass the board's examination, fifty dollars.

**History:** Effective January 1, 2001; amended effective January 1, 2005.

**General Authority:** NDCC 43-25-07, 43-25-08, 43-25-09

**Law Implemented:** NDCC 43-25-07, 43-25-08, 43-25-09

**49-01-02-02. License applications.** To receive a license as a massage therapist, the applicant must complete an application provided by the board and must include the following additional information:

1. Sufficient proof to the board that the applicant has satisfied the education requirements in article 49-02.
2. A copy of the applicant's high school diploma or proof of equivalent education.
3. A statement from a licensed physician, written in the last year, that the applicant is free of signs or symptoms of contagious diseases or that the applicant has been trained in taking sufficient precautions to prevent the spread of communicable diseases.

The application and additional information must be postmarked or actually received by the secretary-treasurer at least thirty days before the examination date in order for the applicant to take the examination.

**History:** Effective January 1, 2001; amended effective January 1, 2005.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 43-25-07, 43-25-09

**49-01-02-05. Continuing education.**

1. To renew a license as a massage therapist, the licenseholder must submit sufficient proof to the board of completion of at least eighteen hours of continuing education within the last year, including the date, time, and location of the instruction, the name of the program or course, the instructor or instructors, and the provider of the program or course.

2. To qualify as continuing education under this section, the instruction must be offered by a qualified instructor and be directly related to the practice of massage therapy. ~~Unless the~~ The course of instruction has been must be approved in advance by the board, ~~the.~~ The licenseholder or provider must identify the instructor of the course and describe the qualifications of the instructor, the topics covered during the course, and the total hours for which the licenseholder seeks approval. Any continuing education is required to be preapproved by the board. When deciding whether to approve continuing education, the board will consider the quality and reputation of the provider and instructor, including consideration whether the provider or instructor is nationally recognized or accredited in the field of education of massage therapy or the specific subject being taught, and whether the instructor has the education and other requirements to teach the subject for credit as contained in section 49-02-02-02. Further, the board must determine whether the content of the course is appropriate for continuing education of massage therapy.
  
3. Continuing education of up to six hours per year may be obtained by remote means such as telephone, internet, correspondence course, or videotape, ~~will not be approved by the board.~~ Any remote continuing education is required to be preapproved by the board. When deciding whether to approve remote continuing education, the board will consider the quality and reputation of the provider and instructor, including consideration whether the provider or instructor is nationally recognized or accredited in the field of education of massage therapy or the specific subject being taught, and whether the instructor has the education and other requirements to teach the subject for credit as contained in section 49-02-02-02. Further, the board must determine whether the content of the course is appropriate for continuing education of massage therapy and whether the topic is suitable for training by remote means, such as ethics or business practices. The board may also consider whether the provider has adopted a procedure or method to determine that the licenseholder has actually reviewed the materials, such as by testing or other methods.

**History:** Effective January 1, 2001; amended effective January 1, 2005.

**General Authority:** NDCC 43-25-09

**Law Implemented:** NDCC 43-25-09

## CHAPTER 49-02-02

### 49-02-02-02. Eligible classroom instruction.

1. Except as otherwise provided in this section or waived by the board for good cause, classroom instruction under this chapter must be provided by a licensed massage therapist at a recognized and approved school of massage and credit may not be given for prior educational instruction. In order to teach, the licensed massage therapist must have at least three years of licensed, hands-on experience as a massage therapist.
2. An instructor of anatomy, physiology, ~~and neurology,~~ or pathology is not required to be a licensed massage therapist but must have earned a recognized ~~postsecondary~~ postgraduate degree in the field of study in which the instructor is providing instruction.
3. A school of massage may give a student credit for prior educational instruction which was provided by a ~~secondary or vocational~~ postsecondary institution. To receive credit, the prior instruction must have been provided by a qualified instructor within the five-year period immediately preceding the date of the application for licensure. The maximum credit for prior instruction which may be given under this subsection is provided in subsection 4 of section 49-02-02-03.
4. Correspondence courses are not recognized by the board under this section.

**History:** Effective January 1, 2001; amended effective January 1, 2005.

**General Authority:** NDCC 28-32-02, 43-25-07

**Law Implemented:** NDCC 43-25-07

### 49-02-02-03. Required curriculum.

1. The supervised classroom instruction received by an applicant must satisfy the following curriculum requirements:
  - a. At least one hundred fifty hours of anatomy, physiology, and neurology, including sixty hours of anatomy, sixty hours of physiology, and thirty hours of neurology.
  - b. ~~At least sixty hours of physiology.~~
  - c. ~~At least thirty hours of neurology.~~
  - d. At least ~~thirty~~ forty-five hours of pathology.
  - e. ~~c.~~ At least ~~sixty~~ ninety hours of kinesiology, including origin, insertion, action, and innervation.

- f. ~~d.~~ At least, but not more than, ten hours of first aid, hygiene, and CPR. At the time of graduation, the applicant must hold a valid current CPR card certifying the completion of these courses under the instruction of a person who is certified by a nationally recognized organization to provide first aid and CPR instruction.
  - ~~g.~~ e. At least ~~twenty-five~~ thirty hours of business practices and thirty hours of professional ethics.
2. Each hour of instruction may be applied to only one of the above categories.
  3. To be counted under this section, the instruction must reflect current scientific knowledge and standards.
  4. The number of classroom hours specified in subdivisions a through e c of subsection 1 also is the maximum amount of prior education credits in each subject which may be given under section 49-02-02-02. The remaining ninety-five hours must include a majority of hours in massage therapy, technique, indications, and contraindications.
  5. Hours of instruction for programs which measure their instruction in credit hours per semester or per quarter shall be determined as follows:
    - a. For semester credits, fifteen clock-hours of lecture equals one credit hour and thirty clock-hours of practical instruction (clinical or lab) equals one credit hour.
    - b. For quarter credits, ten clock-hours of lecture equals one credit hour and twenty clock-hours of practical instruction (clinical or lab) equals one credit hour.

**History:** Effective January 1, 2001; amended effective January 1, 2005.

**General Authority:** NDCC 28-32-02, 43-25-07

**Law Implemented:** NDCC 43-25-07

## CHAPTER 49-02-03

**49-02-03-01. Hours of practical instruction.** The seven hundred fifty total hours of supervised instruction required under this article must include at least three hundred hours of practical instruction. "Hours of practical instruction" means actual hours of providing massage to another person, or receiving massage from a fellow student, under the direct supervision of a licensed massage therapist. In order to provide direct supervision, the licensed massage therapist must have at least three years of licensed, hands-on experience as a massage therapist.

**History:** Effective January 1, 2001; amended effective January 1, 2005.

**General Authority:** NDCC 28-32-02, 43-25-07

**Law Implemented:** NDCC 43-25-07



**TITLE 50**  
**STATE BOARD OF MEDICAL EXAMINERS**



**JUNE 2005**

**CHAPTER 50-02-11**

**50-02-11-03.1. Limitation on attempts at examination passage.** An applicant is permitted a maximum of three attempts to pass each step or part or component of a licensing examination. This rule does not apply to an individual who required more than three attempts to pass USMLE step 1 or USMLE step 2 if that individual was enrolled in a postgraduate training program in North Dakota prior to July 10, 2005, and if:

1. The individual is still enrolled in the program when the application for licensure is submitted to the board's office; or
2. The individual has completed the program successfully.

Parts, steps, and components may not be combined so as to enlarge the number of attempts permitted under this rule.

**History:** Effective June 1, 2005.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 43-17-18



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



**AUGUST 2005**

**CHAPTER 54-01-03**

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

1. "Abandonment" means accepting the client assignment and disengaging the nurse and client relationship without giving notice to a qualified person.
2. "Abuse" means any behavior that is designed to harass, intimidate, or injure another human being through the use of verbal, sexual, emotional, or physical harm.
3. "Accreditation" means the official authorization or status granted by a nationally recognized agency other than a state board of nursing.
4. "Activities of daily living" includes interventions associated with nutrition and hydration, elimination, maintaining mobility, assistance with self-administration of routine regularly scheduled medications, and personal cares. Personal care includes bathing, hair care, nail care, shaving, dressing, oral care, and supporting a safe and healthy environment.
5. "Acts or omissions" means patterns of unsafe behavior, nursing practice deficits, failure to comply with acceptable standards of nursing practice, or grounds for discipline identified in North Dakota Century Code chapter 43-12.1 or these rules.
6. "Applicant" means an individual seeking official action by the board.
7. "Approved" means that the standards established by the board are met.
8. "Assignment" means a licensed nurse designates the responsibility for performance of nursing interventions to another licensed nurse.

9. "Assisting with self-administration of routine, regularly scheduled medications" means helping the client with one or more steps in the process of taking medications. Examples of "assisting" include opening the medication container or reminding the client of the proper time to take the medication. Assisting with the administration of medication may be a delegated intervention.
10. "Authority" means legal authority to provide nursing care granted through licensure as a registered nurse, licensure as a practical nurse, or through delegation of nursing interventions from the licensed nurse.
11. "Certification" means a process of voluntary recognition by a national nursing organization of the person's specialty knowledge, skills, and abilities in a defined area of nursing practice. The certification process measures the theoretical and clinical content denoted in the specialty scope of practice and is developed in accordance with generally accepted standards of validity and reliability.
12. "Client" means the recipient of nursing care, which may include an individual, family, group, or a community.
13. "Competence" means the application and integration of knowledge, skills, ability, and judgment necessary to meet standards.
14. "Consultative nurse" means a licensed nurse who provides guidance and information related to nursing procedures and interventions to the facility or agency but is not individually responsible to direct the plan of care for the client.
15. "Continuing education" means planned, organized learning experiences designed to augment the knowledge, skills, and abilities for the delivery of safe and effective nursing care for the citizens of North Dakota which meets the criteria and reporting requirements established by the board.
16. "Delegation" means the authorization for the performance of selected nursing interventions from a licensed nurse to an unlicensed assistive person.
17. "Denial" means the board's refusal to issue or renew a current license or registration.
18. "Direction" means the provision of written or verbal guidance, or both, and supervision by a licensed nurse who is responsible to manage the provision of nursing interventions by another person.
19. "Encumber" means to place on probation.
20. "Evidence-based practice" means integration of research findings with clinical expertise and client values for optimum care.

21. "Impaired" means the ability to practice nursing safely has been affected by the use or abuse of alcohol or other drugs, psychiatric or physical disorders, or practice deficiencies.
22. "Incompetence" means conduct that deviates from either standards of nursing practice approved by the board or the definition of competence in this section.
23. "Instate nursing program", "nursing program", or "nursing education program" means a nurse program with faculty or facilities located in North Dakota and approved by the board.
24. "Interdisciplinary team" means a group of health care professionals currently licensed under North Dakota Century Code title 43.
25. "Licensed nurse" means a person licensed pursuant to North Dakota Century Code chapter 43-12.1 and North Dakota Administrative Code title 54.
26. "Licensed practitioner" means a person lawfully authorized to prescribe medications or treatments under North Dakota Century Code title 43.
27. "Licensee" means a person who has met all the requirements to practice as a licensed nurse pursuant to North Dakota Century Code chapter 43-12.1 and has been issued a license to practice nursing.
28. "Licensure" means the process by which the board grants legal privilege to an individual to engage in the practice of nursing upon finding that the individual has attained the essential degree of education and competence necessary to ensure that the public health, safety, and welfare will be protected.
29. "Limit" means to restrict, qualify, or otherwise modify the license or registration.
30. "Major incident" means an act or omission in violation of North Dakota Century Code chapter 43-12.1 or this title which indicates an applicant licensee's or registrant's continuing to practice poses a high risk of harm to the client or another person.
31. "Medication administration" means the delivery of medication by a licensed nurse or an individual delegated to and supervised by a licensed nurse, to a client whose use of that medication must be monitored and evaluated applying specialized knowledge, skills, and abilities possessed by a licensed nurse.
32. "Medication assistant" means an individual who has a current registration as an unlicensed assistive person, has ~~successfully completed an approved medication assistant program, has~~

~~demonstrated competency had additional training in the administration of routine, regularly scheduled medications medication, and possesses a current registration from the board as a one of the following medication assistant. assistants:~~

- a. Medication assistant I is a person who has completed all the requirements for a medication assistant program I. A medication assistant I is limited to employment in a setting in which a licensed nurse is not regularly scheduled.
  - b. Medication assistant II is a person who has completed additional training past the medication assistant program I and met all the requirements for a medication assistant program II. A medication assistant II may be employed both in a setting in which a licensed nurse is regularly scheduled and a setting in which a licensed nurse is not regularly scheduled.
  - c. Medication assistant III is a person who has completed two semesters of an approved nursing education program, each of which must have included a clinical nursing component, or a graduate of a board-recognized medical assistant program. A medication assistant III may be employed both in a setting in which a licensed nurse is regularly scheduled and a setting in which a licensed nurse is not regularly scheduled.
33. "Medication assistant program" means a program of study and clinical practice in the administration of routine, regularly scheduled medications which meets board requirements.
  34. "Minor incident" means an act or omission in violation of North Dakota Century Code chapter 43-12.1 or this title which indicates an applicant licensee's or registrant's continuing to practice poses a low risk of harm to the client or another person.
  35. "Misappropriation of property" means the patterned or knowing, willful, or intentional misplacement, exploitation, or wrongful, temporary, or permanent use of a client's, employer's, or any other person's or entity's belongings, money, assets, or property without consent.
  36. "Neglect" means a disregard for and departure from the standards of care which has or could have resulted in harm to the client.
  37. "Nurse administrator" means a person responsible for organized nursing services and who manages from the perspective of the organization as a whole.
  38. "Nursing intervention" means the initiation and completion of client-focused actions necessary to accomplish the goals defined in the plan of care which may include activities of daily living.

39. "Out-of-state nursing program" means a program whose faculty and facilities are located outside North Dakota but within the United States, which is approved by the licensing board for nurses in the particular state or United States territory and is equivalent to an "instate nursing program".
40. "Practice deficiency" means a practice activity that does not meet the standards of nursing practice.
41. "Practice site" means a facility that signs a written agreement with the nursing education program to provide practice experiences for students.
42. "Probation" means issuance of a current license or registration marked "encumbered" and identification of specific requirements, restrictions, or limitations against a nursing license or registration for a period of time.
43. "Professional boundaries" means the provision of nursing services within the limits of the nurse and client relationship which promote the client's dignity, independence, and best interests and refrain from inappropriate involvement in the client's or client's family personal relationships.
44. "Professional misconduct" means any practice or behavior that violates the applicable standards governing the individual's practice necessary for the protection of the public health, safety, and welfare.
45. "Reactivation" means issuance of a previously active license or registration.
46. "Registrant" means an unlicensed assistive person as defined in North Dakota Century Code section 43-12.1-02.
47. "Regularly scheduled presence of a licensed nurse" means that a licensed nurse is present a minimum of eight hours in a twenty-four-hour period of time in a setting where nursing care is continuously delivered.
48. "Reinstatement" means activation of a board-sanctioned license or registration.
49. "Reprimand" means action of the board stating the board's concerns regarding the professional conduct of the licensee or registrant.
50. "Revocation" means the withdrawal by the board of the license or registration of the right to practice nursing or assist in the practice of nursing for a specified length of time of no less than one year. If no specified length of time is identified by the board, revocation is permanent.

51. "Routine, regularly scheduled medication" means the components of an identified medication regimen for an individual or groups of individuals with stable conditions which are administered on a routine basis and do not require determination of need, drug calculation, or dosage conversion.
52. "Scope of practice" means the delineation of the nature and extent of practice.
- ~~52:~~ 53. "Sponsor institution" means the governing organization that provides necessary administrative and fiscal resources for a nursing program.
- ~~53:~~ 54. "Stable" means a situation in which the client's clinical and behavioral status and nursing care needs are determined by the registered nurse or licensed practitioner to be predictable, nonfluctuating, and consistent or in which the fluctuations are expected and the interventions are planned.
- 54: 55. "Stay" means the action of the board that does not immediately take place and may not take place if other conditions, such as probation terms, are met. Violations of the terms and conditions may result in lifting of the stay and imposition of the sanction.
- 55: 56. "Supervision" means maintaining accountability to determine whether or not nursing care is adequate and delivered appropriately. Supervision includes the assessment and evaluation of the client's condition and responses to the nursing plan of care and evaluation of the competence of the person providing nursing care.
- a. "Condition of supervision" means the method of supervision as direct or indirect, the identification of the persons to be supervised as well as the nursing interventions being provided, and the stability or predictability, or both, of the client's condition.
  - b. "Direct supervision" means that the responsible licensed nurse is physically present in the clinical area and is available to assess, evaluate, and respond immediately. Direct supervision does not mean that the responsible licensed nurse must be in the same room or "looking over the shoulder" of the persons providing nursing care.
  - c. "Indirect supervision" means that the responsible nurse is available through periodic inspection and evaluation or telecommunication, or both, for direction, consultation, and collaboration.
- 56: 57. "Survey" means an onsite visit or a paper review of a program approved by the board of nursing.

- ~~57.~~ 58. "Suspension" means withholding by the board of the license or registration of the right to practice nursing or assist in the practice of nursing for a specified or indefinite period of time.
- ~~58.~~ 59. "Technician" means an unlicensed assistive person who may perform limited nursing functions within the ordinary, customary, and usual roles in the person's field. Examples may include surgical and dialysis technicians and medical assistants.
- ~~59.~~ 60. "Temporary suspension" means action by the board when there are reasonable grounds to believe the licensee or registrant has violated a statute or rule the board is empowered to enforce and continued practice by the licensee or registrant would constitute a continuing and imminent threat to the public welfare.
- ~~60.~~ 61. "Unlicensed assistive person registry" means a listing of all persons who are authorized by the board or included on another state registry, which has been recognized by the board to perform nursing interventions delegated and supervised by a licensed nurse.
- ~~61.~~ 62. "Voluntary surrender" means an agreement by a licensee or registrant, approved by the board, to relinquish the license or registration to the board.
- ~~62.~~ 63. "Workplace impairment program" means the program administered by the board as set out in the Nurse Practices Act permitting nurses with chemical dependency, psychiatric or physical disorders, or practice deficiencies to seek treatment and remediation and participate in monitored practice, voluntarily or by the board's order.
- ~~63.~~ 64. "Workplace impairment program agreement" means an individualized written agreement between the nurse and the program. The agreement must include the terms and conditions for successful completion of the program.

**History:** Effective June 1, 2002; amended effective April 1, 2004; August 1, 2005.

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

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

## CHAPTER 54-02-10

**54-02-10-02.1. Issuance of a license by a compact party state.** For purposes of this compact as of July 1, 2005, an applicant for initial licensure will not be issued a compact license granting a multistate privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX® examination or predecessor examination used for licensure.

**History:** Effective August 1, 2005.

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

**Law Implemented:** NDCC 43-51

## CHAPTER 54-03.2-06

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

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

- j. Learning experiences and methods of instruction which are consistent with the written curriculum plan.
2. Additional requirements for associate degree practical nurse programs include:
- a. Historical trends in nursing;
  - b. Theory and clinical experience related to section 54-05-01-06 relating to role of the licensed practical nurse intravenous therapy;
  - c. Data collection skills;
  - d. Use of available health information:
    - (1) Contributing to plan of care and care implementation; and
    - (2) Computer literacy;
  - e. Management skills; and
  - f. Courses that meet the sponsoring institution's general education requirements for the associate degree.
3. The curriculum of an associate degree program leading to registered nurse licensure must include content and sufficient clinical experience to prepare the graduate to:
- a. Deliver client-centered care that respects client differences, values, preferences, and expressed needs and is based on scientific evidence:
    - (1) Biological, physical, social, and behavioral sciences, including disease process, nutrition, and pharmacology;
    - (2) Content regarding legal, ethical responsibilities and historical trends in nursing;
    - (3) Nursing process;
    - (4) Written, verbal, and therapeutic communication;
    - (5) Basic decisionmaking skills;
    - (6) Data collection skills to obtain obvious information; and
    - (7) Health promotion and maintenance for the individual and families.

- b. Function effectively in an interdisciplinary team:
    - (1) Group dynamics;
    - (2) Goal-setting strategies; and
    - (3) Management concepts, including delegation and supervision of other members of the health care team.
  - c. Deliver evidence-based practice, including application of evidence in managing common clinical problems.
  - d. Apply quality improvement concepts in nursing care:
    - (1) Basic safety and infection control standards; and
    - (2) Quality improvement processes.
  - e. Use available health information:
    - (1) Documentation of care plan, nursing care implementation, and evaluation of care provided; and
    - (2) Computer literacy.
  - f. Inform and counsel patients and families:
    - (1) Concepts of informational readiness;
    - (2) Discharge planning; and
    - (3) Implementation of preestablished patient teaching plans.
  - g. Demonstrate nursing values and roles consistent with the scope of practice:
    - (1) Registered nurse standards of practice; and
    - (2) Ethical concepts.
  - h. Courses that meet the sponsoring institution's general education requirements for the associate degree.
4. The curriculum of a baccalaureate nurse program must include:
- a. Content regarding legal and ethical issues; history, trends, and theories in nursing; biological, physical, social, and behavioral

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

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

6. Delivery of instruction by distance education methods must meet the standards for nursing education according to article 54-03.2, be congruent with the nursing program curriculum plan, and enable students to meet the goals, competencies, and objectives of the education program and standards of the board.
7. Out-of-state prelicensure programs provided in this state must meet the standards for nursing education according to article 54-03.2.

**History:** Effective April 1, 2004; amended effective August 1, 2005.

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

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

## CHAPTER 54-07-05

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

**History:** Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004; August 1, 2005.

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

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

**54-07-05-04. Requirements for supervision.** A licensed nurse who delegates medication administration to a medication assistant must provide supervision as follows:

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

**History:** Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004; August 1, 2005.

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

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

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

1. Unlicensed assistive persons may obtain initial medication assistant I registration by:
  - a. Successfully completing a board-approved medication assistant program I; or
  - b. Submitting evidence of successful completion of a medication assistant program in another state equal in content to a board-approved medication assistant program I curriculum.
2. Unlicensed assistive persons may obtain initial medication assistant II registration by:
  - a. Successfully completing a board-approved medication assistant program II; or
  - b. ~~Showing satisfactory evidence of successful completion of two semesters of nursing school, each of which must have included a clinical nursing component. The two semesters combined must have included the required medication assistant program II curriculum content; or~~
  - c. Submitting evidence of successful completion of a medication assistant program in another state equal in content to a board-approved medication assistant program II curriculum.
3. Unlicensed assistive persons successfully completing a medication assistant program prior to August 1, 1999, are not subject to the initial medication assistant I registration requirements in subsection 1.
4. Unlicensed assistive persons may obtain initial medication assistant III registration by:
  - a. Submitting evidence of successful completion of two semesters of an approved nursing education program, each of which must have included a clinical nursing component. The two semesters combined must have included basic clinical skills, basic pharmacology, principles of medication administration, and mathematics competency; or

b. Submitting evidence of:

- (1) Successful completion of a board-recognized medical assistant program; and
- (2) Certification from the American association of medical assistants or its successor organization awarding the certified medical assistant credential or registration from the American medical technologists or its successor organization awarding the registered medical assistant credential.

**History:** Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004; August 1, 2005.

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

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

**54-07-05-06. Medication assistant registration renewal.** The medication assistant registration expiration date must correspond to the individual's unlicensed assistive person registration expiration date and must be renewable at the same time that the unlicensed assistive person registration is renewed. Medication assistant registry listing renewal requires verification of continued competence. An enrolled nursing student or unlicensed graduate of an approved nursing education program may renew with the clinical practice hours in the nursing program within the past two years. The graduate from a board-recognized medical assistant program must show evidence of current certification from the American association of medical assistants or successor organization or current registration from the American medical technologists or successor organization.

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

**History:** Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004; August 1, 2005.

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

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

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

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

3. Submit documentation of continued competency and verification of current certification from the American association of medical assistants or successor organization or current registration from the American medical technologists or successor organization.

**History:** Effective September 1, 1994; amended effective May 1, 1999; April 1, 2004; August 1, 2005.

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

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

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

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

- c. Intradermal injections:
  - d. Gastrostomy; and
  - e. Jejunostomy.
4. Medication assistant students and medication assistants I or II may only administer medications by the following routes when specifically delegated by a licensed nurse for a specific client:
- a. Gastrostomy;
  - b. Jejunostomy; and
  - c. Subcutaneous.
4. 5. Medication assistant students and medication assistants I or II may not administer medications by the following routes:
- a. Central lines;
  - b. Colostomy;
  - c. Intramuscular injection;
  - d. Intravenous medications;
  - e. ~~Heparin~~ Intravenous lock;
  - f. Nasogastric tube;
  - g. Nonmetered inhaler;
  - h. Intradermal;
  - i. Nonunit dose aerosol/nebulizer; or
  - j. Urethral catheter.
6. Medication assistants III may not administer medications by the following routes:
- a. Central lines;
  - b. Colostomy;
  - c. Intravenous;

- d. Intravenous lock;
  - e. Nasogastric tube;
  - f. Nonmetered inhaler;
  - g. Nonunit dose aerosol/nebulizer; or
  - h. Urethral catheter.
5. 7. Medication assistant students and medication assistants ~~to~~ may not administer the following kinds of medications:
- a. Barium and other diagnostic contrast media; ~~or~~
  - b. Chemotherapeutic agents; or
  - c. Through any medication pumps, nor assume responsibility for medication pumps, including client-controlled analgesia.

**History:** Effective May 1, 1999; amended effective April 1, 2004; August 1, 2005.

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

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

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



JANUARY 2005

CHAPTER 61-02-07.1

**61-02-07.1-04. Ratio of pharmacists to pharmacy technicians.** The ratio of pharmacists to pharmacy technicians may not be greater than one to ~~two (one pharmacist to two pharmacy technicians)~~ three (one pharmacist to three pharmacy technicians) in a retail setting. The ratio of pharmacists to pharmacy technicians may not be greater than one to four (one pharmacist to four pharmacy technicians) in a hospital or closed-door pharmacy that does not deal directly with patients. A pharmacist may not supervise more than four telepharmacy sites. This ratio does not include other supportive personnel.

**History:** Effective October 1, 1993; amended effective January 1, 2005.

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

**Law Implemented:** NDCC 28-32-03, 43-15-10(12)(14)

**61-02-07.1-10. Pharmacy technician continuing education.**

1. ~~Commencing March 1997 no annual renewal of a pharmacy technician registration may be issued to a pharmacy technician until such pharmacy technician has completed at least twenty hours of approved pharmacy technician continuing education during the previous two-year period. Thereafter, each~~ Each pharmacy technician shall complete at least twenty hours of approved pharmacy technician continuing education every two years as a condition of renewal of a registration as a pharmacy technician in North Dakota.
2. There may be no carryover or extension of continuing education units with the exception that continuing education units obtained twelve months prior to the ~~end~~ beginning of each two-year reporting period may be used in ~~that~~ the current two-year reporting period or the following reporting period, however, they may not be counted as credit in both reporting periods. The failure to obtain the required twenty hours of continuing education by the renewal date may result in a suspension for a minimum of thirty days, or a maximum of the period ending the date the continuing education is completed.

3. Pharmacy technicians shall maintain their own records on forms supplied by the board. The records must be maintained for a two-year period.
4. The requirements of this section do not apply to a pharmacy technician applying for a first renewal of a registration.
5. A pharmacy technician registered with the board may make application to the board for a waiver of compliance with the pharmacy technician continuing education requirements and may be granted an exemption by the board.
6. Upon request of the board, proof of compliance must be furnished to the board.
7. Approved pharmacy technician continuing education means those pharmacy technician continuing education programs approved by the board. The board shall maintain a record of approved programs, including the hours of credit assigned to each program which shall be available upon request.

**History:** Effective July 1, 1996; amended effective January 1, 2005.

**General Authority:** NDCC 28-32-02, 43-15-10(12)(14)(19)

**Law Implemented:** NDCC 28-32-03

**61-02-07.1-11. Pharmacy technician in training.** A pharmacy technician in training must be designated as a pharmacy technician in training and will be allowed to practice the professional duties of a registered pharmacy technician as determined by the pharmacist-in-charge and the supervising licensed pharmacist. Upon receipt of a request to have a person designated a pharmacy technician in training from a pharmacist-in-charge, the board, if appropriate, shall ~~send a letter of approval to the pharmacist-in-charge and~~ register the person so enrolled as a ~~pharmacist~~ pharmacy technician in training. ~~Registration as a pharmacy technician is not required for a period of two years.~~ The maximum amount of time to be registered as a technician in training is two years unless an extension is granted.

**History:** Effective July 1, 1996; amended effective January 1, 2005.

**General Authority:** NDCC 28-32-02, 43-15-10(12)(14)(19)

**Law Implemented:** NDCC 28-32-03

## CHAPTER 61-02-08

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

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

**History:** Effective October 1, 2001; amended effective December 1, 2003; January 1, 2005.

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

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

**61-02-08-06. Expiration.** ~~This chapter is effective through May 15, 2005, and is thereafter ineffective unless specifically extended by rule. Repealed effective July 1, 2005.~~

**History:** ~~Effective October 1, 2001.~~

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

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

## CHAPTER 61-03-01

**61-03-01-09. Inactive status.** Any pharmacist holding a certificate of registration as a pharmacist in North Dakota may go on inactive status, and continue to hold a certificate of registration in North Dakota, provided that the pharmacist on inactive status may not practice pharmacy within North Dakota. A pharmacist on inactive status may not be required to meet the requirements of continuing pharmaceutical education as required by North Dakota Century Code section 43-15-25.1 or rules of the boards under chapter 61-03-04. In order for a pharmacist to change an inactive status certificate of registration to an active status of registration, the pharmacist will have to complete ~~fifteen hours of approved continuing pharmaceutical education and internship hours and continuing education hours as determined by the board, based on the length of time of inactive status, and then must~~ comply with continuing pharmaceutical education requirements of the board and state of North Dakota thereafter.

**History:** Effective April 1, 1988; amended effective January 1, 2005.

**General Authority:** NDCC 28-32-02, 43-15-10(2)(12)(14), 43-15-15, 43-15-25.1

**Law Implemented:** NDCC 28-32-02, 43-15-10(2)(12)(14), 43-15-15, 43-15-25.1

**61-03-01-10. Reinstatement procedures.** If a licensed pharmacist in this state fails to pay the fee for a renewal of a license within the time required, the director of the board shall mail the pharmacist a notice, addressed to the pharmacist's last-known place of residence, notifying the pharmacist of failure to obtain a renewal license. The delinquent licenseholder, within sixty days after the notice is mailed, may procure a renewal license upon the payment of a renewal fee to be set by the board not to exceed two hundred dollars. If the licenseholder fails to have a license renewed within sixty days after the notice is mailed, the original or renewal license, as the case may be, becomes void and the registry thereof must be canceled. The board, on application of the delinquent licenseholder and upon the payment of all unpaid fees, may authorize the issuance of a new license without examination, if it is satisfied that the applicant is a proper person to receive the same. The board may require reexamination or completion of internship and continuing education hours as determined by the board.

**History:** Effective January 1, 2005.

**General Authority:** NDCC 28-32-02, 43-15-10(2)(12)(14), 43-15-15, 43-15-25.1

**Law Implemented:** NDCC 43-15-26

## CHAPTER 61-03-03.1

**61-03-03.1-06. Board and college responsibilities.** ~~During the entire internship rotations, the intern will maintain a weekly record of activities in a form designated by the board of pharmacy. This form must be reviewed weekly with the preceptor pharmacist during the entire experiential rotations.~~

1. The intern shall submit a yearly affidavit of internship completed, as certified by a licensed pharmacist preceptor.
2. The intern shall maintain a record of objectives and activities as part of the approved pharmacy experiential program and shall submit said record upon completion of the fourth professional year.

**History:** Effective October 1, 1999; amended effective January 1, 2005.

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

**Law Implemented:** NDCC 28-32-02, 43-15-10, 43-15-18

## CHAPTER 61-03-04

### 61-03-04-02. Requirements for continuing pharmaceutical education.

1. ~~Commencing March 1, 1987, no annual renewal of a certificate of registration may be issued to a pharmacist until such pharmacist has completed at least thirty hours (three c.e.u.) of approved continuing pharmaceutical education during the previous two-year period. Thereafter, each~~ Each pharmacist shall complete at least thirty hours (three c.e.u.) of approved continuing pharmaceutical education every two years as a condition of renewal of a certificate of registration as a pharmacist in the state of North Dakota. ~~To meet the continuing pharmaceutical education requirements for the period ending March 1, 1987, a pharmacist may use any hours of approved continuing pharmaceutical education obtained during the period from July 1, 1983, to March 1, 1987.~~
2. There may be no carryover or extension of continuing education units with the exception that continuing education units obtained twelve months prior to the ~~end~~ beginning of each two-year reporting period may be used in ~~that~~ the current two-year reporting period or the following reporting period, however, they may not be counted as credit in both reporting periods. The failure to obtain the required thirty hours of continuing education by the renewal date may result in a suspension for the minimum of thirty days or a maximum of the period ending the date the continuing education is completed.
3. Pharmacists shall maintain their own records on forms supplied by the board. The records shall be maintained for a two-year period.
4. The requirements of this section do not apply to a pharmacist applying for a first renewal of a certificate of registration.
5. A pharmacist holding a certificate of registration from the board may make application to the board for a waiver of compliance with the continuing pharmaceutical education requirements and may be granted an exemption by the board. No pharmacist holding such an exemption may practice pharmacy in North Dakota until reinstated by the board after completing fifteen hours of continuing pharmaceutical education (one and one-half c.e.u.) during the year before reinstatement.
6. Upon request of the board, proof of compliance must be furnished to the board.

**History:** Effective April 1, 1986; amended effective January 1, 2005.

**General Authority:** NDCC 28-32-02, 43-15-10(12)(14), 43-15-25.1

**Law Implemented:** NDCC 28-32-03, 43-15-10(12)(14), 43-15-25.1

## CHAPTER 61-04-05

~~61-04-05-01. Facsimile transmission of prescriptions.~~ A In addition to the requirements in section 61-04-05-02, a prescription order may be transmitted from an authorized prescribing practitioner to a pharmacy under the following provisions:

- ~~1. Actual transmittal is done by or under the direct supervision of the authorized prescribing practitioner or the practitioner's authorized agent.~~
- ~~2. Practitioners or their authorized agents transmitting medication orders using facsimile equipment are obligated to provide voice verification when requested by the pharmacist receiving the medication order. If requested voice verification is refused, the facsimile transmitted prescription may not be filled.~~
- ~~3. Pharmacists are precluded from supplying or leasing facsimile equipment to prescribing practitioners, hospitals, nursing homes, or any medical care provider or facility.~~
- ~~4. Using facsimile equipment to transmit schedule II controlled substance prescriptions is not allowed except when the patient is a hospice patient or resides in a licensed long-term care facility. A facsimile may serve as the pharmacy's original prescription, if it has been signed by the practitioner before faxing and is in compliance with subsection 6 3.~~
- ~~5. 2. Schedule ~~III-IV-V~~ III, IV, and V controlled substances prescriptions received by facsimile equipment ~~must be signed within seven days by the authorized prescriber as required by subsection 3 of North Dakota Century Code section 19-03.1-22~~ except when the patient is a hospice patient or resides in a licensed long-term care facility. A facsimile may serve as the pharmacy's original prescription, if it has been signed by the practitioner before faxing and is in compliance with subsection 6 3.~~
- ~~6. 3. A facsimile copy prescription must be reduced to writing either manually or by other process (computer, photocopying, etc.) which produces a nonfading document; and proper notation on the file copy must indicate that the prescription order was initially received by facsimile equipment.~~
- ~~7. 4. The receiving facsimile machine must be in the prescription department of the pharmacy to protect patient-pharmacist authorized prescribing practitioner confidentiality and security.~~
- ~~8. Using facsimile equipment to circumvent documentation, authenticity, verification, or other standards of pharmacy practice or drug diversion will be considered unprofessional conduct under chapter 61-04-04.~~

- 9: ~~The board of pharmacy recognizes that the facsimile transmission of prescriptions will depend on the type of pharmaceutical services offered; and therefore, variations of the requirements for facsimile transmission of prescriptions may be granted by the board of pharmacy:~~

**History:** Effective October 1, 1993; amended effective October 1, 1999; January 1, 2005.

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

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

**61-04-05-02. Electronic transmission of prescriptions.** The terms "electronic", "electronic record", "electronic signature", and "security procedure" have the meaning ascribed to them in North Dakota Century Code chapter 9-16-01.

A prescription order may be transmitted electronically from an authorized prescribing practitioner to a pharmacy under the following provisions:

1. Actual transmittal is done by or under the supervision of the authorized prescribing practitioner or the practitioner's authorized agent.
2. Practitioners or their authorized agents transmitting medication orders using electronic equipment are obligated to provide voice verification when requested by the pharmacist receiving the medication order. If requested voice verification is refused, the electronically transmitted prescription may not be filled.
3. Pharmacists are precluded from supplying or leasing facsimile equipment, or computer hardware or software, to prescribing practitioners, hospitals, nursing homes, or any medical provider or facility.
4. Using facsimile equipment or other electronic transmission to circumvent documentation, authenticity, verification, or other standards of pharmacy practice or drug diversion will be considered unprofessional conduct under chapter 61-04-04.
5. The board of pharmacy recognizes that the electronic transmission of prescriptions will depend on the type of pharmaceutical services offered, and therefore, variations of the requirements for electronic transmission of prescriptions may be granted by the state board of pharmacy.
6. A third-party intermediary may be used to facilitate transmission of the prescription order as long as the intent of the prescriber is not changed and procedures are in place to protect patient confidentiality.

**History:** Effective January 1, 2005.

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

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

**61-04-05-03. Computer transmission of prescriptions.** In addition to the requirements in section 61-04-05-02, a prescription order may be transmitted from an authorized prescribing practitioner to a pharmacy under the following provisions:

1. Schedule III, IV, and V controlled substances prescriptions received via computer require an electronic signature by the authorized prescriber, as defined in North Dakota Century Code section 9-16-01, for the prescription to serve as the original copy.
2. Transmission of schedule II controlled substance prescriptions via computer is not allowed.
3. The required legend must appear on the practitioner's prescription screen. The practitioner must take a specific overt action to include the "dispense as written" language with the electronic transmission as set forth in subsections 3 and 4 of North Dakota Century Code section 19-02.1-14.1. For example, the practitioner or the practitioner's agent must type out "dispense as written" letter by letter.

**History:** Effective January 1, 2005.

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

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

## CHAPTER 61-04-11

**61-04-11-04. Requirements of physician or nurse practitioner order for a pharmacist to administer injections.** The order must be written, received electronically or if received orally be reduced to writing, and must contain at a minimum the:

1. Identity of the physician or nurse practitioner issuing the order;
2. ~~Identity of the pharmacist who is being authorized to administer the injection;~~
3. Identity of the patient to receive the injection;
4. ~~3.~~ Identity of the medication or vaccine, and dose, to be administered; and
5. ~~4.~~ Date of the original order and the dates or schedule, if any, of each subsequent administration.

**History:** Effective May 1, 2002; amended effective January 1, 2005.

**General Authority:** NDCC 43-15-10

**Law Implemented:** NDCC 43-15-10, 43-15-31.5

## CHAPTER 61-08-01

**61-08-01-04. Pharmacy permit - Home state jurisdiction.** An out-of-state pharmacy doing business in North Dakota by dispensing and delivering prescription drugs to North Dakota consumers shall maintain a document that ~~they have~~ it has a pharmacy permit in good standing in their its respective home state jurisdiction.

**History:** Effective April 1, 1988; amended effective January 1, 2005.

**General Authority:** NDCC 28-32-02, 43-15-10(7)(8)(9)(12)(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

**Law Implemented:** NDCC 28-32-02, 43-15-10(7)(8)(9)(12)(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

**61-08-01-05. Applicable law and rules.** North Dakota pharmacy laws and rules shall be applicable to control ~~interstate~~ interjurisdictional prescription commerce and to govern the practice of pharmacy for that portion of the pharmacy practice or operation.

**History:** Effective April 1, 1988; amended effective January 1, 2005.

**General Authority:** NDCC 28-32-02, 43-15-10(7)(8)(9)(12)(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

**Law Implemented:** NDCC 28-32-02, 43-15-10(7)(8)(9)(12)(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

**61-08-01-08. Administrative inspection.** North Dakota pharmacy inspectors may conduct onsite periodic routine inspections during reasonable business hours of out-of-state pharmacies registered to do business in North Dakota. Alternatively, the North Dakota board of pharmacy may contract with the respective out-of-state ~~state boards of pharmacy~~ regulatory authorities to conduct and perfect periodic routine inspections.

**History:** Effective April 1, 1988; amended effective January 1, 2005.

**General Authority:** NDCC 28-32-02, 43-15-10(7)(8)(9)(12)(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38

**Law Implemented:** NDCC 28-32-02, 43-15-10(7)(8)(9)(12)(14), 43-15-34, 43-15-35, 43-15-36, 43-15-38



**TITLE 69**  
**PUBLIC SERVICE COMMISSION**



**MAY 2005**

**CHAPTER 69-09-03**

**69-09-03-02. Adoption of regulations.** The following parts of title 49, Code of Federal Regulations in effect as of ~~March 1, 2003~~ August 1, 2004, are adopted by reference:

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

Copies of these regulations may be obtained from:

Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480

**History:** Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-02-01.2

## CHAPTER 69-10-01

**69-10-01-03.2. Equipment repair notice - Applicable usage.** An equipment repair notice tag may be used in the following circumstances:

1. During the period any one of the following is pending:
  - a. Response to a variance request;
  - b. Completion of design requirements; or
  - c. Repair of required peripheral equipment;
2. When a point of sale ~~measuring~~ liquid-measuring device:
  - a. Is a retail ~~meter~~ liquid-measuring device that is no more than two cubic inches [32.77 milliliters] outside of the applicable tolerance for over-registration or ten cubic inches [163.87 milliliters] outside the applicable tolerance for under-registration, using a five gallon [18.93 liter] test measure; ~~or~~
  - b. Is a vehicle tank ~~meter~~ wholesale liquid-measuring device that is no more than twenty-two cubic inches [360.52 milliliters] outside of the applicable tolerance for over-registration or one hundred cubic inches [1638.71 milliliters] outside the applicable tolerance for under-registration, using a one hundred gallon [378.54 liter] prover; ~~or~~
  - c. Is an LPG ~~vehicle tank meter~~ liquid-measuring device that is no more than five-tenths of one percent outside of the applicable tolerance for over-registration or five percent outside the applicable tolerance for under-registration, using a one hundred gallon [378.54 liter] test with either a one hundred gallon [378.54 liter] prover or a certified commission-registered master meter, ~~and the:~~ however, when the certifying standard is an LPG master meter the applicable tolerance is one percent for any part of the certification test regardless of acceptance or maintenance tolerances:
    - (1) ~~Allowable error difference between an activated and not activated mechanical automatic temperature compensator is no more than five-tenths of one percent outside of the applicable tolerance for over-registration or under-registration; or~~
    - (2) ~~Allowable error difference between an activated and not activated electronic automatic temperature compensator is no more than two-tenths of one percent outside of the applicable tolerance for over-registration or under-registration;~~

- d. Is an LPG or anhydrous ammonia liquid-measuring device equipped with an automatic temperature compensating system, the allowable error difference between an activated and not activated mechanical or electronic automatic temperature compensating system is no more than one-half of one percent outside of the applicable tolerance for over-registration or under-registration; or
  - e. Is a liquid hydrocarbon or agri-chemical measuring device that has an automatic temperature compensating system, the difference between the meter error (expressed as a percentage) for results determined with and without the mechanical or electronic automatic temperature compensating system activated may be no more than one-tenth of one percent outside of the applicable tolerance for over-registration or under-registration;
3. When a point of sale weighing device is no more than one scale division outside of applicable tolerance for over-registration or two scale divisions outside the applicable tolerance for under-registration; or
  4. When a point of purchase or point of sale weighing device is no more than one scale division outside of applicable tolerance for over-registration or under-registration.

**History:** Effective March 1, 2003; amended effective November 1, 2003; May 1, 2005.

**General Authority:** NDCC 64-02-03

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

**69-10-01-13. Enforcement.** An operator of a commercial weighing and measuring device shall ensure that the device is designed, constructed, operated, and maintained to meet applicable standards in state and national institute of standards and technology handbook no. 44 requirements. The commission may require proof of compliance. The commission may file a complaint for noncompliance, and, in addition to other appropriate sanctions, assess civil penalties under North Dakota Century Code chapter 49-07 after notice and opportunity for hearing on the complaint.

**History:** Effective May 1, 2005.

**General Authority:** NDCC 49-07, 64-02-03

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

**69-10-01-14. Inspection and testing accessibility.** A commercial weighing or measuring device must be installed so that it is easily accessible for inspection and testing.

**History:** Effective May 1, 2005.

**General Authority:** NDCC 64-02-03

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

**69-10-01-15. Devices taken out of service.** When a state weights and measures inspector or a registered service person removes a commercial weighing or measuring device from service, the inspector or registered service person shall notify the commission in writing within seven working days of the removal.

**History:** Effective May 1, 2005.

**General Authority:** NDCC 64-02-03

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

**69-10-01-16. Service contracts.** Registered service companies shall notify the commission of any service contract that provides for annual certification of a commercial device. Notification must be given no later than thirty days from the date of the verbal or written contract. Commercial devices under service contract that have not been tested within thirteen months must be scheduled for testing by the commission.

**History:** Effective May 1, 2005.

**General Authority:** NDCC 64-02-03

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

## CHAPTER 69-10-02

**69-10-02-13. Inspection and testing accessibility.** ~~A commercial weighing or measuring device must be installed so that it is easily accessible for inspection and testing. Repealed effective May 1, 2005.~~

**History:** ~~Amended effective September 1, 1994; July 1, 1997.~~

**General Authority:** ~~NDCC 64-02-03~~

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

**69-10-02-24. Electronic scale data storage and retrieval.** Computer programming installed after January 1, 2002, enabling the electronic recording or storage of scale weight must conform to the following:

1. If more than one scale is interfaced, the system must store the identity of the scale which originated the weight and all printed data must identify the scale which originated the weight;
2. Any weight which is manually entered must be identified manually entered on all recorded weights;
3. All recorded weights must match actual scale-weight indications;
4. All recalled weights must match stored weights;
5. Stored weight must have a recorded audit on a dedicated line printer in a continuous format which includes an "S" indicating that it is a stored weight; a sequential reference number; a scale identifier number; a unique reference number to enable the recall of that stored weight; and the stored weight;
6. Any stored weight which is recalled must be immediately printed on a scale ticket with the following information: an "R" indicating that it is a recalled weight; the unique reference number identified in subsection 5; and the recalled weight;
7. After the transaction is completed, the recalled weight must be automatically deleted from the recall weights data file;
8. ~~Any printed ticket from a system used for storing tare weights must include an "STW" to identify that weight as a stored tare weight;~~
9. Computer computations such as rounding off and truncation must be programmed so that the computations do not result in the degradation of the accuracy of the scale tolerance by more than one-half of one scale division; and

40- 9. Programming must ensure all essential data is properly entered and stored before issuing a weight ticket.

**History:** Effective January 1, 2002; amended effective May 1, 2005.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02

69-10-02-25. Law enforcement scales. Axle load scales used for weight enforcement by the North Dakota highway patrol may be tested annually, but must be tested at least once every fifteen months.

**History:** Effective May 1, 2005.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02

## CHAPTER 69-10-03

**69-10-03-01. National institute of standards and technology (NIST) Handbook No. 44.** Except as modified in this article, the specifications, tolerances, tests, and other technical requirements for commercial weighing and measuring devices in North Dakota shall must conform to the following sections and subsections of the 1999 edition of the United States department of commerce, NIST Handbook No. 44, which is adopted by reference: all of section 1, section 2 (except subsection 2.24), all of subsection 3.30, subsection 3.31 (except S.1.1.1., UR.2.2., and UR.2.3.), subsection 3.32 (except UR.2.5. and UR.2.6.), and all of subsections 3.33, 3.35, and 3.37. In the event of a conflict between the NIST Handbook No. 44 and North Dakota laws and rules, North Dakota laws and rules shall prevail. Copies of the handbook may be obtained from:

Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480

**History:** Amended effective October 1, 1988; December 1, 1990; February 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; October 1, 1999; August 1, 2000; January 1, 2002; May 1, 2005.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-07

**69-10-03-04. Enforcement.** ~~An operator of a commercial weighing and measuring device must ensure that the device is designed, constructed, operated, and maintained to meet applicable standards in state and Handbook No. 44 requirements. The commission may require proof of compliance. The commission may issue a complaint for noncompliance, and assess civil penalties under North Dakota Century Code chapter 49-07.~~ Repealed effective May 1, 2005.

**History:** ~~Effective August 1, 1993; amended effective July 1, 1997.~~

**General Authority:** ~~NDCC 49-07, 64-02-03~~

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

**69-10-03-06. Metrology service.** Metrology service at the commission laboratory will only be provided as set out in this section:

1. All metrology service requests must be by appointment only and will be according to the following:
  - a. Testing and safety division metrology;
  - b. State-registered service company metrology;
  - c. North Dakota law enforcement metrology;
  - d. Industrial customer metrology; and

- e. All other metrology.
- 2. The director shall send out annual appointment notifications by mail to all state-registered service companies at least thirty days prior to each company's appointment date.
- 3. If a party with a scheduled metrology appointment needs to cancel that appointment, the party shall notify the commission of the need to cancel at least seven days in advance of the appointment. Appointments cancelled within less than seven days advance notice will lose scheduling priorities. The party canceling a metrology appointment may request a new appointment date at that time.
- 4. Metrology appointments will be requested and confirmed by telephone, e-mail, facsimile, or in writing by mail. A party requesting a metrology appointment should plan at least thirty days' advance notice to the commission on any metrology appointment requests.
- 5. A metrology request not previously scheduled may only be serviced as time becomes available.
- 6. A metrology request for service beyond the scope of the laboratory's certification of recognition level will be referred to an appropriate NIST-accredited metrology laboratory.

**History:** Effective May 1, 2005.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02

**69-10-03-07. Delivery of standards for certification.** Standards delivered to the metrology laboratory for testing and certification must be submitted undamaged and serviceable and must comply with the following:

- 1. Vehicle scale test carts must be cleaned and painted with all fluid levels topped off to their calibrated reference levels.
- 2. Cast iron weights must be cleaned and painted following the requirements in NIST Handbook No. 105-1, section 2, as adopted by reference in section 69-10-03-01.2.
- 3. Provers and test measures, including sight glasses, must be cleaned inside and out and contain no hydrocarbon residue or other pollutants.
- 4. Provers must have a simple, sturdy, and adequate leveling means on the legs allowing for adjustments with a single tool.
- 5. Provers must have two level indicators mounted on the body of the prover at right angles to each other for leveling purposes.

6. Mild steel provers must be periodically painted as determined by the metrologist, and as recorded in the remarks section on the previous year's calibration report.
7. Mild steel test measures, including sight glasses, must be cleaned inside and out and contain no hydrocarbon residue or other pollutants.
8. Class F weights must meet the applicable material and design requirements of NIST Handbook No. 105-1, as adopted by reference in section 69-10-03-01.2.
9. Fabricated weights, brass weights, and cast iron weights equal to or less than ten pounds [4.54 kilograms] may not be used.
10. Laminated weights must not be adjusted and must be removed from service when the weights fail to maintain the applicable tolerance.
11. Volume standards placed in service after January 1, 1998, must meet the requirements of NIST Handbook No. 105-3 or 105-4, as adopted by reference in sections 69-10-03-01.3 and 69-10-03-01.4.
12. A volume standard placed in service before January 1, 1998, that has maintained annual certification need not meet the requirements of NIST Handbook No. 105-3 or 105-4, as adopted by reference in sections 69-10-03-01.3 and 69-10-03-01.4, unless a standard has been removed from service for a period greater than twelve months.
13. Special seals or special tools required for the test or calibration, which is of a unique nature to a particular standard, must be supplied by the standard owner prior to the beginning of the metrology process.
14. If weights greater than one hundred pounds [45.36 kilograms] or provers with capacities greater than fifty gallons [189.27 liters] are shipped to the metrology laboratory, the weights or provers must be shipped on an open flatbed truck or trailer.
15. Standards that are not in compliance with any of the above requirements will not be accepted for testing and certification.
16. A standard that is not tested and certified may not be used to test and certify a commercial device unless a variance is obtained from the commission, or unless the standards is recertified.

**History:** Effective May 1, 2005.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02

**69-10-03-08. Rejection of standards.** Rejected standards must be removed from service as follows:

1. A standard that has been rejected must be conspicuously marked by sealing, tagging, or painting as appropriate to that standard.
2. A rejected standard may not be used to test and certify a commercial weighing and measuring device. The use of a rejected standard may result in commission enforcement action.
3. A standard not meeting appropriate design criteria may be allowed to remain in service for a limited time, provided a variance is obtained from the commission prior to certification or recertification.

**History:** Effective May 1, 2005.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02

## CHAPTER 69-10-04

**69-10-04-02. Application for registration and permitting of a service person.** Annual application for registration as a registered service person must be submitted to the commission under the following requirements:

1. ~~First-time applicants must~~ A first-time applicant shall:
  - a. ~~Provide acceptable evidence~~ a written history of education and work experience to show that they are the applicant is fully qualified to repair, test, and certify a commercial weighing or measuring device;
  - b. (1) ~~Provide a legible copy of an applicable certificate of training issued by the national institute of standards and technology;~~  
or  
(2) Score seventy-five percent or more on commission testing taken from applicable sections of the adopted edition of the NIST Handbook No. 44, and from weights and measures sections of the North Dakota Century Code and North Dakota Administrative Code;
  - c. ~~Score seventy-five percent or more on commission testing taken from applicable weights and measures sections of the North Dakota Century Code and North Dakota Administrative Code~~ Complete written tests that are required to obtain a permit as a registered service person. Tests must be taken at the commission's metrology lab in Bismarck, North Dakota, and must be administered as follows:
    - (1) A written test will be open book, with seventy-five percent as the minimum passing score; and
    - (2) In the case of a test failure, an alternate test date may be scheduled after a review period of ten working days; and
  - d. ~~Have in their possession adequate standards.~~ Each applicant registered by the commission shall utilize adequate standards during the testing and certification of a commercial device.
2. ~~Repeat applicants must:~~ An applicant who is applying for renewal of an existing registration shall
  - a. ~~Complete complete~~ and submit an the application; and at least fifteen days prior to the expiration date of the applicant's existing registration.

- b. ~~Have in their possession adequate standards.~~ Each applicant who has renewed an existing registration shall utilize adequate standards during the testing and certification of a commercial device.

~~Upon acceptance and approval of an application, the commission will issue a placing in service permit to the applicant. All permits issued under this section remain the property of the commission and must be surrendered upon demand.~~

**History:** Amended effective April 1, 1992; September 1, 1994; July 1, 1997; January 1, 2002; May 1, 2005.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02

**69-10-04-02.1. Self-certification.** Self-certification to repair, test, and certify an operator's own commercial weighing and measuring devices is permitted only as provided in this section:

1. Only hazardous liquid pipeline operators, North Dakota highway patrol, natural gas pipeline operators, and manufacturing-processing operators may self-certify;
2. Applications must be submitted to the commission in writing;
3. Commission approval is required annually; and
4. Applications must address the following conditions:
  - a. The person doing the self-certification must be registered with the commission under section 69-10-04-02. However, persons or companies who make written application to the commission describing their weighing or measuring devices, operating and maintenance procedures, testing processes including a list of testing technicians and their expertise, and reporting requirements, subject to commission approval, are may be exempt from the provisions of section 69-10-04-02, except for subdivision d of subsection 1 and subdivision b of subsection 2 of section 69-10-04-02.
  - b. Upon testing, the device must be within commission-approved tolerance.
  - c. Whenever a weighing or measuring device is recertified, the person or company ~~must~~ recertifying that device shall, within seven working days, report the recertification to the commission. The report must clearly identify each device, the initial test results recorded during self-certification, and the test results upon recertification.

- d. Weights A weights and measures inspectors inspector may randomly recertify any self-certified weighing or measuring device either by actual testing performing a test or by witnessing a test performed by a self-certified service person.

**History:** Effective April 1, 1992; amended effective August 1, 1993; September 1, 1994; July 1, 1997; January 1, 2002; May 1, 2005.

**General Authority:** NDCC 64-02-03

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

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

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

**History:** Effective July 1, 1998; amended effective May 1, 2005.

**General Authority:** NDCC 64-02-03

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

**69-10-04-02.3. Issuing a placing in service permit.** Upon acceptance and approval of an application, the commission shall issue a placing in service permit to the applicant. All permits issued under this section remain the property of the commission and must be surrendered upon demand. Permits issued will be either probationary or permanent as defined in this section.

**1. Probationary permits.**

- a. An applicant with less than three months' experience repairing and placing devices into service will receive a probationary permit;
- b. The duration of a probationary permit will be at the discretion of the testing and safety division director but will not exceed six months from the date of testing; and
- c. A probationary permitholder shall be accompanied by, and have each placing in service test report cosigned by, a permanent

permitholder from the same service company in order for the test report or the placing in service to be considered valid.

## **2. Permanent permits.**

- a. An applicant with more than three months' experience repairing and placing devices into service will receive a permanent permit;
- b. An applicant who has been previously tested and issued a permanent permit by the commission within the last five years, but has allowed it to expire, will receive a permanent permit; or
- c. A probationary permitholder who has completed probationary time assigned without receiving any quality control failures will receive a permanent permit.

**History:** Effective May 1, 2005.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02

**69-10-04-06.1. Quality control - Failures.** Quality control failures must include the outcome of any actual quality control inspections and tests, and any violations of title 64 of the North Dakota Century Code, title 69 of the North Dakota Administrative Code, and any applicable sections of the NIST Handbook No. 44, as adopted by reference in section 69-10-03-01. If a registered service person fails three consecutive quality control inspections within one year a twelve-month period, the commission may:

- 1. Issue either a verbal warning or a formal warning letter requiring remedial action within thirty days from the date of the letter warning;
- 2. Schedule a conference with the division director or chief inspector, the registered service person, and that person's supervisor;
- 3. Require that the registered service person retake the written tests required for licensing under section 69-10-04-02;
- 4. Reduce the registered service person's permit status to probationary for up to six months; and
- 5. Suspend the registered service person's permit and assess a civil penalty.

The results of any quality control failures and associated enforcement actions may be sent to the individual permitholder's company or to the owner or operator of the affected device.

Any quality control failures and associated enforcement actions must be kept on file as part of the overall quality control profile of the registered service person for a twelve-month period from the date of the failure.

**History:** Effective October 1, 1999; amended effective May 1, 2005.

**General Authority:** NDCC 64-02-03

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

**69-10-04-06.2. Procedures for the quality control of registered service persons.** A quality control inspection of a registered service person will be conducted as set forth in this section:

1. Quality control inspection selection criteria is as follows:
  - a. Established by permitholder number;
  - b. Set at one percent, or one of every one hundred placing in services, of average annual production;
  - c. Location of the device versus location of the state inspector is a controlling factor;
  - d. Each permitholder whose annual production is less than twenty will be placed into a special pool of which ten percent will have a quality control performed each year.
  - e. Average annual production must be based upon the previous inspection year totals.
2. A permanent permitholder who receives multiple quality control inspections within a twelve-month period because the holder has logged a large number of placing in services, and, has received a "pass" on the first scheduled quality control inspection for that time period, will receive an "honorary pass" on the second scheduled quality control inspection. If the number of placing services requires a third quality control inspection for which the holder receives a "pass", the fourth scheduled quality control will again be an "honorary pass".
3. The quality control inspection may be based upon the applicable tolerance, acceptance or maintenance tolerance, or design requirements that are applicable to the device.
4. The quality control inspection must be completed within forty-five days from the date of the permitholder's test report.
5. A specific quality control inspection ends when the device either fails a portion of the inspection or it passes the inspection.

6. If a device fails a quality control inspection, the failed quality control is documented for that permitholder, the device is rejected, and a quality control inspection must be scheduled as soon as practicable on the next device placed into service by the permitholder responsible for the previous quality control failure.
  
7. At the discretion of the division director, weights and measures inspectors may conduct quality control inspections of self-certifying permitholders either by performing a test on that holder's device or by witnessing the testing of a device by the self-certified permitholder.

**History:** Effective May 1, 2005.

**General Authority:** NDCC 64-02-03

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

**69-10-04-08. Devices taken out of service.** ~~A state weights and measures inspector or a registered service person must report to the commission, in writing, within seven working days, the removal of a commercial device from service.~~  
Repealed effective May 1, 2005.

**History:** ~~Effective July 1, 1998.~~

**General Authority:** ~~NDCC 64-02-03~~

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

**TITLE 74**  
**STATE SEED DEPARTMENT**



**JANUARY 2005**

**CHAPTER 74-02-02**

**74-02-02-03. Identification cards.** ~~The seed commissioner shall issue to each nonresident person holding a license an identification card for each of the person's agents and for an individual licensee operating as the licensee's agent.~~  
Repealed effective January 1, 2005.

**General Authority:** ~~NDCC 28-32-02~~

**Law Implemented:** ~~NDCC 4-25-04~~

## CHAPTER 74-03-00.1

**74-03-00.1-01. Definitions.** As used in this article, unless the context or subject matter otherwise requires:

1. "Bulk seed" means seed stored in bins and may mean seed stored in containers larger than one hundred sixty pounds [72.72 kilograms].
2. "Conditioning" includes all activities performed on seed between harvest and marketing. Other terms associated with conditioning could include cleaning, processing, sizing, grading, storing, and seed treating.
3. "Field inspection" means physical examination or observation of a field by an authorized state seed employee.
4. "Grower" means any person that is complying with all the certification rules and regulations in the production of field-inspected seed.
5. "Hybrid" definitions include:
  - a. "Double cross" means the first generation hybrid between two single crosses.
  - b. "Foundation single cross" means a single cross used in the production of a double cross, a three-way cross, or a top cross.
  - c. "Inbred line" means a relatively true-breeding strain resulting from at least five successive generations of controlled self-fertilization or of backcrossing to a recurrent parent with selection, or its equivalent, for specific characteristics.
  - d. "Open pollination" means pollination that occurs naturally as opposed to controlled pollination, such as by detasseling, cytoplasmic male sterility, self-incompatability, or similar processes.
  - e. "Single cross" means the first generation hybrid between two inbred lines.
  - f. "Three-way cross" means a first generation hybrid between a single cross and an inbred line.
6. "None" means none found during the normal inspection process (both field and seed standards). None is not a guarantee to mean the lot inspected or analyzed is free of the factor.

~~6.~~ 7. "Other varieties and off-types" means plants or seeds which do not conform to the characteristics of a variety as described by the breeder. They do not include variations which are characteristic of the variety.

~~7.~~ 8. "Variant" means any seed or plant that:

- a. Is distinct but occurs naturally within a variety;
- b. Is stable and predictable with a degree of reliability comparable to other varieties of the same kind, within recognized tolerances, when the variety is reproduced or reconstituted; and
- c. Was originally a part of the variety as released.

A variant is not an off-type.

~~8.~~ 9. "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristic by which it can be differentiated from other plants of the same kind and a subdivision of a kind which is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics which are describable, and "stable" in the sense that the variety will remain unchanged to a reasonable degree of reliability in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories or varieties.

**History:** Effective May 1, 1986; amended effective September 1, 2002; January 1, 2005.

**General Authority:** NDCC 4-09-03, 4-09-05, 4-09-16

**Law Implemented:** NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-13

74-03-13-03. Specific field standards (dry field beans).

Factor	Maximum Tolerance		
	Foundation	Registered	Certified
Other varieties or classes *	0.03 percent	0.05 percent	0.1 percent
Inseparable other crops	none	none	none
Prohibited noxious weeds **	none	none	none
Objectionable weeds ***	none	none	none
Bacterial bean blights	.01 percent	.01 percent	.01 percent
Anthracnose	none	none	none
Wilt	none	none	none
Common bean mosaic	none	0.5 percent	1.0 percent

\* Other varieties shall not include variations which that are characteristic of variety.

\*\* Prohibited noxious weeds include only field bindweed, leafy spurge, yellow starthistle, and Russian knapweed. The tolerance for other noxious and common weeds will be determined by the inspector based on the amount and separability of the seed from the crop being considered and the development of the crop and the weed.

\*\*\* Objectionable weeds include nightshade species.

1. The grower shall isolate and not thresh within a one hundred-foot [30.5-meter] radius of all staked (flagged) plants. Leave-flag A grower must leave in place any stakes or flags by plants with blight-infected pods.
2. Areas to be isolated must be mapped out on field inspection report.
3. In any case, it is important that blighted areas be clearly defined by flags. These blighted areas must be left unthreshed while the rest of the field is threshed. The inspector may recheck the field to ensure that these blighted areas were indeed left. Failure to leave the rejected area will result in total field being rejected.

**History:** Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002; January 1, 2005.

**General Authority:** NDCC 4-09-03, 4-09-05, 4-09-16

**Law Implemented:** NDCC 4-09-16, 4-09-17, 4-09-18

## CHAPTER 74-04-01

### 74-04-01-01. Definitions. As used in this chapter:

1. "Basic seed" means seed potatoes produced by means of meristem, stem cutting, or other techniques for increase by certified growers.
2. "Certification" is strictly limited to the act of endorsing that the potatoes have met the standards or requirements specified in this chapter for seed potatoes. Certification does not mean or constitute any warranty that the potatoes are merchantable, disease free, fit for a particular purpose or anything other than that the potato crop was inspected and that at the time of inspection did meet the standards set forth in this chapter.
3. "Damaged by soil" means that the individual potato has more than fifty percent of its surface affected by light caked soil, or more than fifteen percent of its surface badly caked with soil.
4. "Dry land type", as allowed for long varieties only, means not seriously misshapen.
5. "Except for shape", as allowed for long varieties only, means the potatoes may be seriously misshapen.
6. "Experimental cultivar" means a numbered cultivar or cultivar that has not yet been released from a breeding program.
- ~~7.~~ 8. "Field year" means the time which is required for the potato plant to complete the growing cycle from planting in the field until maturity.
- ~~7.~~ 8. "Foundation seed" means a primary source of a genetically identified variety from which increases are made.
- ~~8.~~ 9. "Grade" refers to the tuber quality, condition, and size factors as specified in this chapter.
- ~~9.~~ 10. "Inspection" means visual examination or observation of sample plants or tubers.
- ~~10.~~ 11. "Latent diseases" means diseases not detectable by visual inspection.
- ~~11.~~ 12. "Lightly caked with soil" means approximately one-eighth of an inch [3.18 millimeters] in depth.
- ~~12.~~ 13. "Micropropagation" means the aseptic production of potato plantlets, tubers, or sprouts utilizing meristem culture.

- ~~43:~~ 14. "Off type" means potato plants in a field that deviate in one or more characteristics from that which is usual in the variety being grown.
- ~~44:~~ 15. "Plant Variety Protection Act" means a federal Act passed in 1970 which gives the owner of a novel variety the exclusive right to produce and market that variety.
- ~~45:~~ 16. "Prenuclear seed" means plantlet propagation source resulting from the use of aseptic propagation techniques either in the laboratory or controlled environment.
- ~~46:~~ 17. "Seed potatoes" means Irish potato tubers to be used for planting.
- ~~47:~~ 18. "Seriously damaged by soil" means a potato having caked soil on more than one-half of the surface or an equivalent amount of soil in excessively thick chunks on a lesser area.
- ~~48:~~ 19. "Tag" refers to the state seed department's official certification tag used to identify certified seed.
- ~~49:~~ 20. "Tolerance" means a permissible allowance for such factors as disease, grade defects, and varietal mixture.
- ~~20:~~ 21. "Virus tested" means tested for latent viruses by methods established by the state seed department.
- ~~24:~~ 22. "Zero tolerance" means that no amount is permissible. It does not mean that the seed is absolutely free of a disease or disease-causing agent, grade defect, or varietal mixture, but that none was found during inspection.

**History:** Amended effective December 1, 1981; December 1, 1987; September 1, 1997; September 1, 2002; January 1, 2005.

**General Authority:** NDCC 4-10-03

**Law Implemented:** NDCC 4-10-04

**74-04-01-07. Seed classification and limited generation.**

1. All seed potatoes must be limited to seven years of reproduction in the field. Seed lots may be reproduced beyond this limit with prior approval of the state seed department providing the seed lot has been winter tested and eligible for recertification.
2. Prenuclear seed stocks must originate from tissue-culture derived plantlets, minitubers, microtubers, or pathogen-tested stem cuttings. Experimental breeding selections shall originate from pathogen-tested material. The first year of reproduction of these stocks will be regarded as nuclear seed stock (generation zero). Nuclear seed (first field year) is the progeny of pre-nuclear seed, generation 1 (second field year)

is the progeny of nuclear seed, generation 2 (third field year) is the progeny of generation 1 seed, generation 3 (fourth field year) is the progeny of generation 2 seed, generation 4 (fifth field year) is the progeny of generation 3 seed, generation 5 (sixth field year) is the progeny of generation 4 seed, and certified generation (seventh field year) is the progeny of generation 5 seed. The certified designation will be granted to lots meeting the minimum standards outlined in section 74-04-01-08 and by approval of the commissioner.

3. Prenuclear seed stocks intended to be grown in the field as nuclear (GO) seed potatoes must be laboratory-tested, be demonstrated to be free of the following pathogens, and meet the following standards:
  - a. *Clavibacter michiganensis* subsp. *sepedonicus* (ring rot).
  - b. *Erwinia carotovora* (blackleg and soft rot).
  - c. Potato virus A.
  - d. Potato virus M.
  - e. Potato virus X.
  - f. Potato virus Y.
  - g. Potato leafroll virus.
  - h. Potato spindle tuber viroid.
  - i. All micropropagation production must be approved by a certification agency.
  - j. Good records must be maintained on all tests and submitted with the application for field inspection.
  - k. A minimum of one percent of the plantlets must have been tested for the above pathogens using the most reliable testing techniques.
4. Basic seed must originate from sources described above and developed in seed plots and have met specific field inspection and winter test standards established by the state seed department. Seed stocks will be grown a limited number of generations.

Experimental cultivars under evaluation by the state seed department in cooperation with universities or industry will meet program requirements of and will be maintained under guidelines and standards established by the state seed department. Seed stocks will be grown a limited number of generations.

5. Foundation seed must be seed meeting standards for recertification.
  - a. Foundation seed will be produced on farms found to be free of bacterial ring rot for three years. All seed stocks must be replaced on a farm in which bacterial ring rot has been found.
  - b. Excessive blackleg symptoms will be cause for rejection as foundation stock.
6. The certified class must meet the minimum field tolerances described in section 74-04-01-08. The classification serves as a quality standard for commercial planting purposes only and must meet all the requirements and responsibilities of this chapter.
7. Generation numbers increase with years of field reproduction from the original seed source. Generation five will be the final generation of seed eligible for recertification. The certified seed class is not eligible for recertification. If seed availability is low for a specific potato variety, seed lots with more advanced generation numbers may be eligible for recertification providing the seed lot has passed a winter test and prior approval of the state seed department has been obtained.
8. Except for varietal mixtures, seed lots may be downgraded or advanced in generation if they do not meet the disease tolerances for that generation or they may be placed in the certified class and sold by their generation number as certified seed providing they meet the specifications for that class. Disease tolerances for each generation of seed are outlined in the section on field inspection standards.

**History:** Effective December 1, 1981; amended effective December 1, 1987; June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002; January 1, 2005.

**General Authority:** NDCC 4-10-03

**Law Implemented:** NDCC 4-10-04

## CHAPTER 74-05-01

**74-05-01-01. Definition of wholesale potato dealer.** ~~A wholesale potato dealer, within the meaning of this chapter is any individual, firm, copartnership, corporation, company, society, or association who shall buy or sell or contract to buy or sell or who shall handle in wholesale lots for the purpose of resale, or who shall handle on account of or as an agent for another, any white or Irish potatoes. Repealed effective January 1, 2005.~~

**General Authority:** ~~NDCC 4-11-19~~

**Law Implemented:** ~~NDCC 4-11-19~~

**74-05-01-03. License fee.** ~~The annual license fee must be set by the state seed commission. All licenses expire on June thirtieth. Repealed effective January 1, 2005.~~

**History:** ~~Amended effective June 1, 1998.~~

**General Authority:** ~~NDCC 4-11-06~~

**Law Implemented:** ~~NDCC 4-11-06~~

**74-05-01-04. Bond - Fee - Exemption.** ~~An applicant for license must file a bond issued in favor of the seed commissioner in the amount fixed by the seed commission or present a letter of credit from a bank in lieu of a bond if approved by the commissioner. Repealed effective January 1, 2005.~~

**History:** ~~Amended effective June 1, 1998.~~

**General Authority:** ~~NDCC 4-11-04~~

**Law Implemented:** ~~NDCC 4-11-04~~

**74-05-01-06. Time limit for payment.** Whenever potatoes have been sold to any dealer on open account, the buyer shall pay for the potatoes within seven ~~thirty~~ days from delivery thereof unless an agreement for extension of credit has been made between the seller and the purchaser, or unless prompt cash payment on delivery is specified.

**History:** Amended effective January 1, 2005.

**General Authority:** NDCC 4-11-19

**Law Implemented:** NDCC 4-11-19

**74-05-01-08. Complaints.** ~~Complaints or damage claims against bonds must be filed with the seed commissioner in the form of an affidavit duly signed and sworn to before a notary public setting forth the facts in the particular case. The complaint or claim should be substantiated and accompanied by pertinent and essential data and correspondence. Repealed effective January 1, 2005.~~

**General Authority:** ~~NDCC 4-11-19~~

**Law Implemented:** ~~NDCC 4-11-20~~

**74-05-01-09. Claims against bonds.** No person delivering potatoes to a licensed dealer shall be entitled to the benefits of any required ~~bond~~ financial instrument unless the person shall have filed the person's claim therefore with the seed commissioner within one hundred eighty days after the delivery of the person's potatoes to the principal in the case of a sale, or within one hundred eighty days after the sale by the principal in the case of potatoes received on consignment. ~~The approval of the commissioner must be secured before any civil action can be maintained against the surety or sureties on the bond of the licensed dealer. No civil action shall be brought against the surety or sureties on a bond of a licensed dealer without including in the complaint the name of the principal and making the principal a party to the action.~~

**History:** Amended effective June 1, 1998; January 1, 2005.

**General Authority:** NDCC 4-11-19

**Law Implemented:** NDCC 4-11-15

**74-05-01-10. License suspension, revocation, or cancellation.** ~~The license of any wholesale potato dealer subject to North Dakota Century Code chapter 4-11 who is found guilty of violating any of the provisions of North Dakota Century Code chapter 4-09 or North Dakota Century Code chapter 4-10, relating to potatoes, may be suspended, revoked, or canceled by the seed commissioner upon ten days' notice and opportunity to be heard. Repealed effective January 1, 2005.~~

**General Authority:** NDCC 4-11-19

**Law Implemented:** NDCC 4-11-23

**TITLE 75**  
**DEPARTMENT OF HUMAN SERVICES**



JUNE 2005

CHAPTER 75-02-01.2

**75-02-01.2-01. Definitions.** For the purposes of this chapter:

1. "Aid to families with dependent children" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] during periods prior to July 1, 1997.
2. "Applicant" means an individual who is seeking a benefit under this chapter.
3. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.
4. "Assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs, but does not include nonrecurring, short-term benefits, work subsidies, supportive services provided to families who are employed, and refundable earned income tax credits.
5. "Base month" means the month, immediately before the processing month, about which the income and circumstances of the household are evaluated to determine the amount of any benefits to be paid during the benefit month.
6. "Benefit cap child" means a child born after June 30, 1998, to a household member who was a recipient of assistance under this chapter during the month of probable conception.
7. "Benefit month" means the calendar month immediately following the processing month.
8. "Benefits" means the amount of temporary assistance for needy families assistance a family receives including the temporary assistance for

needy families amount, essential services, and supportive services, reduced by recoupments.

- ~~9.~~ 9. "Caretaker relative" means the relative so designated by the household who:
- a. Lives with an eligible dependent child;
  - b. Is a pregnant woman, caretaker relative to no dependent child, in the last trimester of her pregnancy; or
  - c. Lives with a dependent child, under age eighteen and receiving supplemental security income benefits, who is the last child in the home.
- ~~9- 10.~~ 10. "Child support agency" means any entity created by a county agency or any combination of county agencies, in execution of the county agency's duties under subsection 5 of North Dakota Century Code section 50-09-03.
- ~~40- 11.~~ 11. "County agency" means the county social service board.
- ~~44- 12.~~ 12. "County demonstration project" means a project operated by a county, with state approval, to conduct a temporary assistance for needy families program with different objective criteria for the delivery of benefits, services, and the determination of eligibility from those provided elsewhere in the state.
- ~~42- 13.~~ 13. "Department" means the North Dakota department of human services.
- ~~43- 14.~~ 14. "Dependent child" means a needy child:
- a. Who lives in the home of a relative by birth, marriage, or adoption;
  - b. Who has been deprived of parental support or care by reason of:
    - (1) The continued absence of a parent from the home, other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States;
    - (2) The death of a parent; or
    - (3) The physical or mental incapacity of a parent; and
  - c. Who is:
    - (1) Under the age of eighteen; or

(2) Under the age of nineteen and a full-time student in a secondary school or the equivalent (secondary school) level in a vocational school, or technical school, if, before the end of the calendar month in which the student attains age nineteen, the student may reasonably be expected to complete the program of such school.

~~44.~~ 15. "Earned income" means income currently received as wages, salaries, commissions, or profits from activities in which a household member is engaged through either employment or self-employment. There must be an appreciable amount of personal involvement and effort, on the part of the household, for income to be considered earned.

~~45.~~ 16. "Eligible caretaker relative" means a caretaker relative who:

- a. If, related to an eligible dependent child as a brother or sister, is not under sixteen years of age;
- b. If deprivation of parental support or care is by reason of the incapacity of a parent, is the incapacitated parent or the eligible dependent child's other parent, but not stepparent;
- c. If deprivation of parental support or care is by reason of the death or continued absence of a parent, is the eligible dependent child's other parent, but not stepparent;
- d. Is not a recipient of supplemental security income benefits; and
- e. Is in financial need; or
- f. Is a pregnant woman, in the third trimester of her pregnancy, caretaker relative to no other dependent child, who or whose husband is incapacitated.

~~46.~~ 17. "Family" includes an individual or group of related individuals within a household whose needs are recognized in a grant of benefits through temporary assistance for needy families, the parents of any dependent child and all brothers and sisters of any dependent child, whether by whole blood, half-blood, or adoption, any child, parent of an eligible dependent child, or other caretaker relative who receives supplemental security income benefits. Family includes an alien who does not meet citizen and alienage requirements, an alien who is ineligible for temporary assistance for needy families benefits because of the application of sponsor-to-alien deeming, an individual who is ineligible for temporary assistance for needy families benefits as the result of the imposition of a sanction, an individual who was eligible for temporary assistance for needy families benefits, but who became ineligible due to the receipt of lump sum income, or an individual who is a household

member who is a legal dependent of a member of the filing unit, but does not include roomers and boarders.

~~47:~~ 18. "Full calendar month" means the period that begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration.

~~48:~~ 19. "Full-time student" means a student who:

- a. If in a secondary school, is enrolled in classes which, if completed, will earn the student four or more units of credit;
- b. If in a vocational or technical school under state operation, a college, or a university, is enrolled in classes that, if completed, will earn the student twelve or more semester hours of credit during a regular term or six or more semester hours of credit during a summer term at an educational facility operating on a semester system, or twelve or more quarter hours of credit during a regular term or six or more quarter hours of credit during a summer term at an educational facility operating on a quarter system;
- c. If in a private vocational or technical school, is enrolled in classes which, according to a written statement from school officials, constitutes full-time enrollment;
- d. Is enrolled in an accredited alternative high school, correspondence courses, or adult basic education, according to a written statement from school officials or who is home schooled; or
- e. Is an individual participating in job corps, whether an adult or a child.

~~49:~~ 20. "Ineligible caretaker relative" means a caretaker relative who is not an eligible caretaker relative.

~~20:~~ 21. "Living in the home of a relative" means a circumstance that arises when a relative assumes and continues responsibility for the day-to-day care and control of a child in a place of residence maintained by the relative (whether one or more) as the relative's own home. It includes situations in which the child or the relative requires medical treatment that requires a special living arrangement. It also includes situations in which the child is temporarily absent from the home, with a plan to return, when the child:

- a. Physically resides in the home, but is under the jurisdiction of a court and is receiving probation services or protective supervision;
- b. Receives education while in an educational boarding arrangement in another community if needed specialized services or facilities are

unavailable in the home community or if transportation problems make school attendance near home difficult or impossible;

- c. Receives services at a summer camp such as Camp Grassick, receives services at an attention deficit hyperactivity disorder summer camp, or receives extended hospital stays during the summer months;
- d. Receives special education at the school for the deaf or school for the blind, whether as a day student or a boarding student, except that a boarding student's needs are limited to those maintenance items that are not provided by the school; or
- e. Receives education at a boarding school in another community, provided that the child was not placed in that setting following removal from the child's home by court order following a determination that the child was abused, neglected, or deprived, except that the child is entitled to a clothing and personal needs allowance only if that allowance is made available for the child's use on a regular basis.

~~24.~~ 22. "Make an assistance payment" means, in the context of two-month retrospective budgeting, an activity that occurs on the date the department deposits an assistance payment check in the United States mail.

~~22.~~ 23. "Monthly income" means income from any source, either earned or unearned, which is computed and reduced to monthly units for the purpose of determining eligibility and benefits. Income may be received weekly, monthly, intermittently, or annually, but is computed and considered monthly.

~~23.~~ 24. "Needy" means:

- a. A household, otherwise eligible under this chapter, whose countable income, less any applicable disregards, is less than the income identified in the basic requirements table for a family of the size and composition of the household;
- b. An unwed parent or pregnant woman in the third trimester of her pregnancy, with an income of less than forty-five dollars per month; or
- c. A child resident of a boarding school with an income of less than forty-five dollars per month.

~~24.~~ 25. "Nonlegally responsible relative" means a relative who is not the child's parent.

- ~~25.~~ 26. "Parent" means the child's mother or father, whether by birth or adoption, but does not mean:
- a. An individual whose parental rights have been terminated with respect to that child; or
  - b. A stepparent.
- ~~26.~~ 27. "Part-time student" means an individual enrolled in a secondary school, vocational school, correspondence courses, technical school, college, or university, or who is home schooled, who is not a full-time student.
- ~~27.~~ 28. "Processing month" means the month, immediately after the base month, and immediately before the benefit month, in which the county agency determines eligibility for, and the amount of, any benefit to be paid during the benefit month.
- ~~28.~~ 29. "Proper individual" means any individual of sufficient maturity and understanding to act responsibly on behalf of the applicant.
- ~~29.~~ 30. "Prospective budgeting" means the determination, made only with respect to the initial month of eligibility and the month immediately after the initial month of eligibility, based on the county agency's best estimate of the income and circumstances of the household in those months, of the amount of any grant of benefits in those two months.
- ~~30.~~ 31. "Prudent person concept" means a method or program administration that relies upon individual staff members:
- a. To exercise judgment in requesting, reviewing, and weighing information provided by an applicant, recipient, or any source of verification; and
  - b. To be attentive, vigilant, cautious, perceptive, and governed by reason and common sense.
- ~~34.~~ 32. "Recipient" means an individual who receives cash assistance under this chapter.
- ~~32.~~ 33. "Relative by birth, marriage, or adoption" means an individual related to the dependent child by birth, whether by blood or half-blood, by marriage including a marriage that has been terminated by death or divorce, or by adoption, as father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, or first cousin.
- ~~33.~~ 34. "Retrospective budgeting" means a determination, made by the county agency during the processing month, based on income and

circumstances of the household, during the base month, of the amount of any grant of assistance in the benefit month.

- ~~34.~~ 35. "Sanction penalty month" means the month in which a sanctioned individual's financial needs may be removed from a household's temporary assistance for needy families grant.
- ~~35.~~ 36. "Self-sufficient" means having income sufficient to require closure of the temporary assistance for needy families case.
- ~~36.~~ 37. "Social contract" means the application for temporary assistance for needy families that contains the requirements for cooperation with child support enforcement, health tracks, job opportunities and basic skills program, and the goals and tasks identified in the assessment.
- ~~37.~~ 38. "Standard employment expense allowance" means twenty-seven percent of earned income, or one hundred eighty dollars, whichever is greater, to be first disregarded from the earned income of any child, relative applying for benefits under this chapter, or other individual whose needs are taken into account in determining eligibility under this chapter, but whose earned income is not required to be wholly disregarded as the income of a child who is a full-time student or a part-time student who is not a full-time employee.
- ~~38.~~ 39. "Stepparent" means an individual married to a parent of a child, but who is not also a parent of that child by either birth or adoption.
- ~~39.~~ 40. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
41. "Supportive services" means services approved by the department and provided to an individual receiving other temporary assistance for needy families benefits, to assist in training for employment, seeking employment or maintaining employment, and to support job opportunities and basic skills program activities.
- ~~40.~~ 42. "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] during periods beginning July 1, 1997.
- ~~41.~~ 43. "Temporary assistance for needy families household" means an individual or group of individuals who reside together and includes at least one individual in receipt of temporary assistance for needy families.
- ~~42.~~ 44. "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].
- ~~43.~~ 45. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].

44- 46. "Title IV-A" means title IV-A of the Social Security Act [42 U.S.C. 601 et seq.].

45- 47. "Title IV-D" means title IV-D of the Social Security Act [42 U.S.C. 651 et seq.].

46- 48. "Unearned income" means income that is not earned income.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-02. County demonstration projects.** Counties within North Dakota may, with the department's approval, conduct a temporary assistance for needy families demonstration project in defined areas which may provide benefits and services that are not identical to benefits and services provided elsewhere in North Dakota. ~~The demonstration projects shall have objective criteria for the delivery of benefits and the determination of eligibility for fair and equitable treatment that will provide opportunities for recipients to become self-sufficient.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-02.1. Diversion assistance.** Diversion assistance helps prevent needy families from becoming dependent on continuing government benefits by providing cash assistance to qualified families (to promote job retention). Diversion assistance is not assistance under title 45, Code of Federal Regulations, part 260.31, and is not a benefit for purposes of North Dakota Century Code section 50-09-06.1. Diversion assistance may be provided to a family that meets all factors of eligibility for assistance under the temporary assistance for needy families program except as provided in this section.

1. A family may not receive diversion assistance and a temporary assistance for needy families grant in the same month. A family may receive diversion assistance only once within a twelve-month period beginning in the month diversion assistance is provided. A family that includes a caretaker who is not a legally responsible relative of a child member of the family may not receive diversion assistance.
2. Diversion assistance may be provided to defray expenses necessary to retain or obtain employment. Expenses incurred in retaining or obtaining employment must be verified. Diversion assistance payments may not exceed an amount equal to four times the temporary assistance for needy families standard of need amount in the month diversion assistance is initially provided.

3. Family members of a diversion assistance recipient are not required to participate in the job opportunities and basic skills program.
4. Cooperation in obtaining support or establishing paternity for any child member of the family is not required. The family may request a referral to the child support enforcement agency.
5. Participation in health tracks screening services is not required.
6. An assessment and social contract are not required.
7. Monthly gross income of the family may not exceed one hundred and forty percent of the poverty level.
8. An applicant may appeal a denial, limitation, or termination of diversion assistance, and a recipient of diversion assistance may appeal termination or reduction of assistance, by making a written request for a hearing within thirty days from the date of the notice of adverse action. Diversion assistance not already approved may not be provided pending the hearing decision.
9. A month in which diversion assistance is received does not count toward the temporary assistance for needy families sixty-month lifetime limit provided under section 75-02-01.2-35.1.
10. For purposes of this section, "poverty level" means the official income poverty line, as defined by the United States office of management and budget, and as revised annually in accordance with 42 U.S.C. 9902(2).

**History:** Effective June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-02.2. Kinship care assistance.** Kinship care provides a monthly maintenance payment and supportive services to a child residing outside the child's parental home with a caretaker who is related to that child within the fifth degree of kinship.

1. Kinship care monthly maintenance payments must be the same as the standard of need amount for a shared living arrangement for a child under the temporary assistance for needy families program, and:
  - a. A court of competent jurisdiction must have entered an order placing a child's care, custody, and control with a county agency or an official of a county agency; and
  - b. Before placing a child in kinship care for more than thirty days, the county agency with care, custody, and control of the child, or a designee, must have completed a family study, a child abuse

and neglect background check, and other investigations as the department may determine necessary to demonstrate that:

- (1) The home in which care is provided is in fit and sanitary condition and properly equipped to provide good care to the child;
  - (2) The caretaker and other adults residing in the home of the caretaker properly qualify to carry out the duties and responsibilities of a kinship care provider;
  - (3) Kinship care provided in the home is for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all children cared for in the home; and
  - (4) The home is maintained according to standards prescribed for its conduct by the department.
2. Within the limits established by the department's foster care program, supportive services may provide reimbursements for child care expenses, transportation, clothing, emergent needs, activity fees, and, as a payer of last resort, reasonable legal fees incurred by or on behalf of a child and approved by the department.
3. For purposes of this section, a relative is within the fifth degree of kinship if the relative by birth, marriage, or adoption, is the child's sibling; niece; nephew; grandniece; grandnephew; grandparent; aunt; uncle; first cousin; first cousin once removed; great-grandparent; great-aunt; great-uncle; parent's first cousin; great, great-grandparent; great, great-aunt; great, great-uncle; or great, great, great-grandparent.

**History:** Effective June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-03.1. Upfront eligibility.** Unless first determined exempt or granted good cause for nonparticipation, the applicant, and any member of the family for whom temporary assistance for needy families is requested, shall, as a condition of eligibility, comply with the requirements of child support enforcement and job opportunities and basic skills or a tribal native employment works program.

**History:** Effective June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-10. Monthly report - Must be complete and timely.**

1. When the county agency receives a completed monthly report, it shall process the payment only if all eligibility conditions are met. The county agency shall notify the household of any changes from a payment made in the month immediately past. If payment is being reduced or assistance terminated as a result of information provided in the monthly report, the county agency shall send an adequate notice, mailed to arrive no later than the resulting payment or in lieu of the payment. The household may be reinstated to the payment amount made in the month immediately past if an appeal of the decision described in the notice is made within ten days of the date of the notice.
2. A county agency may terminate assistance if it has received no timely monthly report or has received only an incomplete report. The county agency shall send an adequate notice, mailed to arrive no later than the date it would have made payment if the agency had received a timely and complete monthly report. If the household notifies the county agency and files a complete report within ten days of the date of the notice, the county agency may accept the replacement report and provide for payment based on the report only if the information indicates that the household is still eligible ~~but, unless the county agency determines that good cause exists for failing to file a timely report, without consideration of otherwise available earned income disregards.~~ If, based on the replacement report, the household is found ineligible or eligible for an amount less than the payment amount made in the month immediately past, the county agency shall promptly notify the household of the right to a fair hearing and, if a hearing is requested ~~before the decision described in the notice becomes effective~~ within ten days from the date of the notice, the right to have payment reinstated to the payment amount made in the month immediately past.
- ~~3. A monthly report is timely, for purposes of avoiding loss of earned income disregards, if it is received by the county agency by the fifteenth day of the month or on the first working day after the fifteenth day of the month if that day falls on a Saturday, Sunday, or holiday and, for all other purposes, if it is received by the county agency by the fifth day of the month.~~

**History:** Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-35. Combined requirements.**

1. The department shall establish combined requirements for the temporary assistance for needy families ~~standard~~ standards of need that represent amounts of income, by household size and living arrangement, necessary for a standard of living compatible with

decency and health. The requirements represent one hundred percent of need:

2. The six basic items of need considered in the temporary assistance for needy families cash grant are: ~~shelter; food; clothing; personal needs such as combs, toothbrushes, and toothpaste; razor blades, sanitary supplies, and haircuts; household supplies such as cooking utensils, laundry, beddings, and towels; and fuel and utilities:~~
  - a. Shelter;
  - b. Food;
  - c. Clothing;
  - d. Personal needs such as combs, toothbrushes, toothpaste, razor blades, sanitary supplies, and haircuts;
  - e. Household supplies such as cooking utensils, laundry detergent, bedding, and towels; and
  - f. Fuel and utilities.
  
3. The applicable standard of need determination must be based on whether the family has an independent living arrangement or a shared living arrangement. A family has an independent living arrangement if the members of the family have sole responsibility for all shelter costs. A family has a shared living arrangement if:
  - a. The household includes an individual who is at least eighteen years of age and not a member of the family;
  - b. The family receives a subsidy for shelter expenses, resides in public housing, or is not solely responsible for the assistance unit's shelter costs; or
  - c. Any member of the family receives assistance for the payment of shelter costs from someone not residing in the family's home.

**History:** Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-35.1. Time limit on certain benefits - Exceptions.** Except as otherwise provided in this section, no household may be provided assistance if that household includes an adult who has received assistance under a temporary

assistance for needy families program provided by any state or Indian tribe for sixty months, whether or not consecutive, after the date that program commenced.

1. In determining the number of months an adult received temporary assistance for needy families, the department shall disregard any month in which:
  - a. The adult was a minor child and not, at the same time, a head of household or married to a head of household; or
  - b. No adult member of the household was included in the benefit for the federal lifetime count under title 45, Code of Federal Regulations, part 264.1.
2. In determining the number of months an adult received temporary assistance for needy families, the department shall disregard any month in which the adult lived in Indian country if, during the month, at least fifty percent of the adults living in that Indian country were unemployed. The department shall determine the percentage of unemployed adults living in Indian country by any means the department determines to be appropriate and reliable, provided that the means chosen are consistent with requirements imposed under federal law.
3. This section may not be applied to preclude eligibility for members of a household if:
  - a. The eligible adult caretaker in the filing unit reaches the age of sixty-five years on or before the sixty-first month in which that individual receives temporary assistance for needy families benefits;
  - b. The eligible adult caretaker is determined to be incapacitated or has been determined to be disabled by the social security administration;
  - c. The household includes an individual who is a victim of domestic violence. Domestic violence includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members; or
  - d. The condition of a child or a spouse precludes care by a child care provider, in-home care, or outside of home care and prevents the caretaker from employment.
4. For purposes of this section:

- a. An adult caretaker may be treated as "incapacitated" if the individual is incapacitated or treated as incapacitated under section 75-02-01.2-18; and
- b. "Indian country" means:
  - (1) All lands within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation;
  - (2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and
  - (3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.
- 5. The number of households that may be exempted from the temporary assistance for needy families lifetime limit may not exceed twenty percent of the average monthly number of households receiving temporary assistance for needy families assistance.
- 6. If a household must submit a written request to the county social service agency requesting to be exempt from the sixty-month lifetime limit, the written request must explain the reason for the exemption and must include clear and convincing documentation from a professional service provider.
- 7. During the exemption period from the lifetime limit, all temporary assistance for needy families, job opportunities, and basic skills program policies apply.
- 8. Applicants and recipients that appeal the denial for an exemption from the lifetime limit may request in writing a fair hearing within the thirty days from the date of the denial or closure notice. Assistance is not continued pending the fair hearing.
- 9. All months in which a disqualified adult caretaker is part of the family court toward the lifetime limit. For purposes of this subsection, an individual is a disqualified adult caretaker if that individual is a disqualified alien, or is disqualified because of a sanction, a drug felony conviction, status as a fleeing felon, or an intentional program violation.

**History:** Effective July 1, 1997; amended effective January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-45. Excluded income.**

1. The following income must be excluded in determining eligibility for assistance:
  - a. All earned income of any child, except a minor parent, attending elementary or high school full time;
  - b. Earned income of any child derived from a program carried out under the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.];
  - c. Payments made to any member of the household under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [Pub. L. 91-646; 42 U.S.C. 4601 et seq.];
  - d. Per capita payments made to members of Indian tribes under the Indian Tribal Judgment Funds Use and Distribution Act [25 U.S.C. 1407 et seq.], including all interest and investment income accrued on such funds while held in trust pursuant to a plan approved under the provisions of that Act pursuant to a plan approved by Congress prior to January 12, 1983, and any purchases made with such payments for so long as the payment is not commingled with other funds;
  - e. Income derived from submarginal lands held in trust for Indians, to the extent required by Pub. L. 94-114 [25 U.S.C. 459e], for so long as the income is not commingled with other funds;
  - f. Up to two thousand dollars per year of income received by an individual Indian derived from that Indian's interests in trust or restricted lands, as required by 25 U.S.C. 1408, for so long as the income is not commingled with other funds;
  - g. A loan from any source that is subject to a written agreement requiring repayment by the recipient;
  - h. Agent orange settlement payments;
  - i. Payments made under the Radiation Exposure Compensation Act [Pub. L. 101-426; 104 Stat. 920; 42 U.S.C. 2210 (note) (1993 Supp.)], for so long as the payment is not commingled with other funds;
  - j. The value of any supplemental food assistance received under the Child Nutrition Act of 1966, as amended [42 U.S.C. 1771 et seq.], and the special food service program for children provided under

the National School Lunch Act, as amended [42 U.S.C. 1751 et seq.];

- k. Payments received by any member of the household, from the child nutrition and food distribution unit of the North Dakota department of public instruction, in reimbursement of the cost of furnishing meals and snacks by any member of the household who provides child care in the home, provided that the child care provider is licensed under North Dakota Century Code chapter 50-11.1;
- l. Income received as a housing allowance through any program sponsored by the United States department of housing and urban development and rent supplements or utility payments provided through the housing assistance program;
- m. The value of surplus commodities provided through the United States department of agriculture;
- n. Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides or senior companions, or to individuals serving in the service corps of retired executives, active corps of executives, and any other programs under title II of the Domestic Volunteer Services Act of 1973 [Pub. L. 93-113; 42 U.S.C. 5001 et seq.];
- o. Payments made to volunteers in service to America under title I of the Domestic Volunteer Services Act of 1973 [Pub. L. 93-113; 42 U.S.C. 4951 et seq.];
- p. Any payment made as a result of the Alaska Native Claims Settlement Act, which is made tax exempt under Public Law 92-203 [43 U.S.C. 1601 et seq.];
- q. The value of benefits received under the supplemental food program for women, infants, and children [Pub. L. 94-105; 42 U.S.C. 1786];
- r. The value of general assistance benefits provided in voucher form by any county agency, tribe, or the bureau of Indian affairs;
- s. Assistance payments from other programs, agencies, or organizations that:
  - (1) Do not serve the same purposes as the temporary assistance for needy families cash grant; or

- (2) Provide goods or services that are not included in the standard of need;
- t. Scholarships, grants, stipends, and awards for educational purposes, which are given because of need or achievement by the bureau of Indian affairs, other federal sources, state sources, civic, fraternal, and alumni organizations, or relatives, to undergraduate-level and graduate-level students;
  - u. Workstudy program income earned by an undergraduate-level or graduate-level student;
  - v. Family subsidy program payments made by the department;
  - w. Returned deposits from rentals and from utility companies;
  - x. Adoption assistance and subsidized adoption payments;
  - y. Foster care payments, subsidized guardianship payments, and payments received as a retainer for services as an emergency shelter foster home;
  - z. Irregular cash gifts, which total, in any month, less than five hundred dollars per household received for a special occasion, such as Christmas, birthdays, or graduations;
  - aa. Any refund or federal income taxes received as an earned income tax credit pursuant to 26 U.S.C. 32, and any payments made by an employer as an advance payment of earned income tax credit pursuant to 26 U.S.C. 3507;
  - bb. Payments of education award money and living allowance moneys to an individual enrolled in AmeriCorps under the National and Community Service Act, as amended [42 U.S.C. 12571 et seq.]; and
  - cc. Crime victim compensation.
2. For purposes of this section, "child" means an individual:
- a. Under age eighteen; or
  - b. Age eighteen and a full-time student in elementary or high school, or in an equivalent level of vocational or technical training, if, before

attaining age nineteen, such student may reasonably be expected to complete the high school or vocational training curriculum.

**History:** Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-63. Budgeting in unusual circumstances.**

1. Except as provided in subsection 3, if an eligible child lives in the home of a relative who is not the child's parent, the relative is ineligible if the relative's spouse also lives in the home.
2. If an eligible child lives in the home of a relative who is not the child's parent, and the spouse of that relative does not also live in the home, the relative:
  - a. Must be excluded from the household if the relative's income and assets would cause the household to be ineligible; and
  - b. May be included in the household if the relative requests inclusion and the relative's income and assets do not cause the household to be ineligible.
3. Except as provided in subsection 5, if an eligible child lives in the home of a relative who is not the child's parent, but who is, and could in the absence of that child be, a member of a household which includes the spouse of the relative, the eligible child must be added as a member of the household of the relative.
4. Except as provided in subsection 5, if two or more eligible children are living in the home of an ineligible relative who is not a parent of either child, all eligible children must be included in a single household.
5. An individual who is a caretaker relative in a household may act as a temporary payee for a child who is a member of another household and with respect to whom the individual is a relative, while that child lives temporarily with the individual, to preserve the child's usual living arrangement with that child's caretaker relative who is:
  - a. Hospitalized; or
  - b. Incarcerated for ninety days or less.
6. If two or more relatives, who are each eligible caretakers for one or more children but who are not married to each other and who have no children in common living in the household, live together, each caretaker and the

child or children with respect to whom that caretaker is a relative must be budgeted as a household.

7. If a child lives with a relative who receives supplemental security income benefits, budgeting is based on the number of eligible individuals in the household.
8. If a child lives with a parent whose needs are deleted from the household benefit due to the parent's failure to cooperate in obtaining support and in establishing paternity or in the job opportunities and basic skills program, the parent's income and assets must be considered in determining eligibility for the remaining members of the household. The income of the parent is subject to any applicable income disregards.
9. If an eligible caretaker leaves a child in the care of another individual while the caretaker pursues an educational program in another community, budgeting for the household must be done as if the unit resided together.
10. a. If a member of a household is hospitalized or residing in a halfway house, a drug and alcohol facility, the North Dakota state hospital, a nursing home, or a swing bed facility, and there is a medical plan that the individual may return to the household:
  - (1) No reduction in assistance may be made for the first three full months if the individual receives a cash grant, but the needs of the individual must be reduced thereafter to a forty-five dollar clothing and personal needs allowance; and
  - (2) Effective the first day of the month following the date of admittance to the institution, the needs of a household member admitted to a veterans administration hospital or any state institution other than the North Dakota state hospital must be deleted.
- ~~b. If the needs of a primary individual are deleted from the household, the case must be closed and a new primary individual may reapply on behalf of the household.~~
- ~~c. For periods when the needs of an individual must be reduced, the individual's share of assistance is limited to the amount of the clothing and personal needs allowance, effective with the first month the reduction may be made. This budgeting arrangement~~

must continue as long as the medical plan calls for the individual to return to the household, but may not exceed nine months.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-68. High school graduate or general equivalency diploma incentive payment.** The county agency may authorize a one-time payment of five two hundred fifty dollars to each individual in the household upon completion of high school or receipt of general education development diploma.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-69. Unrestricted payment of assistance - Exceptions.**

1. The usual method of providing assistance under this chapter is through payments ~~in cash, by check, or warrant credit on account~~, immediately redeemable at par, made to the caretaker relative or legal guardian at regular intervals, with no restrictions on the use of the funds. This practice is followed because recipients of assistance do not, by virtue of their need for assistance, lose the capacity to select how or when the needs of the household must be met. If the caretaker relative or other members of the household manage funds in a manner that is clearly detrimental to members of the household, or if the caretaker relative is subject to sanction for nonconformance to program requirements, protective payments may be used to assist the household in financial management.
2. a. A determination that there is a detrimental mismanagement of funds may be based on:
  - (1) Continued failure to plan for and make necessary expenditures during periods for which assistance is provided;
  - (2) Continued failure to provide children in the household with proper food, clothing, or housing so as to threaten the chances of those children for healthy growth and development;
  - (3) Persistent failure to pay the cost of rent, food, utilities, school supplies, or other essentials;
  - (4) Repeated loss of housing due to nonpayment of housing costs; or

- (5) Repeated failure to pay debts that result in attachments of or levies against current income.
  - b. The fact that debts are not paid on a timely basis may not be the sole basis for a determination that there is detrimental mismanagement of funds unless relevant factors, including the following, have been considered:
    - (1) Whether the family has experienced an emergency or extraordinary event that reasonably required the expenditure of funds ordinarily used to meet the needs of the household;
    - (2) Whether reasonable payments on necessarily incurred debt exceeds the family's income; or
    - (3) Whether the family has withheld payment on a debt as a part of a legitimate dispute concerning the amount of the debt or the terms or performance of a contract out of which the debt arises.
3.
  - a. The county agency may select, appoint, and remove a protective payee to receive and manage a household's cash grant. In making a selection, the county agency shall consider any individual nominated by the caretaker relative.
  - b. The protective payee is a fiduciary responsible for assuring that the cash grant is expended to achieve the maximum reasonable benefit for the assistance and for working cooperatively with the county agency.
  - c. The protective payee may be furnished information about the household, from the county agency's records, sufficient to allow the protective payee's role to be carried out. The information furnished to the protective payee under this section remains confidential information subject to the provisions of North Dakota Century Code section 50-06-15.
  - d. The status of a household for which a protective payee has been appointed must be reviewed by the county agency as often as necessary, but no less often than every six months, to determine if:
    - (1) The protective payee is performing satisfactorily;
    - (2) The household should be restored to unrestricted money payment status; and

- (3) Some other arrangement should be sought for the care of children who are members of the household.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-72.1. Denial of assistance for fugitive felons, probation and parole violators, and certain convicted drug offenders.**

1. An individual may not be included in the cash grant if the individual is:
  - a. Fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of such state;
  - b. Violating a condition of probation or parole imposed under federal or state law; or
  - c. Convicted of a felony offense for an act which occurred after August 22, 1996, involving which has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)]. The disqualification does not apply to alcohol-related convictions.
2. During any period of disqualification:
  - a. The individual's needs may not be taken into account when determining the household's need and amount of assistance;
  - b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the household; and
  - c. Income disregards may be provided for the disqualified individual when determining if the remaining household members are eligible.

**History:** Effective January 1, 2003; amended effective June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-74. Assessment and case plan.** Assessment is an ongoing process in the program. The assessment may result in goals for the household. The ~~program case manager~~ eligibility worker and household prioritize the goals

to develop a case plan. This case plan identifies issues to be resolved, tasks for completing the goals, and times to complete the tasks. Agencies or services that can assist in reaching goals are identified and referrals to agencies are made when the case plan is formalized.

**History:** Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-75. Temporary assistance for needy families social contract.** The temporary assistance for needy families social contract is an agreement, signed by the household, that documents the goals and tasks identified in the assessment, the mandatory requirements on the application for benefits, and records times for the completion of those tasks. The social contract is negotiated between the ~~program case manager~~ eligibility worker and the household. Each household must develop and sign a contract, by the end of the fourth benefit month, as a condition of continued eligibility. The household must comply with the terms of the social contract. The social contract is subject to change as conditions warrant. It must be reviewed and updated with the household on at least an annual basis. A temporary assistance for needy families social contract must:

1. Address immediate health and safety needs that are mutually identified by the household and ~~program case manager~~ eligibility worker;
2. Specify what the responsibilities of the household and the ~~program case manager~~ eligibility worker may be;
3. Establish realistic goals, reflective of the household's capabilities and the resources available to assist in meeting goals;
4. Clearly identify tasks required for continued participation;
5. Establish specific times for the accomplishment of tasks;
6. Provide a means to evaluate progress toward meeting identified goals and tasks; and
7. Unless an exemption or good cause is determined, require compliance with the mandatory requirements, which include:
  - a. Child support enforcement when appropriate deprivation reasons exist;
  - b. Health tracks program; and

- c. Job opportunities and basic skills program.

**History:** Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-76. ~~Initial social~~ Social contract.**

1. The ~~initial~~ assessment must be completed and social contract signed by the end of the fourth benefit month. The social contract must be signed by the primary individual in the household and the ~~program case manager~~ eligibility worker. Ten days before the end of the fourth benefit month, a written statement must be sent reminding the household that the household is ineligible for a fifth month's assistance if the social contract is not signed.
2. If a household becomes ineligible under subsection 1 because the assessment is not completed and the social contract is not signed, and the household reappplies within a one-year period from its original application date, a cash grant may not be issued until the household completes an assessment and signs a social contract.
3. For purposes of this section:
  - a. If a household becomes ineligible under subsection 1 because the contract is not signed and reappplies more than one year after the household's last application date, the reapplication may be treated as a new application; and
  - b. If a household becomes ineligible for a reason other than failure to sign a social contract as required under subsection 1, the reapplication may be treated as a new application.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-79. Sanctions for noncompliance with temporary assistance for needy families program requirements.**

1. Temporary assistance for needy families participants who fail or refuse to comply with program requirements, without good cause, may be sanctioned. Actions or failures to comply that may result in sanctions include:
  - a. Failure or refusal to participate in the job opportunities and basic skills ~~program~~ or tribal native employment works programs;

- b. Failure or refusal to cooperate in obtaining child support or establishing paternity;
  - c. Not completing a social contract;
  - d. Not signing a social contract;
  - e. Not completing the goals or tasks listed on a social contract; and
  - f. Not cooperating with an agency providing services to meet goals or tasks listed in the social contract, including goals identified as mandatory or nonmandatory referrals and goals that are nonmandatory and identified in the assessment.
2. All sanctions are first imposed against the responsible individual and will result in removal of the individual's financial needs from the household's temporary assistance for needy families grant, for a period of one month.
  3. If the sanctioned individual does not cure the sanction prior to the end of the sanction penalty month, the sanction may progress to closure of the entire temporary assistance for needy families case.
    - a. A sanction penalty month runs from the effective date of a sanction through the last day of that month.
    - b. If a sanction, based on noncooperation with the job opportunities and basic skills program leads to closure of the entire temporary assistance for needy families case, the household shall, at a minimum, be ineligible for assistance in the month following the sanction penalty month, and until the responsible individual cures the sanction.
    - c. If a sanction, based on noncooperation with child support enforcement leads to closure of the entire temporary assistance for needy families case, the household shall be ineligible for assistance in the month following the sanction penalty month.
  4. ~~A job opportunities and basic skills program sanction may be imposed for no more than twelve months. An otherwise eligible individual whose noncooperation caused the job opportunities and basic skills program sanction may demonstrate cooperation within twelve months from the sanction start date to regain eligibility for the household. After twelve months, a reapplication for assistance made on behalf of the household is treated as a new application.~~
  5. Sanctions under temporary assistance for needy families follow a noncooperating individual.

- 6- 5. A job opportunities and basic skills program sanction, a tribal native employment works program sanction, or a sanction for failure to comply with the social contract requirements, is cured only when the responsible individual demonstrates, to the satisfaction of the county agency, that the failure to cooperate or participate, as required, has been corrected for at least ten consecutive days.
- 7- 6. A child support enforcement sanction ~~will~~ may only be considered cured upon ~~such~~ notification from the child support enforcement agency to the ~~program case manager eligibility worker that the sanctioned individual is cooperating in obtaining child support and, if necessary, establishing paternity.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-80. Good cause determination.**

1. Except with respect to a sanction imposed for failure to obtain child support, or establish paternity, an individual shall be provided an opportunity to present the good cause reason for a failure or refusal to cooperate prior to the imposition of a sanction.
2. The ~~program case manager eligibility worker~~ or the individual's job opportunities and basic skills coordinator may oversee the good cause determination process.
  - a. If the individual refuses to complete the social contract, refuses to sign the social contract, or refuses to comply with a referral to a service agency, the ~~program case manager eligibility worker~~ is responsible to oversee the good cause determination process.
  - b. If the individual is not cooperating with the job opportunities and basic skills program, the coordinator is responsible to oversee the good cause determination process and must inform both the individual and the ~~program case manager eligibility worker~~ of the outcome of the good cause determination process.
3. Within ten days following the date of a failure or a refusal to comply, the ~~program case manager eligibility worker~~ or coordinator, as appropriate, shall send written notice to the individual to offer an opportunity to show good cause. A good cause determination must state that:
  - a. The individual is responsible to call or meet with the coordinator or case manager within seven days, from the print date of the notice, to show good cause; and

- b. A sanction will be imposed if the individual does not contact the coordinator or ~~program case manager~~ eligibility worker, as appropriate, within the required time or does not show good cause for the individual's failure or refusal to comply.
4. If an individual fails or refuses to participate in the good cause determination process, or if it is determined that the individual did not show good cause for the initial failure or refusal to participate as required in the temporary assistance for needy families program, the ~~program case manager~~ eligibility worker shall notify the individual of the sanction.
5. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

**History:** Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-83. Job opportunities and basic skills program - Basic requirements.** To the extent resources permit, all nonexempt adults, and all children age sixteen or older, who have completed high school or received a general equivalency diploma, or who have neither completed high school nor received a general equivalency diploma and are not attending school shall participate in the job opportunities and basic skills program. The program combines education, training, and employment components. Its purpose is to enable participants to become self-sufficient. The ~~program case manager~~ eligibility worker shall:

1. Determine eligibility for assistance and determine whether each person is a member of the household;
2. Determine whether each recipient is exempt from participating in the job opportunities and basic skills program; and
3. Refer nonexempt members of the household to the job opportunities and basic skills program.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-88. Job opportunities and basic skills program - Referral.**

1. Any individual not exempt from the job opportunities and basic skills program and anyone who volunteers must be referred to the program.

Referrals may be made only after the individual is determined otherwise eligible for assistance.

2. The referred individual shall contact the job opportunities and basic skills program within ~~five workdays~~ seven calendar days from the print date of the referral to set up an appointment for program orientation, assessment, and employability planning and shall make a good-faith effort to complete program orientation, initial assessment, and employability planning within thirty days of the referral date.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-96. Job opportunities and basic skills program - Vocational education.** Vocational education offers an organized sequence of coursework directly related to preparation of the participant for employment in a current or emerging occupation.

1. Vocational education may be approved as an allowable work activity only if the participant demonstrates:
  - a. A lack of marketable job skills that may reasonably be expected to enable the participant to become employed in a current or emerging occupation that has the potential to provide a wage great enough to enable the participant and the participant's family to become self-sufficient;
  - b. That the training will result in a marketable skill that may reasonably be expected to enable the participant to become employed in a current or emerging occupation that has the potential to provide a wage great enough to enable the participant and the participant's family to become self-sufficient;
  - c. The functional capacity and ability to complete the vocational education and become employed in a job applying that vocational education; and
  - d. An understanding of the requirements of the job for which the vocational training is intended to prepare the participant and a willingness to meet those requirements, including, if applicable:
    - (1) Shift work;
    - (2) Relocation;
    - (3) Work-related travel;

- (4) Licensure or certification; and
  - (5) Prevailing wage rates.
2. A participant in the job opportunities and basic skills program, who has made the demonstration required under subsection 1, may undertake vocational education as an exclusive approved work activity if:
- a. The employability plan outlines a clearly identified goal of employment in a specific occupation that may reasonably be expected to enable the participant to become employed in a current or emerging occupation that has the potential to provide a wage great enough to enable the participant and the participant's family to become self-sufficient;
  - b. The curriculum is recognized by a statutorily sanctioned education authority as leading to qualification for employment in the specific occupation identified in the employability plan;
  - c. The participant does not already possess a bachelor's degree or has not previously completed a course in vocational education, unless:
    - (1) The participant, by reason of incapacity or substantiated lack of employment in the field for which the participant was prepared, cannot be employed in North Dakota; and
    - (2) The department, exercising its reasonable discretion, approves the employability plan;
  - d. The selection of a course of study is guided by demand in specific occupations or, upon approval by the coordinator, a course of study in another occupation for which the participant provides substantial justification of demand;
  - e. The participant applies for a Pell grant and all other reasonably available sources of grants and scholarships, which become the first source of payments for books, tuition, and fees;
  - f. The participant verifies that the participant is maintaining satisfactory progress, and taking classes required by the employability plan, through class schedules and grade reports;
  - g. During any participant's lifetime, no employability plan beginning on or after July 1, 1997, and no combination of such plans, may include more than twenty-four months, which need not be consecutive months, during which vocational education may be the participant's exclusive, approved work activity unless:

- (1) The participant, by reason of incapacity or substantiated lack of employment in the field for which the participant was prepared, cannot be employed in North Dakota; and
  - (2) The department, exercising its reasonable discretion, approves the employability plan; and
- h. The participant who engages in vocational education as an exclusive, approved work activity attends vocational education on a full-time basis.
3. A participant approved for vocational education may receive any supportive service for which a need can be demonstrated.
4. Applicants for or recipients of temporary assistance for needy families enrolled as full-time students in any course of vocational education study at the time they become participants may seek approval of an employability plan which continues that course of study if the course of study can reasonably be expected to increase the participant's employability or earnings potential. Approval beyond the current school term may not be granted if the participant is presently qualified for available full-time employment with the potential to provide a wage great enough to allow the participant and the participant's family to become self-sufficient.
5. A participant who, in addition to meeting the minimum required hours in another approved work activity, is enrolled in a self-initiated course of vocational education may receive any supportive service for which a need can be demonstrated, if the vocational education course may reasonably be expected to increase the participant's employability or earnings potential. A participant's approved work activities must take priority over self-initiated vocational education activities. A participant who refuses to seek employment or reduces involvement in approved work activities to accommodate self-initiated vocational education may be sanctioned.
6. When determining whether to approve or support a participant's proposed plan for vocational education, whether the vocational education may be completed as an exclusive work activity or as a self-initiated activity, the coordinator shall also consider:
  - a. The graduation and job placement rates of the education or training facility;
  - b. The cost of the education or training facility services, combined with the cost of necessary supportive services, as compared to other education or training facilities offering a similar course of study; and

- C. The anticipated length of time to complete training as compared to other education or training facilities offering a similar course of study.
7. Employed participants who are approved for vocational education as their exclusive, approved work activity shall not be subjected to the job-quit penalty described in section 75-02-01.2-52, if the coordinator or tribal native employment works program coordinator provides prior approval for the individual to quit or reduce the individual's hours of employment to focus on vocational education. Prior approval must be documented in the individual's employability development plan.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-05.1, 50-09

**75-02-01.2-101. Job opportunities and basic skills program - Subsidized public or private sector employment.** Subsidized public or private sector employment provides a cash subsidy for a portion of the wages paid to a participant. The cash subsidy is provided for a specified period of time for the purpose of assisting the participant to obtain employment. Subsidized employment may include work supplementation.

1. Under work supplementation the cash subsidy is diverted from the participant's temporary assistance for needy families cash grant and is limited to a negotiated amount that cannot exceed the lesser of three hundred dollars or fifty percent of the temporary assistance for needy families cash grant. A work supplementation program participant must be considered a regular employee, and receive benefits and enjoy working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.
2. Work supplementation program payments may be made only pursuant to a contract signed by the employer, the work supplementation program participant, the ~~program case manager~~ eligibility worker, and the coordinator.
3. The length of the contract is limited to the training time required for the recipient to learn the necessary job skills and may not exceed six months.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-102. Job opportunities and basic skills program - Failure or refusal to participate.** A failure or refusal to participate in the job opportunities and basic skills program occurs any time the participant:

1. Misses a scheduled appointment for any program or approved work activity;
2. Is absent from a ~~worksite~~ program or approved work activity when scheduled to be there;
3. States an unwillingness to participate in any program ~~activity~~ or ~~worksite~~ approved work activity;
4. Fails to contact the coordinator, within ~~five workdays~~ seven calendar days from the print date of the referral, to set up an appointment ~~for to~~ begin involvement in the program orientation;
5. Refuses, despite apparent ability, to maintain satisfactory progress in any program or approved work activity; or
6. Fails to comply with the requirements of the participant's employability plan.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-103. Job opportunities and basic skills program - Good cause for failure or refusal to comply with a referral to, or participate in, the job opportunities and basic skills program.**

1. All nonexempt household members must participate in the job opportunities and basic skills program unless good cause is granted by the ~~program case manager~~ eligibility worker. Good cause for failure or refusal to participate in the job opportunities and basic skills program exists when:
  - a. The household member is incapacitated with a physical or mental impairment verified by reliable medical evidence which, by itself or in conjunction with age, prevents the individual from working or participating in any job opportunities and basic skills program or work activity;
  - b. An individual whose substantially continuous presence in the household is necessary to care for another member of the household, to whom the individual seeking good cause for nonparticipation owes a legal duty to provide care, who has a condition, verified by reliable medical evidence, which does not

permit self-care, care by another household member, or care provided as supportive services;

- c. An individual has an illness or injury, verified by reliable medical evidence and reviewed every thirty days, which is serious enough to temporarily prevent entry into employment or participation in any job opportunities and basic skills program activity; or
  - d. In the case of a parent or other eligible caretaker relative of a child under age six, who is personally caring for the child full time and who demonstrates an inability to obtain needed child care for one or more of the following reasons:
    - (1) Child care is unobtainable at a location such that the usual commuting time from the parent's home to the location at which child care is provided, and on to the parent's worksite, is one hour or less;
    - (2) Suitable child care is unobtainable from a relative, from an approved child care provider licensed or registered under North Dakota Century Code chapter 50-11.1, or from a child care provider not required to be licensed or registered under North Dakota Century Code chapter 50-11.1; or
    - (3) Child care is unobtainable, from a child care provider licensed or registered under North Dakota Century Code chapter 50-11.1, at a rate equal to or less than 1.1 times the maximum allowable amount as determined by the child care assistance program.
- 2. The department may also authorize temporary assistance for needy families case managers to grant good cause for nonparticipation to individuals whenever it becomes necessary to administratively limit the number of individuals being referred to, or participating in, the job opportunities and basic skills program.
  - 3. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

**History:** Effective December 9, 1996; amended effective July 1, 1997; June 1, 2002; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**ARTICLE 75-09.1**

**SUBSTANCE ABUSE TREATMENT PROGRAMS**

Chapter

<u>75-09.1-01</u>	<u>General Standards for Substance Abuse Treatment Programs</u>
<u>75-09.1-02</u>	<u>Clinically Managed Low-Intensity Residential Care - Adult ASAM Level III.1</u>
<u>75-09.1-02.1</u>	<u>Clinically Managed Low-Intensity Residential Care - Adolescent ASAM Level III.1</u>
<u>75-09.1-03</u>	<u>Clinically Managed High-Intensity Residential Care - Adult ASAM Level III.5</u>
<u>75-09.1-03.1</u>	<u>Clinically Managed Medium-Intensity Residential Care - Adolescent ASAM Level III.5</u>
<u>75-09.1-04</u>	<u>Medically Monitored Intensive Inpatient Treatment - Adult ASAM Level III.7</u>
<u>75-09.1-04.1</u>	<u>Medically Monitored High-Intensity Inpatient Treatment - Adolescent ASAM Level III.7</u>
<u>75-09.1-05</u>	<u>Partial Hospitalization - Day Treatment - Adult ASAM Level II.5</u>
<u>75-09.1-05.1</u>	<u>Partial Hospitalization - Day Treatment - Adolescent ASAM Level II.5</u>
<u>75-09.1-06</u>	<u>Intensive Outpatient Treatment - Adult ASAM Level II.1</u>
<u>75-09.1-06.1</u>	<u>Intensive Outpatient Treatment - Adolescent ASAM Level II.1</u>
<u>75-09.1-07</u>	<u>Outpatient Services - Adult ASAM Level I</u>
<u>75-09.1-07.1</u>	<u>Outpatient Services - Adolescent ASAM Level I</u>
<u>75-09.1-08</u>	<u>Social Detoxification ASAM Level III.2-D</u>
<u>75-09.1-09</u>	<u>DUI Seminar ASAM Level 0.5</u>

**CHAPTER 75-09.1-01**  
**GENERAL STANDARDS FOR SUBSTANCE ABUSE TREATMENT PROGRAMS**

Section

<u>75-09.1-01-01</u>	<u>Definitions</u>
<u>75-09.1-01-02</u>	<u>Application for License and Notice of Address Change</u>
<u>75-09.1-01-03</u>	<u>Provisional and Unrestricted License</u>
<u>75-09.1-01-04</u>	<u>License Report Procedures</u>
<u>75-09.1-01-05</u>	<u>Program Authority and Administration</u>
<u>75-09.1-01-06</u>	<u>Information Management</u>
<u>75-09.1-01-07</u>	<u>Personnel Administration</u>
<u>75-09.1-01-08</u>	<u>Fiscal Management</u>
<u>75-09.1-01-09</u>	<u>Physical Facilities</u>
<u>75-09.1-01-10</u>	<u>Health and Safety Program</u>
<u>75-09.1-01-11</u>	<u>Infection Control</u>
<u>75-09.1-01-12</u>	<u>Transportation</u>
<u>75-09.1-01-13</u>	<u>Intake and Orientation</u>
<u>75-09.1-01-14</u>	<u>Assessment</u>
<u>75-09.1-01-15</u>	<u>Individual Treatment Plan</u>

<u>75-09.1-01-16</u>	<u>Differences in Dimensional Criteria for Adolescents and Adults</u>
<u>75-09.1-01-17</u>	<u>Criteria for Programs That Treat Adolescents and Adults</u>
<u>75-09.1-01-18</u>	<u>Admission Criteria</u>
<u>75-09.1-01-19</u>	<u>Continued Stay Criteria</u>
<u>75-09.1-01-20</u>	<u>Discharge and Transfer Criteria</u>
<u>75-09.1-01-21</u>	<u>Referral Criteria</u>
<u>75-09.1-01-22</u>	<u>Client Records</u>
<u>75-09.1-01-23</u>	<u>Client Rights</u>
<u>75-09.1-01-24</u>	<u>Quality Assurance</u>
<u>75-09.1-01-25</u>	<u>Accreditation as a Basis for Licensing</u>
<u>75-09.1-01-26</u>	<u>Sanctions</u>
<u>75-09.1-01-27</u>	<u>Appeals</u>

75-09.1-01-01. Definitions. As used in chapters 75-09.1-01, 75-09.1-02, 75-09.1-02.1, 75-09.1-03, 75-09.1-03.1, 75-09.1-04, 75-09.1-04.1, 75-09.1-05, 75-09.1-05.1, 75-09.1-06, 75-09.1-06.1, 75-09.1-07, 75-09.1-07.1, and 75-09.1-08:

1. "ASAM patient placement criteria" means the second edition, revised, of the patient placement criteria of the American society of addiction medicine.
2. "Department" means the North Dakota department of human services.
3. "DSM" means the fourth edition, text revision, of the diagnostic and statistical manual of mental disorders published by the American psychiatric association.
4. "DUI" means an offense of driving or being in actual control of a motor vehicle while under the influence of alcohol or controlled substances, or both.
5. "Program" means a person, partnership, association, corporation, or limited liability company that establishes, conducts, or maintains a substance abuse treatment program for the care of persons addicted to alcohol or other drugs. "Program" does not include a DUI seminar which is governed by chapter 75-09.1-09.
6. "Recommendation" means a violation of the rule has occurred, however, on a very limited basis. A recommendation can also be given when there is general compliance with a rule but the procedures can be strengthened.
7. "Type I condition" means a violation of the requirements of any applicable law or regulation has occurred in at least twenty-five percent of the cases reviewed.
8. "Type II condition" means habitual noncompliance with the requirements of any law or regulation including a type I condition that

is still found to be occurring during subsequent visits, any illegal act, or any act that threatens the health or safety of the clients.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-02. Application for license and notice of address change.**

1. A program must submit to the department an application for a license in the form and manner prescribed by the department.
2. The department will consider an application complete when it has received all required information and documents.
3. The department may declare an application withdrawn if an applicant fails to submit all required documentation within sixty days of notification of incompleteness.
4. A new application for a license must be submitted to the department by a program upon change of ownership or level of care.
5. A program must notify the department of a change of address.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-03. Provisional and unrestricted license.**

1. Provisional license.
  - a. Upon approval of an application, the department may issue a provisional license for the operation of a program.
  - b. A provisional license is in effect for the period specified in the license not to exceed one year from the date of issuance.
  - c. Prior to changing a provisional license to an unrestricted license, the department shall conduct an onsite review to determine that the program is in compliance with the standards contained in this article.
2. Restricted license.
  - a. A restricted license is in effect for the period specified in the license not to exceed ninety days.

- b. Prior to removing a restriction on a license and issuing an unrestricted license, the department shall conduct an onsite review to determine that the program is in compliance with the standards contained in this article.
3. An unrestricted license is in effect for the period specified in the license not to exceed two years.
4. A license may not be transferred and is valid only for those programs indicated on the license.
5. The department shall conduct continued license reviews for programs with unrestricted licenses on at least a biennial basis to determine continued compliance with the standards contained in this article.
6. The department may conduct scheduled or unscheduled visits at times other than routine license reviews.
7. The program must display its current license in a place that is conspicuous to the public.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-04. License report procedures.**

1. Within thirty days of an onsite review of a program, the department must send a license report to the program that was reviewed.
2. A license report must contain a description of the programs and services reviewed, strengths, concerns, recommendations, and a description of any existing type I or type II conditions.
3. A license report shall be retained by the department while the program that is the subject of the report is licensed and for at least seven years from the time the program is no longer licensed.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-05. Program authority and administration.**

1. A program shall identify to the department an individual or entity that is responsible for the conduct of the program.
2. A program shall implement a written policy governing the operation of services including admission procedures, discharge procedures,

client grievance procedures, scope of service, treatment plans, staffing patterns, outside referrals, and continued or followup treatment.

3. The program shall conform to applicable legal requirements and regulations of all governmental and legally authorized agencies under whose authority it operates, to include accessibility, affirmative action, equal employment opportunity, health and safety, and licensure.
4. A program shall be responsible for providing qualified personnel, facilities, and equipment needed to carry out the goals and objectives and meet the needs of the clients.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-06. Information management.**

1. A program must collect data as prescribed by the department, including information necessary for federal and state grant statistical requirements and fiscal information such as fee structure.
2. A program must apply appropriate safeguards to protect client records regardless of whether the records are electronically or manually maintained. These safeguards must include:
  - a. Limiting record access to authorized individuals;
  - b. Suitably maintaining a record indexing and filing system to preserve confidentiality;
  - c. Knowing the essential record location at all times;
  - d. Securing and reasonably protecting records against loss, damage, and inappropriate access; and
  - e. Protecting electronic records by routine backup.
3. A program must maintain a policy so that files are not needlessly retained or prematurely discarded. The retention of records of clients and administrative records must be guided by professional and state research, administrative, and legal requirements.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-07. Personnel administration.**

1. A program shall employ sufficient and qualified staff members to meet the needs of the clients.
2. A program shall have a written policy regarding how it verifies the background, qualifications, and credentials of staff members, volunteers, and consultants, and how it acts upon the results of the information received.
3. A program shall document the nature and extent of the involvement of any individual who provides consultation or volunteer service to the program.
4. A program shall maintain a personnel file for each employee that contains:
  - a. A written job description;
  - b. The qualifications, supervisor, employees supervised, and the duties of each employee; and
  - c. Performance evaluations dated and regularly conducted at least annually for continuing appropriateness.
5. A program shall implement a written employment policy related to nondiscrimination with regard to employment, pay, place of work, or promotion because of age, creed, disability, gender, national origin, or race.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-08. Fiscal management.**

1. When fees for services are charged, a program shall have an established schedule of fees that is available in printed form and is applied equitably to all clients.
2. A program shall implement a policy that prohibits fee splitting with other programs, agencies, entities, or individuals as consideration for referral of the client to be served.

3. If a program is responsible for funds or personal possessions that belong to a client, the program shall implement a procedure for identification and accountability for those funds.

History: Effective October 26, 2004.

General Authority: NDCC 50-06-16, 50-31

Law Implemented: NDCC 50-31

**75-09.1-01-09. Physical facilities.**

1. All locations owned, rented, leased, or occupied by a program must meet standards of the state fire marshal or an equivalent code or provide a letter from the inspecting authority stating that an inspection was not done and the reason why.
2. A program shall provide suitable locations within the physical plant for such activities as interviews, treatment services, dictation, staff conferences, and psychometric testing to provide for confidentiality of client information.
3. A program shall provide adequate toilet and lavatory facilities.

History: Effective October 26, 2004.

General Authority: NDCC 50-06-16, 50-31

Law Implemented: NDCC 50-31

**75-09.1-01-10. Health and safety program.**

1. A program shall maintain health and safety policies and procedures.
2. A program shall implement a written emergency plan that addresses provisions for dealing with bomb threats, fires, medical emergencies, natural disasters, and power failures.
3. A program shall make readily available first-aid facilities, equipment, and supplies. A program shall have:
  - a. At least one staff member certified in basic first aid and in basic cardiac life support. At least one employee certified in cardiopulmonary resuscitation must be present at the program during all hours of program operations. The number of other certified individuals present must be based on the needs of the clients and the type of services provided; and
  - b. A program must implement a written plan to assist a client in receiving additional care beyond first aid when it is needed. An outline of the plan must be posted where first-aid supplies are kept and at other appropriate places in the physical plant.

4. Designated staff members shall be responsible for the safety of clients and personnel under their supervision in the event of emergency or emergency drill.
5. A program shall implement a written plan for reporting all incidents, including serious illnesses, injuries, and alleged cases of abuse or neglect.
6. A program shall implement a written policy that addresses the use of smoking products. The policy must address the needs of the clients, personnel, visitors, and it must comply with local, state, and federal laws.
7. A program shall implement a written policy that is in conformance with applicable legal requirements to govern the safe administration, handling, storage, and disposal of medications. A program must document appropriate training of its employees according to state laws.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

#### **75-09.1-01-11. Infection control.**

1. A program shall implement a written infection control policy that complies with all applicable laws and regulations. The program must review this written policy at least annually and at any other times as necessary. The policy must provide screening or referral procedures and must include a documented verbal assessment of high-risk behaviors for tuberculosis, hepatitis, HIV, and other blood-borne and sexually transmitted diseases.
2. A program shall implement a practical system developed for reporting, evaluating, and maintaining records of infections among clients.
3. A program shall implement a written plan for the instruction of new employees in the importance of infection control and personal hygiene and their responsibility in the infection control program.
4. A program shall take universal precautions in the handling of all bodily fluids and implement written policies for the handling of bodily fluids.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-12. Transportation.** If a program provides client transportation services, whether by volunteers or by contract, the program shall provide evidence to the department that the program maintains state minimum liability insurance

coverage and that any employee who provides transportation has a current and appropriate driver's license.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-13. Intake and orientation.**

1. A program shall implement written criteria for client admission for each of the program's levels of care based on the DSM and the ASAM patient placement criteria and policies for client admission.
2. A program shall implement a written policy for orientation of the client and the family.
3. A program shall explain the rights and responsibilities of persons served and grievance and appeal procedures. A program shall post in a place that is conspicuous to the public these rights and responsibilities.
4. A program shall implement a written policy regarding provision of services for clients who do not have the ability to pay.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-14. Assessment.**

1. When conducting an assessment, a program shall administer instruments or conduct clinical interviews or both sufficient to gather enough information to substantiate or rule out a client's diagnosis.
2. An assessment must include adequate assessment in at least each of the following areas: withdrawal potential; medical conditions and complications; psychiatric, including emotional, behavioral, and cognitive functioning and the presence of co-occurring mental health problems; employment; alcohol, tobacco, and other drug use; legal; family and social; readiness to change; relapse, continued use, and continued problem potential; and recovery environment.
3. When clinically appropriate, previous diagnostic, medical, treatment, and training reports that impact the development of an individual must be:
  - a. Requested from appropriate current or previous providers and referral sources with signed, informed consent to release of information forms in compliance with applicable laws and regulations; and

- b. Integrated into the assessment process.
- 4. A program shall provide requested information within a reasonable time period when the request is accompanied by an appropriate consent to release of information.
- 5. A program's report from the assessment process must clearly describe the diagnostic impressions based on a five-axis assessment of the DSM and recommendations for treatment based on the ASAM patient placement criteria.
- 6. Based on the information gathered in the assessment, a program's report should identify and prioritize problems by severity, which should then be addressed in the individual treatment plan with the involvement of the client.
- 7. A program shall keep progress notes that reflect the client's progress or lack of progress in measurable and behavioral language associated with treatment plan objectives.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-15. Individual treatment plan.**

- 1. A program shall implement policies that ensure the services provided to each client are coordinated and integrated and address goals that reflect the client's informed choice.
- 2. A program shall develop, with each client's participation, a comprehensive, coordinated, individualized plan based on referral and assessment information about the client's strengths, abilities, needs, functional deficits, and preferences.
- 3. A program shall develop and document an individual treatment plan that is as comprehensive as possible given the time in treatment and the client's condition. The individual treatment plan shall be developed according to the following schedule:
  - a. By the end of the first day for a client in a social detoxification program;
  - b. By the end of the third session for a client receiving outpatient services or intensive outpatient treatment; and
  - c. By the end of the fifth working day for a client receiving day treatment, inpatient, or low-intensity and high-intensity residential treatment.

4. A program shall implement a written policy that specifies instances in which signed, informed consent for services must be obtained and retained. The policy must be guided by professional and legal requirements.
5. A program must regularly analyze with the active involvement of the client the client's progress toward the accomplishment of goals and modify goals and services as a result of any occurrence that is likely to impact the client's treatment progress. A program must perform such an analysis no less often than:
  - a. Once every two months or every eight sessions, whichever comes first, for a client receiving outpatient services;
  - b. Once a month for a client receiving low-intensity residential treatment;
  - c. Once every two weeks for a client receiving intensive outpatient treatment;
  - d. Once each week for a client receiving high-intensity residential, inpatient, or partial hospitalization or day treatment; and
  - e. Once during the first six months and annually thereafter for a client receiving chronic care and maintenance services.
6. Counseling or assessment regarding an individual's use or abuse of alcohol or a controlled substance must be provided by a licensed addiction counselor as required by North Dakota Century Code chapter 43-45. The provision of case management and educational services do not need to be performed by a licensed addiction counselor. A licensed addiction counselor must be present in all team meetings at which level of care and treatment planning decisions are made regarding a client receiving or referred for substance abuse treatment services.
7. Services essential to the attainment of a client's goals and objectives must be provided or it must be documented that attempts were made to provide such services either through staff members or through formal affiliation or consultation arrangements with or referral to appropriate agencies or individuals.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-16. Differences in dimensional criteria for adolescents and adults.**

1. If a program plans to admit an individual age seventeen or younger, the program shall implement a written policy regarding how to determine when it is appropriate to place an adolescent in an adult program. The policy must address the safety and supervision of clients in that program. The decision to determine whether a person seventeen years of age or younger is appropriately served in an adult rather than an adolescent program must be based on clinical judgment and other factors such as:
  - a. History of sexual acting out;
  - b. History of violence;
  - c. History of running away;
  - d. Living status such as whether the adolescent is living independently or with parents;
  - e. School status;
  - f. Employment status;
  - g. Marital status;
  - h. Ability to act responsibly;
  - i. Level of emotional maturity;
  - j. Level of cognitive development;
  - k. Level of parental or family support; and
  - l. Current mix of population in the adult milieu.
2. A program shall document in the client record the clinical justification for its decision to treat an individual age seventeen years or younger in an adult program.
3. A program shall maintain a list of all potential adolescent admissions with documentation of those admitted to the program and those denied admission to the adult program due to failure to meet the requirements of this section.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-17. Criteria for programs that treat adolescents and adults.**

1. A program shall secure a criminal history record investigation for any employee who works with adolescents.
  - a. A program shall secure from any employee who may have any contact with an adolescent treated by the program identifying information that is appropriate to accomplish a criminal history record investigation.
  - b. A program providing services to adolescents that held a license in good standing before the effective date of this section shall complete a criminal history record investigation check for all existing employees within thirty days of the effective date of this section.
  - c. A program may not allow an employee to begin work until the criminal history record investigation is complete and it shows fitness to work with adolescents. A program may not employ, in any capacity that involves or permits contact between the employee and any adolescent treated by the program, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
    - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; or 12.1-18, kidnapping; North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code section 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or
    - (2) An offense, other than an offense identified in paragraph 1, if the department determines that the individual has not been sufficiently rehabilitated or the offense has a direct bearing on the program's ability to safely serve adolescents treated there. The department will not consider a claim that the individual has been sufficiently rehabilitated until any term

of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, has elapsed. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.

2. A program providing services to adolescents must employ staff that is knowledgeable about adolescent development or have experience in working with and engaging adolescents.
3. A program shall provide treatment to meet the level of cognitive development and other needs of an adolescent and must address the adolescent experience, including cognitive, emotional, physical, social, and moral development, in addition to involvement with alcohol and other drugs.
4. A program shall make every reasonable attempt to engage an adolescent's family members or guardian in the adolescent's assessment, treatment, and continuing care.
5. A program shall assure that all interactions between adults and adolescents are supervised where adults receive treatment at a program that also provides an adolescent-specific program.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-18. Admission criteria.** A program shall not admit a client into a substance abuse treatment program unless the client:

1. Meets diagnostic criteria for a substance use disorder as described in the DSM; and
2. Meets specifications in each of the ASAM dimensions required for the recommended level of care.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-19. Continued stay criteria.** For a client to remain in the current level of care placement, a program must document that the client:

1. Is making progress but has not yet achieved the goals articulated in the individualized treatment plan and continued treatment at the present

level of care is necessary to permit the client to continue to work toward treatment goals.

2. Is not yet making progress but has the capacity to resolve problems and is actively working toward the goals articulated in the individual treatment plan.
3. New problems have been identified that are appropriately treated at the present level of care that is the least intensive in which these problems can be addressed effectively.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-20. Discharge and transfer criteria.** Before a program may transfer or discharge a client, the client must have:

1. Achieved the goals articulated in the client's individualized treatment plan and resolved the problems that justified admission to the present level of care with progress evaluated and a determination has been made that the client is ready for a less intensive level of care or independent living.
2. Been unable to resolve the problems that justified admission to the present level of care despite amendments to the treatment plan and no further progress is likely indicating the need for another level of care or type of service.
3. Demonstrated a lack of capacity to resolve problems indicating the need for another level of care or type of service.
4. Experienced an intensification of problems or has developed new problems and can be treated effectively only at a more intensive level of care.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-21. Referral criteria.**

1. A program shall implement a written policy for referral and recommendations for services not available through the program. All referrals and recommendations must be made part of the treatment or discharge plan.
2. A program must implement a written policy that verifies appropriate referral during and after treatment.

3. A program must secure the written consent of the client or a client's legal representative before releasing any confidential information about that client and the release of information must conform to the following:
  - a. Any information released must be limited to that necessary for the individual or agency requesting the information or for the provider to whom the client is referred to address the purpose of the referral;
  - b. A program must stamp or write on the records that are being released that any further disclosure of information is prohibited unless it is authorized by the client or the client's legal representative;
  - c. A program's consent to release of information form must conform to applicable laws and regulations and must identify:
    - (1) The information to be released;
    - (2) The form in which the information is to be released such as written, verbal, audio, video, or electronic;
    - (3) To whom the information is to be released;
    - (4) The purpose of the information to be released;
    - (5) The name of the client and the client's date of birth;
    - (6) The date on which the consent to release of information is signed;
    - (7) The length of time, event, or condition for which the consent to release of information is authorized or the event or condition upon which the consent may be withdrawn; and
    - (8) The signature of the client or legal representative; and
  - d. A program shall give to the client or client's legal representative a copy of the signed consent to release of information.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-22. Client records.**

1. A program shall prepare and maintain a single record for each client admitted to the program so as to communicate the appropriate case information. This information must be in a form that is clear, concise, complete, legible, and current.

2. A program shall implement a written policy addressing the process by which a client may gain access to the client's own record.
3. If duplicates of information or reports from the single record of a client exist or if working materials are maintained, such material must:
  - a. Not be a substitute for the single record;
  - b. Be secondary to the recording of information with the single record of the client receiving first priority; and
  - c. Record information of value to the specific service, such as daily attendance, raw scores of tests, and similar data.
4. A program must apply appropriate safeguards to protect active and closed confidential written, electronic, and audiovisual records and to minimize the possibility of loss or destruction in the following manner:
  - a. The information in active and closed records must be organized in a systematic fashion. Manual systems must provide for affixing active records to record jackets;
  - b. The location of the records of clients and the nature of the information contained therein must be controlled from a central location;
  - c. A program employee must be responsible for the control of records of clients and for the implementation of the policies pertaining to records of clients;
  - d. Access to records of clients and electronically generated documents must be limited to the members of the professional staff who are providing or supervising direct services to the client and such other individuals as may be administratively authorized;
  - e. The program must maintain an indexing and filing system for all manual and electronic records of clients;
  - f. The program must secure records and take reasonable steps to protect the records against fire, water damage, and other hazards;
  - g. The program must follow routine procedure for backup of data files for electronic systems; and
  - h. The program must implement a policy that defines file access control procedures.
5. Client records must include:

2. A program shall implement a written policy addressing the process by which a client may gain access to the client's own record.
3. If duplicates of information or reports from the single record of a client exist or if working materials are maintained, such material must:
  - a. Not be a substitute for the single record;
  - b. Be secondary to the recording of information with the single record of the client receiving first priority; and
  - c. Record information of value to the specific service, such as daily attendance, raw scores of tests, and similar data.
4. A program must apply appropriate safeguards to protect active and closed confidential written, electronic, and audiovisual records and to minimize the possibility of loss or destruction in the following manner:
  - a. The information in active and closed records must be organized in a systematic fashion. Manual systems must provide for affixing active records to record jackets;
  - b. The location of the records of clients and the nature of the information contained therein must be controlled from a central location;
  - c. A program employee must be responsible for the control of records of clients and for the implementation of the policies pertaining to records of clients;
  - d. Access to records of clients and electronically generated documents must be limited to the members of the professional staff who are providing or supervising direct services to the client and such other individuals as may be administratively authorized;
  - e. The program must maintain an indexing and filing system for all manual and electronic records of clients;
  - f. The program must secure records and take reasonable steps to protect the records against fire, water damage, and other hazards;
  - g. The program must follow routine procedure for backup of data files for electronic systems; and
  - h. The program must implement a policy that defines file access control procedures.
5. Client records must include:

- a. Identification data;
- b. The name and address of the legal representative, conservator, guardian, and representative payee of the client;
- c. Pertinent history, a diagnostic assessment on all five axes of the DSM, a six-dimension assessment of the current version of the ASAM patient placement criteria, disability, presenting need, functional limitation, client strengths, and desired outcomes and expectations;
- d. Prescribed medications;
- e. Relevant medical information;
- f. Reports of assessment and individual treatment planning;
- g. Signed and dated progress notes describing in measurable and behavioral terms the client's progress toward the attainment of the client's treatment plan objectives;
- h. Reports from referring sources;
- i. Reports of service referrals;
- j. Reports from outside consultants;
- k. Designation of the case manager, licensed addiction counselor, and other staff for the client;
- l. Evidence of the direct involvement of the client in the decisionmaking process related to the client's program;
- m. Reports of team conferences;
- n. Reports of family conferences;
- o. The individual plan of the client, including the overall plan and the plans for specific services and signature of the client or other documentation of the client's involvement in the plan;
- p. References to audiovisual records;
- q. Correspondence pertinent to the client;
- r. Signed and dated release forms;

- s. Transfer summary describing in measurable and behavioral terms a client's move from one level of care to another;
  - t. Discharge summary describing in measurable and behavioral terms the client's progress and attainment of treatment plan goals and criteria for discharge. When the client is transferred, the discharge summary must include a discharge plan which identifies the treatment goals not yet achieved as well as any problems that have been deferred for treatment by a subsequent provider; and
  - u. If admission, ongoing care, or discharge criteria as described by the department have not been met, the provider must document the grounds for placement, ongoing care, or discharge decisions.
6. A program shall implement a written policy that specifies timeframes for entries into the records of a client, such as clinical information, critical incidents or interactions, progress notes, and discharge summaries. A program must enter progress notes into client records according to the following schedule:
- a. Shift entries for inpatient clients;
  - b. Daily entries for clients in day treatment;
  - c. Weekly entries for intensive outpatient clients;
  - d. Weekly entries for clients in outpatient services seen once or more a week but monthly for those clients seen less than once a week;
  - e. Weekly entries for clients in clinically managed high-intensity residential care; and
  - f. Monthly for clients in clinically managed low-intensity residential care.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-23. Client rights.**

- 1. A program must assure the right of each client to:
  - a. Be treated with respect and dignity;
  - b. Be treated without discrimination based on physical or mental disability;

- c. Be treated without regard to race, creed, national origin, sex, or sexual preference;
  - d. Have all information handled confidentially in accord with applicable laws, regulations, and standards;
  - e. Receive notice of federal confidentiality requirements;
  - f. Not be subject to physical, emotional, or sexual abuse or harassment by employees or another client;
  - g. Have services for male or female clients reflecting the special needs of each gender and to be provided equivalent, clearly defined, and well-supervised sleeping quarters and bath accommodations for male and female clients;
  - h. Be provided a reasonable opportunity to practice the religion of the client's choice insofar as the practice does not interfere with the rights of other clients or the treatment program;
  - i. Have the right to be excused from any religious practice;
  - j. Have access to an established client grievance procedure; and
  - k. Be informed of client rights in a language the client understands.
2. A program shall protect the fundamental human, civil, constitutional, and statutory rights of each client.
  3. A program shall implement a written policy that describes the rights of clients and the means by which these rights are protected and exercised.
  4. As appropriate, the client, the client's family, or the client's legal guardian shall be informed of the client's status if authorized by a client who is fourteen years of age or older.
  5. A program shall evaluate for appropriateness any restrictions placed on the rights of individual clients. The program shall document in the client's clinical record the clinical rationale for such restrictions.
  6. A program shall implement a written policy stating the form and manner in which a client may file a grievance or an appeal of a program decision. The procedure must be written in language that is understandable to the client and must be provided to the client in a timely manner.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-24. Quality assurance.**

1. A program shall implement an established written system that provides for internal, professional review of the quality and appropriateness of the program of services for the client.
2. A program shall implement a written quality assurance plan and designate an employee to coordinate that plan.
3. A program shall implement a written policy that provides that peer review must occur at least quarterly and must involve a representative sampling of clients served. The review must be conducted irrespective of sources of funding for the clients and the documented results of the review must:
  - a. Produce a documented list of areas needing improvement and actions taken;
  - b. Be integrated into the individual planning, plan evaluation, and program management activities for the client;
  - c. Be administratively used, in conjunction with results of consumer satisfaction surveys, in program evaluation activities, and in organizational planning; and
  - d. Be reviewed at least annually by the program's administration.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-25. Accreditation as a basis for licensing.**

1. The department shall issue a license to a program that has a current accreditation of a nationally recognized body that reviews and certifies providers of drug and alcohol services.
2. When applying for licensure or renewal licensure, a program must submit to the department proof of accreditation or deemed status in the form of the accreditation agency's most recent review and certification.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-26. Sanctions.**

1. The department may immediately revoke a program's license upon a finding of a type II condition.

2. A program must submit to the department a plan of corrective action within thirty days of a licensure visit when a type I or type II condition has been found. A program will be allowed thirty days to submit to the department a plan of corrective action. A program will be allowed sixty days after the plan is submitted to implement the plan and satisfy a type I condition.
3. The department may conduct another onsite review prior to issuing a license after a program has developed a plan of corrective action of any condition.
4. If the program does not satisfy a condition or develop a plan to satisfy the cited condition within the timeframes allowed, the department shall impose a ninety-nine-day suspension of the program's license. At the end of the ninety-nine-day suspension, if the cited condition has been corrected, the department may issue a one-year provisional license to the program. If the program has not corrected the condition, the department shall revoke the provider's license immediately.
5. A program which has had its license revoked is prohibited from submitting a new application to the department for consideration for a license for any program during the three hundred sixty-five days following a license revocation for any type I or type II condition.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-01-27. Appeals.** An applicant for or a holder of a license may appeal a decision to deny, suspend, or revoke a license by filing a written appeal with the department within thirty days of written notice of such a decision. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**CHAPTER 75-09.1-02**  
**CLINICALLY MANAGED LOW-INTENSITY RESIDENTIAL CARE - ADULT**  
**ASAM LEVEL III.1**

Section

<u>75-09.1-02-01</u>	<u>Definitions</u>
<u>75-09.1-02-02</u>	<u>Provider Criteria</u>
<u>75-09.1-02-03</u>	<u>Program Criteria</u>
<u>75-09.1-02-04</u>	<u>Admission Criteria</u>

**75-09.1-02-01. Definitions.** For the purposes of this chapter:

1. "Clinically managed low-intensity residential care" means providing an ongoing therapeutic environment for clients requiring some structured support in which treatment is directed toward applying recovery skills, preventing relapse, improving emotional functioning, promoting personal responsibility, and reintegrating the individual into the worlds of work, education, and family life, adaptive skills that may not have been achieved or have been diminished during the client's active addiction. Such programs must offer at least five hours per week of low-intensity treatment the focus of which will be on issues in ASAM dimensions four, five, six, and three, if appropriate mental health services are available onsite or by contractual arrangement. Clinically managed low-intensity residential care is also designed for the client suffering from chronic, long-term alcoholism or drug addiction and affords an extended period of time to establish sound recovery and a solid support system. The residential component of clinically managed low-intensity residential care may be combined with low-intensity outpatient, intensive outpatient, or day treatment.
  
2. "Program" means a clinically managed low-intensity residential care program.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-02-02. Provider criteria.**

1. A program shall maintain a safe, comfortable, alcohol-free, and drug-free environment.
  
2. A program shall provide to clients or help clients gain access to full meal service that meets established nutritional guidelines.
  
3. A program shall implement written referral procedures and agreements with providers of services to enable clients to receive necessary aftercare, other therapeutic services, vocational rehabilitation,

educational instruction, literacy training, and attendance at local support groups.

4. A program shall provide staff twenty-four hours per day.
5. A program shall offer a minimum of five hours a week of professionally directed treatment in addition to other treatment services offered to clients such as partial hospitalization or intensive outpatient treatment. Professionally directed treatment must include two support or group sessions a week for clients.
6. A program shall collaborate with care providers to develop an individual treatment plan for each client with time-specific goals and objectives.
7. A program shall maintain a record of the client's progress and activities in the program.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-02-03. Program criteria.**

1. A program shall provide services designed to improve a client's ability to structure and organize the tasks of daily living and recovery.
2. A program shall provide educational and informational programming to enhance client recovery.
3. A program shall provide activities to promote a client's social skill development.
4. A program shall provide support group meetings available onsite or transportation assistance to offsite support group meetings.
5. A program shall provide transportation assistance to enable clients to use offsite rehabilitation services.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-02-04. Admission criteria.** Before a program may admit a client, the client must:

1. Meet diagnostic criteria for a substance dependence disorder of the DSM; and

2. Meet specifications in each of the six ASAM patient placement criteria dimensions. Specifically, the client must:
- a. Have no signs or symptoms of withdrawal or have withdrawal needs that can be safely managed by the program;
  - b. Not have a physical condition or complication impacting immediate safety and well-being requiring twenty-four-hour medical or nursing interventions and the client is capable of self-administering any prescribed medications;
  - c. Not have an emotional, behavioral, or cognitive condition or complication impacting immediate safety and well-being, requiring twenty-four-hour medical or nursing interventions unless in a dual diagnosis program;
  - d. Be at a stage of readiness to change in which the client requires twenty-four-hour structured milieu, acknowledges the existence of a substance use problem, is capable of self-care, and is sufficiently ready to change or is appropriately placed in a level I outpatient services or level II intensive outpatient services and is receiving clinically managed low-intensity residential care concurrently because of the need for engagement and motivational strategies or requires a twenty-four-hour structured milieu to promote treatment progress and recovery because past motivational strategies on an outpatient treatment have failed or the client is unable to make behavior changes without the support of a structured environment; or has a history of compulsive, relapse-prone chronicity or organic-related difficulties as a result of the client's abuse of alcohol or other drugs;
  - e. Be in imminent danger of relapse with dangerous emotional, behavioral, or cognitive consequences because of limited coping skills to address relapse triggers and cravings; or because the client is unable to consistently address the substance dependence disorder in spite of understanding it and is at risk in a less structured level of care or without staff support to maintain engagement while transitioning to life in the community; or because of other issues such as postponing immediate gratification and these issues are being addressed concurrently in a level II program; and
  - f. Require a twenty-four-hour supportive setting because the client is at moderately high risk of physical, sexual, or emotional abuse; or is assessed as being unable to achieve or maintain sobriety at a less intensive level of care because substance use in the client's recovery environment is so endemic; or lacks social contacts or has inappropriate social contacts that jeopardize recovery; or is unlikely to recover because of continued exposure to school, work, or living environment and insufficient resources and skills

to maintain an adequate level of functioning; or is in danger of victimization by another; and is able to cope for limited periods of time outside of the twenty-four-hour structure to pursue clinical, vocational, educational, and community activities.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**CHAPTER 75-09.1-02.1**  
**CLINICALLY MANAGED LOW-INTENSITY RESIDENTIAL CARE -**  
**ADOLESCENT ASAM LEVEL III.1**

Section

<u>75-09.1-02.1-01</u>	<u>Definition</u>
<u>75-09.1-02.1-02</u>	<u>Provider Criteria</u>
<u>75-09.1-02.1-03</u>	<u>Program Criteria</u>
<u>75-09.1-02.1-04</u>	<u>Admission Criteria</u>

**75-09.1-02.1-01. Definition.** As used in this chapter "clinically managed low-intensity residential care" means a substance abuse treatment program that provides an ongoing therapeutic environment for clients requiring some structured support in which treatment is directed toward applying recovery skills, preventing relapse, improving emotional functioning, promoting personal responsibility, and reintegrating the client into the world of work, education, and family life, adaptive skills that may not have been achieved or have been diminished during the client's active addiction. Such programs must offer at least five hours per week of low-intensity treatment, the focus of which will be on issues in ASAM dimensions four, five, and six, as well as ASAM dimension three if appropriate mental health services are available onsite or by contractual arrangement. Clinically managed low-intensity residential care is also designed for the adolescent requiring extended treatment to sustain and further therapeutic gains made at a more intensive level of care because of the client's functional deficits such as developmental immaturity, greater than average susceptibility to peer influence, or lack of impulse control. This level is also sometimes warranted as a substitute for or supplement to the deficits in the adolescent's recovery environment such as chaotic home situation, drug-using caretakers or siblings, or a lack of daily structured activities such as school. The residential component of clinically managed low-intensity residential care may be combined with low-intensity outpatient, intensive outpatient, or day treatment.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-02.1-02. Provider criteria.**

- 1. A clinically managed low-intensity residential care program shall maintain a safe, comfortable, alcohol-free, and drug-free environment.**
- 2. A clinically managed low-intensity residential care program shall provide to clients a full meal service that meets established nutritional guidelines.**
- 3. A clinically managed low-intensity residential care program shall implement written referral procedures and agreements with providers of services to enable clients to receive necessary aftercare, other therapeutic services, vocational rehabilitation and educational**

instruction such as general educational development preparation and literacy training and attendance at local support groups for clients not having completed high school.

4. A clinically managed low-intensity residential care program shall provide to an adolescent still enrolled in school onsite staff or onsite or offsite contractors for the provision of accredited educational services or short-term educational services linked to home school designed to maintain current learning.
5. A clinically managed low-intensity residential care program shall provide staff twenty-four hours per day.
6. A clinically managed low-intensity residential care program shall offer a minimum of five hours a week of professionally directed treatment in addition to other treatment services a client may receive such as partial hospitalization or intensive outpatient treatment. Professionally directed treatment must include two support or two group sessions a week.
7. A clinically managed low-intensity residential care program shall collaborate with care providers to develop an individual treatment plan for each client with time-specific goals and objectives.
8. A clinically managed low-intensity residential care program shall maintain a record of each client's progress and activities in the program.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-02.1-03. Program criteria.**

1. A clinically managed low-intensity residential care program shall provide services designed to improve a client's ability to structure and organize the tasks of daily living and recovery.
2. A clinically managed low-intensity residential care program shall provide educational and informational programming to enhance client recovery.
3. A clinically managed low-intensity residential care program shall provide family and caregiver treatment.
4. A clinically managed low-intensity residential care program shall provide activities to promote a client's social skill development.
5. A clinically managed low-intensity residential care program shall provide to clients support group meetings available onsite or transportation assistance to offsite support group meetings.

6. A clinically managed low-intensity residential care program shall provide transportation assistance to clients so that they may use offsite rehabilitation services.

History: Effective October 26, 2004.

General Authority: NDCC 50-06-16, 50-31

Law Implemented: NDCC 50-31

75-09.1-02.1-04. Admission criteria. Before a clinically managed low-intensity residential care program may admit a client, the client must:

1. Meet diagnostic criteria for a substance-related disorder of the DSM; and
2. Meet specifications in each of the six ASAM dimensions. Specifically, the client:
  - a. Must not be in need of detoxification from alcohol or drugs nor have any signs or symptoms of withdrawal that cannot be safely managed by the program;
  - b. Must not have a physical condition or complication impacting immediate safety or well-being requiring twenty-four-hour medical or nursing interventions and be capable of self-administering any prescribed medications but has a biomedical condition that distracts from recovery efforts and requires limited residential supervision to ensure adequate treatment or to provide support to overcome the distraction; or continued substance use would place the adolescent at risk of serious damage to the client's health because of the biomedical condition or an imminently dangerous pattern of high-risk use;
  - c. Must not have an emotional, behavioral, or cognitive condition or complication that impacts immediate safety or well-being requiring twenty-four-hour medical or nursing interventions unless in a dual diagnosis program but does have problems in the areas of dangerousness or lethality to self or others; interference with addiction recovery efforts; social functioning; ability for self-care; or course of illness;
  - d. Must be at a stage of readiness to change in which the client requires limited twenty-four-hour supervision to promote or sustain progress through the stages of change and is cooperative and likely to engage in treatment at this level of care;
  - e. Is in danger of relapse because of a lack of monitoring or is in danger of relapse because supervision between treatment encounters at a less intensive level of care has been a major barrier to abstinence; recovery skills are not yet sufficient to

overcome environmental triggers such as peer pressure; or a history of chronic substance use, repeated relapse, or resistance to treatment predicts continued use or relapse without residential containment;

- f. Has been living in an environment in which there is a high risk of neglect or initiation or repetition of physical, sexual, or severe emotional abuse; has a family member or other household member with an active substance use disorder; substance use is endemic in the home environment; has a social network that is too chaotic or ineffective to support or sustain treatment goals; or has logistical impediments such as distance from a treatment facility or lack of transportation that precludes participation at a less intensive level of care; and
  
- g. Is able to cope for limited periods of time outside of the residential structure to pursue clinical, vocational, educational, and community activities.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**CHAPTER 75-09.1-03**  
**CLINICALLY MANAGED HIGH-INTENSITY RESIDENTIAL CARE - ADULT**  
**ASAM LEVEL III.5**

Section

<u>75-09.1-03-01</u>	<u>Definitions</u>
<u>75-09.1-03-02</u>	<u>Provider Criteria</u>
<u>75-09.1-03-03</u>	<u>Program Criteria</u>
<u>75-09.1-03-04</u>	<u>Admission Criteria</u>

**75-09.1-03-01. Definitions. As used in this chapter:**

1. "Clinically managed high-intensity residential services" means a therapeutic community or residential treatment center that offers continuous observation, monitoring, and treatment by allied professional staff designed to treat clients who are not sufficiently stable to benefit from outpatient treatment no matter how intensive and who have significant psychological and social problems. A clinically managed high-intensity residential services program does not treat clients that exhibit acute intoxication or withdrawal problems also known as ASAM dimension one; biomedical conditions and complications also known as ASAM dimension two; or emotional, behavioral or cognitive problems also known as ASAM dimension three unless in a dual diagnosis program also known as ASAM level III.5 which requires the availability of twenty-four-hour medical or nursing interventions.
2. "Therapeutic community" means a treatment program characterized by reliance on the treatment community as a therapeutic change agent in which the goals of treatment are abstinence from substance use and antisocial behavior and affecting a global change in a client's lifestyles, attitudes, and values. The defining characteristics of such a client are found in emotional, behavioral, and cognitive conditions also known as ASAM dimension three and in the recovery environment also known as ASAM dimension six. For some clients, treatment must be considered habilitative rather than rehabilitative which addresses a client's educational and vocational deficits as well as socially dysfunctional behavior.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-03-02. Provider criteria. A clinically managed high-intensity residential care program shall include:**

1. Onsite, twenty-four hour per day clinical staffing by licensed counselors, other clinicians, and other allied health professionals such as counselor aides;

2. Specialized professional consultation; and
3. A residential program offered no less than seven days per week with the length of stay to be determined by the client's condition and functioning.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-03-03. Program criteria.** A clinically managed high-intensity residential care program shall include:

1. Daily clinical services which include a range of cognitive, behavioral, and other therapies in individual or group therapy and psychoeducation as deemed appropriate by an assessment and treatment plan;
2. Motivational enhancement and engagement strategies appropriate to the client's stage of readiness to change;
3. Counseling and clinical interventions to teach a client the skills needed for daily productive activity, prosocial behavior, and reintegration into family or community;
4. Random client drug screening to shape behavior and reinforce treatment gains as appropriate to the client's individual treatment plan;
5. A system for referral of a client for identified treatment needs if the service is not available in the program;
6. Family treatment services as deemed appropriate by an assessment and treatment plan; and
7. Educational, vocational, and informational programming adapted to individual client needs.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-03-04. Admission criteria.** Before a clinically managed high-intensity residential care program may admit a client, the client shall:

1. Meet diagnostic criteria for a substance dependence disorder of the DSM; and
2. Meet admission criteria for clinically managed high-intensity residential services also known as ASAM level III.5 in each of the six ASAM dimensions. Specifically, the client must:

- a. Not be in need of detoxification from alcohol or drugs or have no signs or symptoms of withdrawal or withdrawal needs can be safely managed by the program;
- b. Not have a physical condition or complication impacting immediate safety and well-being or requiring twenty-four-hour medical or nursing interventions and be capable of self-administering any prescribed medications;
- c. Not have an emotional, behavioral, or cognitive condition or complication impacting immediate safety and well-being or requiring twenty-four-hour medical or nursing interventions unless the client is in a dual diagnosis program but may require a residential program because of sufficiently severe functional deficits to maintain abstinence or mental stability or both;
- d. Have a low readiness to change as evidenced by a lack of awareness of the need for treatment characterized by active or passive resistance to treatment; marked difficulty understanding the relationship between the substance use and life problems; require a structured therapy and a twenty-four-hour programmatic milieu to promote treatment progress and recovery; or require repeated, structured motivational interventions delivered in a twenty-four-hour milieu;
- e. Have a higher readiness to change but issues in other dimensions impair the client's ability to translate this into treatment progress and recovery;
- f. Have a high relapse, continued use, or continued problem potential as evidenced by the lack of recognition of relapse triggers or the lack of commitment to continuing care or both; the inability to control use of alcohol or other drugs or antisocial behavior with the attendant probability of harm to self or others; symptoms such as drug craving, difficulty postponing immediate gratification and other drug-seeking behaviors; or imminent danger of relapse with dangerous emotional, behavioral, or cognitive consequences because of a crisis situation; and
- g. Have a problematic recovery environment that makes recovery goals assessed as unachievable at a less intensive level of care as evidenced by a moderately high risk of physical, sexual, or emotional abuse; substance use so endemic that the client is assessed as unable to achieve or maintain recovery; a social network of regular users of alcohol or other drugs; a social network characterized by significant withdrawal and social isolation; living with an individual who is a regular user, abuser, or dealer of alcohol and other drugs; the inability to cope for even limited periods of time outside of twenty-four-hour care; a living

environment characterized by criminal behavior, victimization, and other antisocial norms and values; or the need for staff monitoring before safe transfer of the client to a less intensive setting.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**CHAPTER 75-09.1-03.1**  
**CLINICALLY MANAGED MEDIUM-INTENSITY RESIDENTIAL CARE -**  
**ADOLESCENT ASAM LEVEL III.5**

Section

<u>75-09.1-03.1-01</u>	<u>Definition</u>
<u>75-09.1-03.1-02</u>	<u>Provider Criteria</u>
<u>75-09.1-03.1-03</u>	<u>Program Criteria</u>
<u>75-09.1-03.1-04</u>	<u>Admission Criteria</u>

**75-09.1-03.1-01. Definition.** As used in this chapter, "clinically managed medium-intensity residential care" means a substance abuse treatment program that offers continuous observation, monitoring, and treatment by allied professional staff of individuals with significant psychological and social problems who are not sufficiently stable to benefit from outpatient treatment no matter how intensive. Such programs include therapeutic group homes, therapeutic communities, psychosocial model rehabilitation centers, or extended residential rehabilitation programs. A clinically managed medium-intensity residential care program should not treat a client who exhibits acute intoxication or withdrawal problems also known as ASAM dimension one; biomedical conditions and complications also known as ASAM dimension two; or emotional, behavioral, or cognitive problems also known as ASAM dimension three unless in a dual diagnosis program also known as level III.5 that requires the availability of twenty-four-hour medical or nursing interventions. Clinically managed medium-intensity residential care programs must provide relatively extended, subacute treatments that aim to effect fundamental personal change for the adolescent who has significant social and psychological problems and the goals and modalities of treatment focus not only on the adolescent's substance use but also a holistic view that takes into account the client's behavior, emotions, attitudes, values, learning, family, culture, lifestyle, and overall health. A clinically managed medium-intensity residential care program is particularly suitable for treatment of entrenched patterns of maladaptive behavior, extremes of temperament, and development or cognitive abnormalities related to mental health symptoms or disorders.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-03.1-02. Provider criteria.** A clinically managed medium-intensity residential care program shall:

1. Offer onsite twenty-four-hour-a-day clinical staffing by licensed counselors, other clinicians, and other allied health professionals such as counselor aides;
2. Make available specialized professional consultation; and

3. Offer the residential program no less than seven days per week with the length of stay to be determined by a client's condition and functioning.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-03.1-03. Program criteria.** A clinically managed medium-intensity residential care program shall include:

1. Daily clinical services including a range of cognitive, behavioral, and other therapies in individual or group therapy and psychoeducation as deemed appropriate by an assessment and treatment plan;
2. Motivational enhancement and engagement strategies appropriate to a client's stage of readiness to change;
3. Counseling and clinical interventions to teach a client the skills needed for daily productive activity, prosocial behavior, and reintegration into family and community;
4. Random client drug screening to shape behavior and reinforcement treatment gains as appropriate to a client's individual treatment plan;
5. A system for referral of a client for identified treatment needs if the service is not available in the program;
6. Family and caregiver treatment services as deemed appropriate by an assessment and treatment plan;
7. Educational, vocational, and informational programming adaptive to individual client needs; and
8. Onsite staff provided or contracted onsite or offsite accredited educational services if a client is in school; general educational development preparation if the client does not possess a high school diploma and is no longer in school; or short-term educational services linked to home school designed to maintain current learning.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-03.1-04. Admission criteria.** Before a clinically managed medium-intensity residential care program may admit a client, the client must:

1. Meet diagnostic criteria for a substance-related disorder of the DSM; and

2. Meet admission criteria for clinically managed medium-intensity residential services also known as ASAM level III.5 in each of the six ASAM dimensions. Specifically, the client:
- a. Is at risk of or is experiencing subacute intoxication or withdrawal with mild to moderate symptoms and needs containment and increased treatment intensity without frequent access to medical or nursing services to support engagement in treatment, ability to tolerate withdrawal, and prevention of immediate continued use;
  - b. Does not have a physical condition or complication impacting immediate safety and well-being, requiring twenty-four-hour medical or nursing interventions but biomedical conditions distract from recovery efforts and require residential supervision or continued substance use would place a the client at risk for serious damage to physical health because of a co-occurring biomedical condition and the resident is capable of self-administering any prescribed medications;
  - c. Does not have an emotional, behavioral, or cognitive condition or complication impacting immediate safety or well-being requiring twenty-four-hour medical or nursing interventions unless in a dual diagnosis program but does have problems in the areas of dangerousness or lethality; interference with addiction recovery efforts; social functioning; ability for self-care; or course of illness;
  - d. Has a low readiness to change as evidenced by a lack of awareness of the need for treatment characterized by active or passive resistance to treatment; marked difficulty understanding the relationship between the substance use and life problems; the client requires a structured therapy and a twenty-four-hour programmatic milieu to promote treatment progress and recovery; or the client requires repeated, structured motivational interventions delivered in a twenty-four-hour milieu;
  - e. Has a readiness to change but issues in other dimensions impair the ability to translate this into treatment progress and recovery;
  - f. Has a high relapse, continued use, or continued problem potential as evidenced by the lack of recognition of relapse triggers or the lack of commitment to continuing care; the inability to control use of alcohol or other drugs or antisocial behavior with the attendant probability of harm to self or others; symptoms such as drug craving; difficulty postponing immediate gratification and other drug-seeking behaviors; or imminent danger of relapse with dangerous emotional, behavioral, or cognitive consequences because of a crisis situation; or

- g. Has a chaotic home environment that makes recovery goals assessed as unachievable at a less-intensive level of care as evidenced by a moderately high risk of physical, sexual, or emotional abuse; substance use so endemic that the client is assessed as unable to achieve or maintain recovery; a social network of regular users of alcohol or other drugs; living with a family or other household member who is a regular user, abuser, or dealer of alcohol or other drugs; neglect or lack of supervision; the inability to cope, even for limited periods of time, outside of twenty-four-hour care; a living environment characterized by criminal behavior, victimization, and other antisocial norms and values; or the need for staff monitoring before safe transfer to a less-intensive setting.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**CHAPTER 75-09.1-04**  
**MEDICALLY MONITORED INTENSIVE INPATIENT TREATMENT -**  
**ADULT ASAM LEVEL III.7**

Section

<u>75-09.1-04-01</u>	<u>Definition</u>
<u>75-09.1-04-02</u>	<u>Provider Criteria</u>
<u>75-09.1-04-03</u>	<u>Program Criteria</u>
<u>75-09.1-04-04</u>	<u>Admission Criteria</u>

**75-09.1-04-01. Definition.** As used in this chapter, "medically monitored intensive inpatient treatment" means a substance abuse treatment program that provides a planned regimen of twenty-four-hour professionally directed evaluation, observation, medical monitoring, and addiction treatment in an inpatient setting. This program is appropriate for a client whose subacute detoxification, withdrawal, biomedical, and emotional, behavioral, or cognitive problems are so severe that they require inpatient treatment but who does not need the full resources of an acute care general hospital or a medically managed inpatient treatment program.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-04-02. Provider criteria.** A medically monitored intensive inpatient treatment program shall:

1. Offer twenty-four-hour skilled nursing care, daily onsite counseling services, and a physician's services twenty-four hours per day seven days per week;
2. Make available specialized professional consultation; and
3. Offer the inpatient treatment program for seven days per week with the length of stay to be determined by a client's condition and functioning.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-04-03. Program criteria.** A medically monitored intensive inpatient treatment program shall provide:

1. A combination of individual and group therapy as deemed appropriate by an assessment and treatment plan;
2. Medical and nursing services available onsite to provide ongoing assessment and care of acute detoxification needs, medical, and psychiatric problems;

3. A system for referral of clients for identified treatment needs if the service is not available in the program;
4. Family treatment services as deemed appropriate by an assessment and treatment plan; and
5. Educational and informational programming adapted to individual client needs.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-04-04. Admission criteria.** Before a medically monitored intensive inpatient program may admit a client, the client shall:

1. Meet diagnostic criteria for a substance dependence disorder of the DSM; and
2. Meet specifications in at least two of the six ASAM dimensions, at least one of which is in dimension one, two, or three as in the following criteria:
  - a. The client is experiencing signs and symptoms of acute withdrawal or there is evidence that a severe withdrawal syndrome is imminent or there is a strong likelihood that the client who requires medication will not complete detoxification at another level of care and enter continued treatment or self-help recovery;
  - b. The client has a physical condition or complication impacting immediate safety or well-being;
  - c. The client has a psychiatric condition or complication impacting immediate safety or well-being;
  - d. The client exhibits severe impairment in significant life areas such as legal, family, or work;
  - e. The client exhibits significant loss of control and relapse symptoms;  
or
  - f. The client has had multiple attempts at treatment programs of lower intensity with an inability to stay sober.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**CHAPTER 75-09.1-04.1**  
**MEDICALLY MONITORED HIGH-INTENSITY INPATIENT TREATMENT -**  
**ADOLESCENT ASAM LEVEL III.7**

Section

<u>75-09.1-04.1-01</u>	<u>Definition</u>
<u>75-09.1-04.1-02</u>	<u>Provider Criteria</u>
<u>75-09.1-04.1-03</u>	<u>Program Criteria</u>
<u>75-09.1-04.1-04</u>	<u>Admission Criteria</u>

**75-09.1-04.1-01. Definition.** As used in this chapter, "medically monitored intensive inpatient treatment program" means a substance abuse treatment program that provides a planned regimen of twenty-four-hour professionally directed evaluation, observation, medical monitoring, and addiction treatment in an inpatient setting. This program is appropriate for clients whose subacute detoxification, withdrawal, biomedical, and emotional, behavioral, or cognitive problems are so severe that they require inpatient treatment but who do not need the full resources of an acute care general hospital or a medically managed inpatient treatment program.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-04.1-02. Provider criteria.** A medically monitored intensive inpatient treatment program shall:

1. Offer twenty-four-hour skilled nursing care, daily onsite counseling services, and the services of a physician twenty-four hours per day seven days per week;
2. Make specialized professional consultation available;
3. Offer the inpatient treatment program for seven days per week with the length of stay to be determined by a client's condition and functioning.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-04.1-03. Program criteria.** A medically monitored intensive inpatient treatment program shall provide:

1. A combination of individual and group therapy as deemed appropriate by an assessment and treatment plan;
2. Medical and nursing services available onsite to provide ongoing assessment and care of acute detoxification needs, medical, and psychiatric problems;

3. A system for referral of clients for identified treatment needs if such services are not available in the program;
4. Family treatment services as deemed appropriate by an assessment and treatment plan;
5. Educational and informational programming adaptive to individual client needs; and
6. Onsite staff provided or contracted accredited educational services if a client is still in school; general educational development preparation if the client does not possess a high school diploma and is no longer in school; or short-term educational services linked to home school designed to maintain current learning.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-04.1-04. Admission criteria.** Before a medically monitored intensive inpatient program may admit a client, the client must:

1. Meet diagnostic criteria for a substance-related disorder of the DSM; and
2. Meet specifications in at least two of the six ASAM dimensions, at least one of which is in dimension one, two, or three as in the following criteria:
  - a. The client is experiencing or at risk of acute or subacute intoxication or withdrawal with moderate to severe signs and symptoms or there is a strong likelihood that the client who requires medication will not complete detoxification at another level of care and enter continued treatment or self-help recovery;
  - b. A biomedical complication of addiction or co-occurring medical condition requires active nursing and medical monitoring which does not require the resources of an acute care hospital or continued substance use would place the client at risk for serious damage to physical health because of a co-occurring biomedical condition;
  - c. The client has problems in one of the following areas requiring twenty-four-hour supervision and a high-intensity therapeutic milieu with access to nursing and medical monitoring and treatment; dangerousness or lethality; interference with addiction recovery efforts; social functioning; ability for self-care; or course of illness;
  - d. The client exhibits severe impairment in significant life areas such as legal, family, school, or work;

- e. The client exhibits significant loss of control and relapse symptoms;  
or
- f. The client has had multiple attempts at treatment programs of lower intensity with an inability to stay sober.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**CHAPTER 75-09.1-05**  
**PARTIAL HOSPITALIZATION - DAY TREATMENT - ADULT ASAM LEVEL II.5**

<u>Section</u>	
<u>75-09.1-05-01</u>	<u>Definition</u>
<u>75-09.1-05-02</u>	<u>Provider Criteria</u>
<u>75-09.1-05-03</u>	<u>Program Criteria</u>
<u>75-09.1-05-04</u>	<u>Admission Criteria</u>

**75-09.1-05-01. Definition.** As used in this chapter, "partial hospitalization" means a substance abuse treatment program that uses multidisciplinary staff and is provided for clients who require a more intensive treatment experience than intensive outpatient treatment but who do not require residential treatment with the exception of ASAM level III.1. This level of care is designed to offer highly structured intensive treatment to those clients whose condition is sufficiently stable so as not to require twenty-four-hour per day monitoring and care, but whose illness has progressed so as to require consistent near-daily treatment intervention. Partial hospitalization may also be referred to as day treatment.

**History:** Effective October 26, 2004.  
**General Authority:** NDCC 50-06-16, 50-31  
**Law Implemented:** NDCC 50-31

**75-09.1-05-02. Provider criteria.**

1. A partial hospitalization program shall offer no less than twenty hours of programming per week in a structured program.
2. A partial hospitalization program shall offer the program no less than four days per week with the length of stay to be determined by a client's condition and functioning.
3. A partial hospitalization program shall make clients aware of emergency services that are available twenty-four hours per day seven days per week when the program is not in session.

**History:** Effective October 26, 2004.  
**General Authority:** NDCC 50-06-16, 50-31  
**Law Implemented:** NDCC 50-31

**75-09.1-05-03. Program criteria.** A partial hospitalization program shall offer a client:

1. A combination of individual and group therapy as deemed appropriate by an assessment and treatment plan;
2. Medical and nursing services as deemed appropriate by an assessment and treatment plan;

3. A system for referral for needs identified but not available in the program;
4. Family treatment services as deemed appropriate by an assessment and treatment plan; and
5. Educational and informational programming adaptable to individual client needs.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-05-04. Admission criteria.** Before a partial hospitalization program may admit a client, the client must:

1. Meet diagnostic criteria for a substance-related disorder of the DSM;
2. Be at low risk for withdrawal symptoms or have minimal remaining withdrawal symptoms;
3. Be physically stable but may have a medical condition that is severe enough to distract from recovery efforts or would be aggravated by continued use of alcohol or drugs or be psychologically stable enough not to require twenty-four-hour observation and care but may have a psychiatric condition that would be aggravated by continued use of alcohol or drugs; and
4. The client meets at least two of the following:
  - a. The client requires repeated, structured, clinically directed motivational enhancement strategies not available at a less-intensive level of care;
  - b. The client has made previous attempts at a treatment program of lower intensity with an inability to remain sober or has been an active participant at a less-intensive level of care but is experiencing an intensification of symptoms of the substance-related disorders and the client's functioning is deteriorating despite modifications of the treatment plan or there is a high likelihood that the client will continue to use or relapse without close outpatient monitoring and structured therapeutic services;
  - c. The client has minimal support for sustaining beginning recovery in the client's home or customary environment;

- d. The client has experienced significant impairment in life areas that require a high level of intensity best accomplished as close to the client's home community as is feasible; or
- e. The client has experienced significant life traumas or stresses that require therapeutic interventions as an adjunct to addiction treatment to assure continuing recovery.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**CHAPTER 75-09.1-05.1**  
**PARTIAL HOSPITALIZATION - DAY TREATMENT -**  
**ADOLESCENT ASAM LEVEL II.5**

Section

<u>75-09.1-05.1-01</u>	<u>Definition</u>
<u>75-09.1-05.1-02</u>	<u>Provider Criteria</u>
<u>75-09.1-05.1-03</u>	<u>Program Criteria</u>
<u>75-09.1-05.1-04</u>	<u>Admission Criteria</u>

**75-09.1-05.1-01. Definition.** As used in this chapter, "partial hospitalization program" means a substance abuse treatment program that uses multidisciplinary staff and is provided for clients who require a more intensive treatment experience than intensive outpatient treatment but who do not require inpatient care or residential treatment with the exception of clients at ASAM level III.1. This level of care is designed to offer highly structured intensive treatment to a client whose condition is sufficiently stable so as not to require twenty-four hour per day monitoring and care, but whose illness has progressed so as to require consistent near-daily treatment intervention. Partial hospitalization may also be referred to as day treatment.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-05.1-02. Provider criteria.**

1. A partial hospitalization program shall offer no less than twenty hours of programming per week in a structured program.
2. A partial hospitalization program shall offer the program no less than four days per week with the length of stay to be determined by a client's condition and functioning.
3. A partial hospitalization program shall make clients aware of emergency services that are available twenty-four hours a day seven days a week when the program is not in session.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-05.1-03. Program criteria.** A partial hospitalization program shall offer a client:

1. A combination of individual and group therapy as deemed appropriate by an assessment and treatment plan;

2. Medical and nursing services as deemed appropriate by an assessment and treatment plan;
3. A system for referral for needs identified but not available in the program;
4. Family treatment services as deemed appropriate by an assessment and treatment plan;
5. Educational and informational programming adaptable to individual client needs; and
6. Onsite staff provided or contracted accredited educational services for clients still in school or short-term educational services linked to home school designed to maintain current learning.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-05.1-04. Admission criteria.** Before a partial hospitalization program may admit a client, the client must:

1. Meet diagnostic criteria for a substance-related disorder of the DSM;
2. Be at low risk for withdrawal symptoms or have minimal remaining withdrawal symptoms;
3. Be physically stable but may have a medical condition that is severe enough to distract from recovery efforts or would be aggravated by continued use of alcohol or drugs or the client is psychologically stable enough not to require a twenty-four-hour observation and care but does have problems in the areas of dangerousness or lethality; interference with addiction recovery efforts; social functioning; ability for self-care or course of illness; and
4. The client meets at least two of the following:
  - a. The client requires repeated, structured, clinically directed motivational enhancement strategies not available at a less-intensive level of care;
  - b. The client made previous attempts at a treatment program of lower intensity with an inability to remain sober or has been an active participant at a less-intensive level of care but is experiencing an intensification of symptoms of the substance-related disorders and the client's functioning is deteriorating despite modifications of the treatment plan or there is a high likelihood that the client will

continue to use or relapse without close outpatient monitoring and structured therapeutic services;

- c. The client minimal support for sustaining beginning recovery in the client's home or customary environment;
- d. The client has experienced significant impairment in life areas that require a high level of intensity best accomplished as close to the client's home community as is feasible; or
- e. The client has experienced significant life traumas or stresses that require therapeutic interventions as an adjunct to addiction treatment to assure continuing recovery.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-05-16, 50-31

**Law Implemented:** NDCC 50-31

**CHAPTER 75-09.1-06**  
**INTENSIVE OUTPATIENT TREATMENT - ADULT ASAM LEVEL II.1**

<u>Section</u>	
<u>75-09.1-06-01</u>	<u>Definition</u>
<u>75-09.1-06-02</u>	<u>Provider Criteria</u>
<u>75-09.1-06-03</u>	<u>Program Criteria</u>
<u>75-09.1-06-04</u>	<u>Admission Criteria</u>

**75-09.1-06-01. Definition.** As used in this chapter, "intensive outpatient treatment" means treatment provided to clients requiring a primary, organized treatment program and who are able to establish abstinence and recovery within the context of the client's usual environment and daily activities. This level of care will normally be offered in the evening hours to facilitate a client's ability to maintain the usual daily activity but may be offered during the day.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-06-02. Provider criteria.**

1. An intensive outpatient treatment program shall offer no less than eight hours and no more than nineteen hours of programming per week in a structured environment.
2. An intensive outpatient treatment program shall offer the program with the length of stay to be determined by a client's condition and functioning.
3. An intensive outpatient treatment program shall make clients aware of emergency services that are available twenty-four hours per day seven days per week when the program is not in session.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-06-03. Program criteria.** An intensive outpatient program shall provide:

1. A combination of individual and group therapy as deemed appropriate by an assessment and treatment plan;
2. Medical and nursing services as deemed appropriate by an assessment and treatment plan;
3. A system for consultation or referral for identified treatment needs if such services are not available in the program and which includes

close coordination of such services by the program and an effort by the program to arrange needed medical or psychiatric services by telephone within twenty-four hours of when the need was identified and in-person services within a timeframe appropriate to the severity and issue;

4. Family treatment services as deemed appropriate by an assessment and treatment plan; and
5. Educational and informational programming adaptable to individual client needs and developmental status.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-06-04. Admission criteria.** Before an intensive outpatient treatment program may admit a client, the client must:

1. Meet diagnostic criteria for a substance-related disorder of the current DSM; and
2. Meet admission criteria for ASAM level II.1 outpatient treatment in all six ASAM dimensions and at least two of the following:
  - a. The client has few or no symptoms of withdrawal and presents only stable physical or psychiatric conditions;
  - b. The client expresses willingness even through coercion to attend all scheduled events; or
  - c. The client has an environment supportive of recovery efforts or is able to be supplied with alternative supportive housing.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**CHAPTER 75-09.1-06.1**  
**INTENSIVE OUTPATIENT TREATMENT - ADOLESCENT ASAM LEVEL II.1**

Section

<u>75-09.1-06.1-01</u>	<u>Definitions</u>
<u>75-09.1-06.1-02</u>	<u>Provider Criteria</u>
<u>75-09.1-06.1-03</u>	<u>Program Criteria</u>
<u>75-09.1-06.1-04</u>	<u>Admission Criteria</u>

**75-09.1-06.1-01. Definitions.** As used in this chapter:

1. "After school program" means an intensive outpatient program offered after school hours to facilitate a client's schedule.
2. "Intensive outpatient treatment" means treatment provided to adolescent clients requiring a primary, organized treatment program and who are able to establish abstinence and recovery within the context of the client's usual environment and daily activities. This level of care will normally be offered in the evening hours to facilitate a client's ability to maintain the usual daily activity but may be offered during the day.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-06.1-02. Provider criteria.**

1. An intensive outpatient treatment program shall offer no less than six hours per week in a structured program.
2. An intensive outpatient treatment program shall offer the program with the length of stay to be determined by a client's condition and functioning.
3. An intensive outpatient treatment program shall make clients aware of emergency services that are available twenty-four hours a day seven days a week when the program is not in session.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-06.1-03. Program criteria.** An intensive outpatient program shall provide:

1. A combination of individual and group therapy as deemed appropriate by an assessment and treatment plan;

2. Medical and nursing services as deemed appropriate by an assessment and treatment plan;
3. A system for consultation or referral for identified treatment needs if such services are not available in the program and which includes close coordination of such services by the program and an effort by the program to arrange needed medical or psychiatric services by telephone within twenty-four hours of when the need was identified and in-person services within a timeframe appropriate to the severity and issue;
4. Family treatment services as deemed appropriate by an assessment and treatment plan;
5. Educational and informational programming adaptable to individual client needs and developmental status; and
6. If treatment hours conflict with school hours, an intensive outpatient program shall arrange onsite homework assistance coordinated with the client's home school.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-06.1-04. Admission criteria.** Before an intensive outpatient treatment program may admit a client, the client shall:

1. Meet diagnostic criteria for a substance-related disorder of the current DSM; and
2. Meet admission criteria for ASAM level II.1 outpatient in all six ASAM dimensions and at least two of the following:
  - a. The client has few or no symptoms of withdrawal and presents only stable physical or psychiatric conditions;
  - b. The client expresses willingness even through coercion to attend all scheduled events; or
  - c. The client has an environment supportive of recovery efforts or is supplied with recommendations for alternative supportive housing by the intensive outpatient treatment program.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**CHAPTER 75-09.1-07**  
**OUTPATIENT SERVICES - ADULT ASAM LEVEL I**

<u>Section</u>	
<u>75-09.1-07-01</u>	<u>Definitions</u>
<u>75-09.1-07-02</u>	<u>Provider Criteria</u>
<u>75-09.1-07-03</u>	<u>Program Criteria</u>
<u>75-09.1-07-04</u>	<u>Admission Criteria</u>

**75-09.1-07-01. Definitions. As used in this chapter:**

1. "Assertive referral" means the identification of appropriate services and actively assisting the client to connect with the service provider and follow through with the plan of service.
2. "Chronic" means diagnosed chemical dependency or severe and persistent mental illness as described in the DSM and characterized by long duration and progression of symptoms, frequent recurrence or relapse, and a prognosis that indicates continuous clinical care or support or both to maintain stability and remission or reduction of symptoms.
3. "Chronic care and maintenance services" means outpatient services necessary and appropriate to assist a client who is chronically chemically dependent or chronically mentally ill or both to maintain stability and live in the community as independently as possible. Such services include professionally directed case management, psychiatric care, support services, monitored medication administration, professional addiction counseling, mental health counseling, mental health and chemical dependency assessment, social services, supported housing, and other services sufficient to allow a client to live outside an institutional setting. This service may be provided as a component of services within a residential or transitional living setting or other such facility but would not require formal attachment to that facility.
4. "Intentional community treatment and support" means proactively identifying client needs and deficits and seeking to identify and put in place services or resources to address those needs and deficits through assertive referral, active implementation, and continuous monitoring by treatment personnel.
5. "Outpatient services" means an organized nonresidential service or an office practice that provides professionally directed aftercare, individual,

and other addiction services to clients according to a predetermined regular schedule of fewer than nine contact hours a week.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-07-02. Provider criteria.**

1. An outpatient services program shall offer no more than eight hours of programming per week.
2. An outpatient services program shall offer the program with the length of stay to be determined by a client's condition and functioning.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-07-03. Program criteria.**

1. An outpatient services program shall provide skilled treatment services that may include any combination of the following:
  - a. Individual or group counseling, motivational enhancement, brief intervention, cognitive-behavioral therapy, opioid substitution therapy, family therapy, educational groups, occupational and recreational therapy, or other psychotherapy; or
  - b. Case coordination, case management, chronic care and maintenance services, intentional community treatment support, or assertive community treatment.
2. An outpatient services program must provide services in an amount, frequency, and intensity appropriate to a client's treatment plan.
3. An outpatient services program must address as the need arises with a client with a mental health problem issues of psychotropic medication, mental health treatment, and their relationship to substance use disorders.
4. An outpatient services program with a dual diagnosis enhanced program shall offer therapies to actively address, monitor, and manage psychotropic medication, mental health treatment, and the interaction with substance-related disorders.
5. Counseling or assessment of a client regarding the client's abuse of alcohol or a controlled substance must be provided by a licensed addiction counselor as provided in North Dakota Century Code chapter

43-45. The provision of case management and educational services do not need to be performed by licensed addiction counselors. A licensed addiction counselor must be present in all team meetings where level of care and treatment planning decisions are made regarding a client receiving or referred for substance abuse services.

6. For chronic care and maintenance services, an outpatient services program shall offer services that are comprehensive and have an indefinite and variable programming or provision schedule determined by the client's stability, level of functioning, and assessed needs for ongoing community support and maintenance services.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-07-04. Admission criteria.** For admission to outpatient services, the client shall meet the criteria set forth in subsections one and two and at least one of the remaining criteria:

1. Meet diagnostic criteria for substance-induced disorders of the DSM; and
2. Meet admission criteria for ASAM level I outpatient services in all six ASAM dimensions and meet at least one of the following:
  - a. Demonstrates the need to take extended time for evaluation or lacks motivation to make a commitment to a more intensive recovery effort and requires motivational enhancement strategies;
  - b. Has completed a higher intensity level of care but requires continued services until recovery stabilizes;
  - c. Has evidence of a brief return to usage not resulting in significant physical or emotional deterioration;
  - d. Requires outpatient counseling of an intensity that will meet the client's needs without placement in a higher level of care;
  - e. Has not been through a prior treatment and exhibits motivation for recovery and meets ASAM criteria for level I in dimensions one, two, three, five, and six or the client has low severity of problems in ASAM dimensions one, two, three, five, and six;
  - f. Has a low severity of problems in ASAM dimensions one, two, three, five, and six but is not motivated and requires motivation enhancement strategies best delivered in a level I program; or

- g. Has a severe and persistent mental illness that impairs the client's ability to consistently follow through with mental health appointments, take prescribed psychotropic medications, and maintain mental and personal stability in the community but does have the ability to access services such as assertive community treatment and case management or supportive living.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-05-16, 50-31

**Law Implemented:** NDCC 50-31

**CHAPTER 75-09.1-07.1**  
**OUTPATIENT SERVICES - ADOLESCENT ASAM LEVEL I**

<u>Section</u>	
<u>75-09.1-07.1-01</u>	<u>Definitions</u>
<u>75-09.1-07.1-02</u>	<u>Provider Criteria</u>
<u>75-09.1-07.1-03</u>	<u>Program Criteria</u>
<u>75-09.1-07.1-04</u>	<u>Admission Criteria</u>

**75-09.1-07.1-01. Definitions. As used in this chapter:**

1. "Assertive community treatment" means an effective, evidence-based, outreach-oriented, service delivery model that provides comprehensive community substance abuse treatment, rehabilitation, and support services to clients in their home, work, school, or community setting.
2. "Outpatient services" means an organized nonresidential service or an office practice that provides professionally directed aftercare, individual, and other addiction treatment services to clients according to a predetermined regular schedule of fewer than nine contact hours a week.

**History:** Effective October 26, 2004.  
**General Authority:** NDCC 50-06-16, 50-31  
**Law Implemented:** NDCC 50-31

**75-09.1-07.1-02. Provider criteria.**

1. An outpatient services program shall offer no more than five hours of programming per week.
2. An outpatient service program shall offer the program with the length of stay to be determined by a client's condition and functioning.

**History:** Effective October 26, 2004.  
**General Authority:** NDCC 50-06-16, 50-31  
**Law Implemented:** NDCC 50-31

**75-09.1-07.1-03. Program criteria. An outpatient services program shall provide skilled treatment services that may include any combination of the following:**

1. Individual or group counseling or both, motivational enhancement, brief intervention, cognitive-behavioral therapy, opioid substitution therapy, family therapy, educational groups, occupational and recreational therapy, or other psychotherapy;
2. Case coordination, case management, or assertive community treatment;

3. Services that are provided in an amount, frequency, and intensity appropriate to a client's treatment plan;
4. Issues of psychotropic medication and mental health treatment and their relationship to substance use disorders are addressed as the need arises for patients with mental health problems;
5. Dual diagnosis enhanced programs offer therapies to actively address, monitor, and manage psychotropic medication, mental health treatment, and the interaction with substance-related disorders.
6. Counseling or assessment of a client regarding the client's abuse of alcohol or a controlled substance must be provided by a licensed addiction counselor as provided in North Dakota Century Code chapter 43-45. The provision of case management and educational services do not need to be performed by licensed addiction counselors. A licensed addiction counselor must be present in all team meetings where level of care and treatment planning decisions are made regarding a client receiving or referred for substance abuse services.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-07.1-04. Admission criteria.** Before an outpatient services program may admit a client, a client must:

1. Meet diagnostic criteria for substance-induced disorders of the DSM; and
2. Meet admission criteria for ASAM level I outpatient services in all six ASAM dimensions and at least one of the following:
  - a. Demonstrate the need to take extended time for evaluation or lack motivation to make a commitment to a more intensive recovery effort and requires motivational enhancement strategies;
  - b. Have completed a higher intensity level of care but requires continued services until recovery stabilizes;
  - c. Have evidence of a brief return to usage not resulting in significant physical or emotional deterioration;
  - d. Require outpatient counseling of an intensity that will meet the client's needs without placement in a higher level of care;
  - e. Have not been through a prior treatment and exhibits motivation for recovery and meets ASAM criteria for level I in dimensions one.

two, three, five, and six or the client has low severity of problems in ASAM dimensions one, two, three, five, and six;

- f. Have a low severity of problems in ASAM dimensions one, two, three, five, and six but is not motivated and requires motivation enhancement strategies best delivered in a level I program; or
- g. Have a severe and persistent mental illness that impairs the client's ability to consistently follow through with mental health appointments and psychotropic medications but does have the ability to access services such as assertive community treatment and case management or supportive living.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**CHAPTER 75-09.1-08**  
**SOCIAL DETOXIFICATION ASAM LEVEL III.2-D**

Section

<u>75-09.1-08-01</u>	<u>Definitions</u>
<u>75-09.1-08-02</u>	<u>Program Criteria</u>
<u>75-09.1-08-03</u>	<u>Provider Criteria</u>
<u>75-09.1-08-04</u>	<u>Admission and Continued Stay Criteria</u>
<u>75-09.1-08-05</u>	<u>Referral to Acute Care Criteria</u>
<u>75-09.1-08-06</u>	<u>Criteria to Determine That Social Detoxification Is Not Necessary</u>

**75-09.1-08-01. Definitions.**

1. "CIWA-Ar" means the revised clinical institute withdrawal assessment for alcohol scale published in the archives of general psychiatry 48:442-447, May 1991, which is a ten-item scale for clinical quantification of the severity of alcohol withdrawal syndrome.
2. "Detoxification" means the process of interrupting the momentum of compulsive use in an individual diagnosed with substance dependence and the condition of recovery from the effects of alcohol or another drug, the treatment required to manage withdrawal symptoms from alcohol or another drug, and the promotion of recovery from its effects.
3. "Social detoxification" means detoxification in an organized residential nonmedical setting delivered by appropriately trained staff who provide safe, twenty-four-hour monitoring, observation, and support in a supervised environment for a client to achieve initial recovery from the effects of alcohol or another drug. Social detoxification is characterized by its emphasis on peer and social support and it provides care for clients whose intoxication or withdrawal signs and symptoms are sufficiently severe to require twenty-four-hour structure and support but the full resources of a medically monitored inpatient detoxification are not necessary.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-08-02. Program criteria.** A social detoxification program must provide:

1. Hospital affiliation providing twenty-four-hour medical backup;
2. A trained staff member familiar with complications associated with alcohol and other drug use and with community resources awake on all shifts;

3. A quite, positive atmosphere;
4. Use of detoxification time as preparation for referral to another level of care; and
5. Recognition of the chronic nature of the disease of substance dependence and the fact that some clients will require multiple admissions.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-08-03. Provider criteria. A social detoxification provider shall:**

1. Maintain a safe, comfortable, positive environment in a residential setting;
2. Have an agreement with local medical providers that ensure readily accessible emergency care when needed;
3. Implement a protocol so that the nature of the medical interventions required are developed and supported by a physician knowledgeable in addiction medicine;
4. Have available specialized clinical consultation and supervision for biomedical, emotional, behavioral, and cognitive problems;
5. Have awake staff twenty-four hours per day to monitor clients' conditions;
6. Have staff trained in admission, monitoring skills, including signs and symptoms of alcohol and other drug intoxication and withdrawal as well as appropriate treatment of those conditions, supportive care, basic cardiopulmonary resuscitation technique, assessment, and referral procedures;
7. Have services including close observation, supportive staff-client interaction, provision for proper fluid and nutritional components, and provision for client space that offers low to moderate sensory stimulation;
8. Implement a clearly defined policy for admission, care, discharge, and transfer of a client to another level of care;
9. Develop a method of documentation of care and train staff in documentation procedures;

10. Develop linkage with providers of other levels of care so the client may begin a therapeutic process as soon as the client is physically and mentally able to do so;
11. Administer a range of cognitive, behavioral, medical, mental health, and other therapies on an individual or group basis designed to meet the client's ability to participate in order to enhance the client's understanding of addiction, the completion of the detoxification process, and referral to an appropriate level of care for continuing treatment;
12. Develop a preliminary individualized treatment plan with the client that includes problem identification in ASAM PPC dimension two through six and development of treatment goals and measurable treatment objectives and activities designed to meet those objectives; and
13. Implement a policy for medication storage, security, and self-administration to assure that the client receives the client's medication and for observation of the medication taking behavior.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-08-04. Admission and continued stay criteria.** Before a client may be admitted to a social detoxification program, the client must meet the diagnostic criteria for a substance-induced disorder of the current DSM and current clearance by a physician or a CIWA-Ar score of less than eight and the presence of any of the following:

1. Diffuse mild central nervous system symptoms such as:
  - a. Cerebral symptoms, including slow responses to questions, difficulty in following complicated instructions, mild impairment of immediate memory, slurred speech, and mild disorientation to time but not to place or client;
  - b. Coordination symptoms, including mild abnormality in movement or gait, difficulty in finger-to-nose or finger-to-finger testing and rapid movements;
  - c. Reflex abnormalities, including normal or slightly depressed but symmetrical; or
  - d. Motor abnormalities, are normal or slightly depressed but symmetrical.
2. Onset of any stated symptoms listed in subsection 1 over a few hours;
3. Intoxication;

4. The absence of other more serious symptoms, including medical or psychiatric histories of significant problems and the absence of suicidal ideations or suicidal ideation of low lethality without plan or means;
5. Presence of any one of the following physical findings:
  - a. A temperature of ninety-seven degrees to one hundred degrees Fahrenheit [36.1 to 37.6 degrees Celsius] taken orally;
  - b. Tachycardia up to one hundred twenty beats per minute;
  - c. Blood pressure of up to one hundred sixty over one hundred twenty at rest;
  - d. Respiration of twelve to twenty-six breaths per minute;
  - e. Flushed skin color;
  - f. Pupils have a sluggish reaction to light; or
  - g. Other, such as alcohol odor on breath; or
6. Ability to comprehend and function in an ambulatory setting.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-08-05. Referral to acute care criteria.** A social detoxification program shall refer a client to an acute care facility or consult with a physician upon an increase in score to greater than a seven CIWA-Ar score scale or when a client has any one or more of the following symptoms:

1. Seizures or a history of seizures;
2. Current persistent vomiting or vomiting of blood;
3. Current ingestion of vomit into lungs;
4. Clouded sensorium such as gross disorientation or hallucination;
5. A temperature higher than one hundred and one degrees Fahrenheit [38.1 degrees Celsius] taken orally;
6. Abnormal respiration such as shortness of breath or a respiration rate greater than twenty-six breaths per minute;

7. Elevated pulse such as a heart rate greater than one hundred twenty beats per minute or arrhythmia;
8. Hypertension such as blood pressure greater than one hundred sixty over one hundred twenty;
9. Sudden chest pain or other sign of coronary distress or severe abdominal pain;
10. Recent head injury or any trauma other than minor;
11. Unconscious and not arousable; or
12. Other signs of significant illness such as jaundice, unstable diabetes, acute liver disease, severe allergic reaction, progressively severe Antabuse reaction, poisoning, progressively worsening tremors, chills, severe agitation, exposure, internal bleeding, shock, uncontrollable violence, suicidal or homicidal ideations.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-08-06. Criteria to determine that social detoxification is not necessary. Social detoxification will not be necessary if:**

1. The client exhibits no withdrawal symptoms at a blood alcohol level of 0.0 percent;
2. The client has no medical complications present;
3. The client's nutritional status is moderate to good;
4. The client has a relative, friend, or other support system who can stay with the client for the time necessary to complete detoxification; or
5. The client prefers outpatient detoxification.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**CHAPTER 75-09.1-09**  
**DUI SEMINAR ASAM LEVEL 0.5**

<u>Section</u>	
<u>75-09.1-09-01</u>	<u>Definitions</u>
<u>75-09.1-09-02</u>	<u>Application for Licensure</u>
<u>75-09.1-09-03</u>	<u>License Required</u>
<u>75-09.1-09-04</u>	<u>Licensure Report Procedures</u>
<u>75-09.1-09-05</u>	<u>Seminar Authority and Administration</u>
<u>75-09.1-09-06</u>	<u>Information Management</u>
<u>75-09.1-09-07</u>	<u>Fiscal Management</u>
<u>75-09.1-09-08</u>	<u>Physical Facilities</u>
<u>75-09.1-09-09</u>	<u>Health and Safety Program</u>
<u>75-09.1-09-10</u>	<u>Infection Control</u>
<u>75-09.1-09-11</u>	<u>Referral Criteria</u>
<u>75-09.1-09-12</u>	<u>Client Records</u>
<u>75-09.1-09-13</u>	<u>Client Rights</u>
<u>75-09.1-09-14</u>	<u>Provider Criteria</u>
<u>75-09.1-09-15</u>	<u>Seminar Program Criteria</u>
<u>75-09.1-09-16</u>	<u>Seminar Care Criteria</u>
<u>75-09.1-09-17</u>	<u>Discharge Criteria</u>
<u>75-09.1-09-18</u>	<u>Sanctions</u>
<u>75-09.1-09-19</u>	<u>Appeals</u>

**75-09.1-09-01. Definitions. As used in this chapter:**

1. "Department" means the North Dakota department of human services.
2. "DUI seminar" means an alcohol and drug risk reduction education program for individuals convicted of driving under the influence or actual physical control.
3. "Recommendation" means that a violation of the rule has occurred, however, on a very limited basis. Recommendation can also be given when there is general compliance with a rule but the procedures can be strengthened.
4. "Type I condition" means that a violation of the requirements of any applicable law or regulation has occurred in at least twenty-five percent of the cases reviewed.
5. "Type II condition" means habitual noncompliance with the requirements of any applicable law or regulation, including a type I condition that is still found to be occurring during subsequent visits, any illegal act, or any act that threatens the health and safety of a client.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-02. Application for licensure.**

1. A DUI seminar must submit to the department an application for a license in the form and manner prescribed by the department.
2. The department shall consider an application for a DUI seminar license complete when it has received all required information and documents. The department shall notify an applicant if an application is incomplete.
3. The department may declare an application for a DUI seminar license withdrawn if an applicant fails to submit all required documentation within sixty days of notification of incompleteness.
4. A new application for a DUI seminar license must be filed by a program upon change of ownership or level of care.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-03. License required.**

1. The department may issue a provisional license for the operation of a new DUI seminar upon approval of a new application.
2. A provisional license must expire at a set date not to exceed one year from the date of issuance.
3. Prior to issuing an unrestricted license, the department must conduct an onsite review to determine if a DUI seminar is in compliance with the standards contained in this chapter.
4. An unrestricted license is in effect for the period specified in the license not to exceed two years.
5. A DUI seminar license may not be transferred and is valid only for those programs indicated on the license.
6. The department shall conduct at least biennially a continued license review for any DUI seminar with an unrestricted license. The continued license review will be performed to determine continued compliance with the standards contained in this chapter.
7. The department may conduct scheduled or unscheduled visits of a DUI seminar at times other than a routine licensure review.

8. A DUI seminar must display its license in a place that is conspicuous to the public.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-04. Licensure report procedures.**

1. Within thirty days of an onsite review, the department must send a license report to the DUI seminar reviewed.
2. A license report must contain a description of the programs and services reviewed, strengths, concerns, recommendations, and a description of any type I or type II conditions.
3. The department shall retain all reports of the licensure review while the DUI seminar that is the subject of the report is licensed and for at least seven years from the time the DUI seminar is no longer licensed.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-05. Seminar authority and administration.**

1. A DUI seminar shall identify to the department an individual or entity that is responsible for the conduct of the DUI seminar.
2. A DUI seminar shall be responsible for providing qualified personnel, facilities, and equipment needed to carry out the goals and objectives and to meet the needs of clients.
3. A DUI seminar shall conform to applicable laws and regulations, including accessibility, affirmative action, equal employment opportunity, confidentiality, health and safety, and licensure.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-06. Information management.**

1. A DUI seminar shall collect data as prescribed by the department, including information necessary for federal and state grant statistical requirements and fiscal information such as fee structure.

2. A DUI seminar must apply appropriate safeguards to protect client records regardless of whether the records are electronically or manually maintained. These safeguards must include:
  - a. Limiting record access to authorized individuals;
  - b. Suitably maintaining a record indexing and filing system;
  - c. Knowing the essential record location at all times;
  - d. Securing and reasonably protecting records in a locked area where they will be reasonably protected against loss, damage, and inappropriate access; and
  - e. Protecting electronic records by routine backup.
3. A DUI seminar must implement a policy so that files are not needlessly retained or prematurely discarded. The retention of records of clients and administrative records must be guided by professional and state research, administrative, and legal requirements.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-07. Fiscal management.**

1. A DUI seminar shall have an established schedule of fees that is available in printed form and applied equitably to all clients.
2. A DUI seminar shall implement a policy that prohibits fee splitting with other programs, agencies, entities, or individuals as consideration for referral of the client to be served.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-08. Physical facilities.**

1. All locations owned, rented, or leased by a DUI seminar must meet standards of the state fire marshal or an equivalent code or provide a letter from the inspecting authority stating that inspections were not done and why.

2. A DUI seminar shall provide adequate toilet and lavatory facilities.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-09. Health and safety program.**

1. A DUI seminar shall develop a written emergency procedure that includes provisions for dealing with bomb threats, fires, medical emergencies, natural disasters, and power failures.
2. At the beginning of the DUI seminar, the DUI seminar instructor shall point out emergency evacuation exits and routes to seminar participants.
3. A DUI seminar shall have first-aid facilities, equipment, and supplies readily available.
4. A DUI seminar shall implement a written policy that addresses the use of smoking products. The policy must address the needs of the seminar participants and visitors and comply with local, state, and federal laws.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-10. Infection control.** A DUI seminar shall take universal precautions in the handling of all bodily fluids and implement a written policy for the handling of bodily fluids.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-11. Referral criteria.**

1. A DUI seminar must secure the written consent of the client or the client's legal representative before releasing any confidential information about that client and the consent to release of information must conform to the following:
  - a. Any information released must be limited to that necessary for the individual or agency requesting the information or for the provider to whom the client is referred to be able to address the purpose of the referral:
  - b. A DUI seminar must stamp or write on the records that are being released that any further disclosure or redisclosure of information

is prohibited unless it is authorized by the client or the client's legal representative; and

- c. Be in accordance with applicable federal and state laws and must include at a minimum:
  - (1) The content to be released;
  - (2) The form in which the information is to be released such as written, verbal, audio, video, electronic;
  - (3) To whom the information is to be released;
  - (4) For what purpose the information is to be released;
  - (5) The name of the client and date of birth about whom information is to be released;
  - (6) The date on which the release is signed;
  - (7) The length of time, event, or condition for which the release is authorized or the event or condition upon which consent for release will be withdrawn; and
  - (8) The signature of the client or legal representative.
2. A DUI seminar shall give a copy of the signed consent to release of information to the client or client's legal representative.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-12. Client records.**

1. A DUI seminar shall prepare and maintain a single record for each client so as to communicate the appropriate case information. This information must be in a form that is clear, concise, complete, legible, and current.
2. The record of each seminar participant must include:
  - a. Seminar attendance record;
  - b. Department approved post-test;
  - c. A copy of any department of transportation report of addiction treatment form;

- d. A copy of any consent to release of information form signed by the client; and
  - e. Any other correspondence related to the seminar participant.
3. A DUI seminar shall implement a written policy addressing the process by which a client may gain access to the client's own record.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-13. Client rights.**

1. A DUI seminar must assure the right of each client to:
- a. Be treated with respect and dignity;
  - b. Be treated without discrimination based on physical or mental disability;
  - c. Be treated without regard to race, creed, national origin, sex, or sexual preference;
  - d. Have all information handled confidentially in accord with state and federal standards of confidentiality; and
  - e. Not be subject to physical, emotional, or sexual abuse or harassment by the staff or another client.
2. A DUI seminar shall implement a written procedure stating the form and manner in which a client may file a grievance that explains the grievance and appeal procedures in a manner that can be understood by the client.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-14. Provider criteria.**

1. A DUI seminar instructor shall have at least a two-year degree or its equivalent or at least one year of professional work experience in the education, health, human services, or criminal justice field.
2. A DUI seminar instructor shall not engage in the illegal use of drugs nor conduct the DUI seminar while under the influence of alcohol or other mood-altering drugs.

3. A DUI seminar instructor shall be certified by the department to teach the department-approved curriculum. To achieve certification by the department, the instructor candidate shall meet all DUI seminar instructor requirements, shall successfully complete the department-approved DUI seminar instructor training, and shall submit the certification application to the department.
4. A DUI seminar instructor shall be recertified by the department every two years. To maintain certification by the department, a DUI seminar instructor shall teach the DUI seminar at least twice per certification cycle and attend DUI seminar instructor recertification training coordinated by the department.
5. To achieve certification when a DUI seminar instructor has allowed certification to lapse, a DUI seminar instructor shall submit a letter to the department that must:
  - a. Show evidence that the DUI seminar program's curriculum has incorporated current DUI information and educational changes;
  - b. Provide an explanation for the DUI seminar instructor's lapse in certification; and
  - c. Contain a statement that the DUI seminar program has not provided DUI seminar services during the time period that the certification had lapsed.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-15. Seminar program criteria.**

1. A DUI seminar program shall follow the department-approved curriculum's sequence, schedule, format, process, and content.
2. A DUI seminar program shall use only those videos approved by the department for use in the DUI seminar and shall use those videos only at the times when the curriculum schedule permits their use.
3. A DUI seminar program shall provide each seminar participant with a new student booklet. Books become the property of the client and are not to be reissued.
4. A DUI seminar program shall not continue a class for more than two hours without providing the clients with a break.

5. A DUI seminar program shall not count time for breaks beyond three ten-minute breaks per four-hour period toward the required hours of education to be provided to clients.
6. A DUI seminar program shall maintain a current list of licensed substance abuse programs and information on local recovery support groups.
7. A DUI seminar program shall ask all DUI seminar clients to complete a participant evaluation form at the conclusion of each seminar and will retain copies of the evaluations in accordance with its record retention policy.
8. A DUI seminar program shall not accept into the seminar a client who has completed the department-approved evaluation process more than six months prior to participation in the seminar.
9. A DUI seminar program shall conduct the seminar in classes that must last no more than four hours per session and only one session must be scheduled per calendar day unless an exception is granted by the department.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-16. Seminar care criteria.**

1. In order to fulfill a DUI seminar care criteria, a client shall:
  - a. Complete all required activities and assignments;
  - b. Attend all seminar sessions in sequence;
  - c. Attain a passing mark on the seminar post-test; and
  - d. Notify the department of transportation regarding the incident.
2. A DUI seminar program shall not admit to a class in progress a client who is more than fifteen minutes late unless extenuating circumstances exist. A client who arrives late to a class will be required to meet with the DUI seminar instructor to make up what the client missed.
3. A client must attend all DUI seminar sessions sequentially and may not be allowed to attend the next session after missing a class. The client must wait until the next session of the class has started and then may start the class again from the point where missed.

4. A DUI seminar program shall prohibit the illegal use of drugs and alcohol at the seminar site and shall implement a written policy for referral of a client for further assessment of alcohol or drug problems if they occur.
5. If a client arrives at a DUI seminar under the influence or during the seminar is under the influence, a DUI program shall:
  - a. Not admit the client into the class;
  - b. Discharge the client from the class;
  - c. Inform the client that the program will notify law enforcement if the client drives upon leaving the program; and
  - d. Notify the department of transportation regarding the incident.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-17. Discharge criteria.** A DUI seminar program will discharge a client when:

1. The client has completed the seminar and all seminar requirements;
2. The client does not comply with the program; or
3. The client arrives at the seminar under the influence or is under the influence during the seminar.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

**75-09.1-09-18. Sanctions.**

1. The department may immediately revoke a DUI seminar's license upon a finding of a type II condition.
2. A DUI seminar must submit to the department a plan of corrective action within thirty days of the licensure visit when a type I condition has been found. A type I condition will result in a condition with ninety days allowed to implement the plan and satisfy the cited condition.
3. The department may conduct another onsite review prior to issuing a continued license after a DUI seminar has developed a plan of corrective action for any type I or type II condition.

4. The department shall issue a ninety-day suspension of a DUI seminar's license if the DUI seminar fails to timely satisfy a type I condition or develop a plan to satisfy the cited condition.
5. At the end of a ninety-day suspension of a DUI seminar license, the department may issue a provisional license that expires in no more than one year if the cited type I condition has been corrected.
6. The department shall revoke a DUI seminar license immediately if a DUI seminar fails to timely correct a type I condition.
7. During the three hundred sixty-five days following a license revocation for any type I or type II condition, a DUI seminar that has been the subject of a license revocation is prohibited from submitting a new application to the department for consideration for a new license for any facility or program.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31

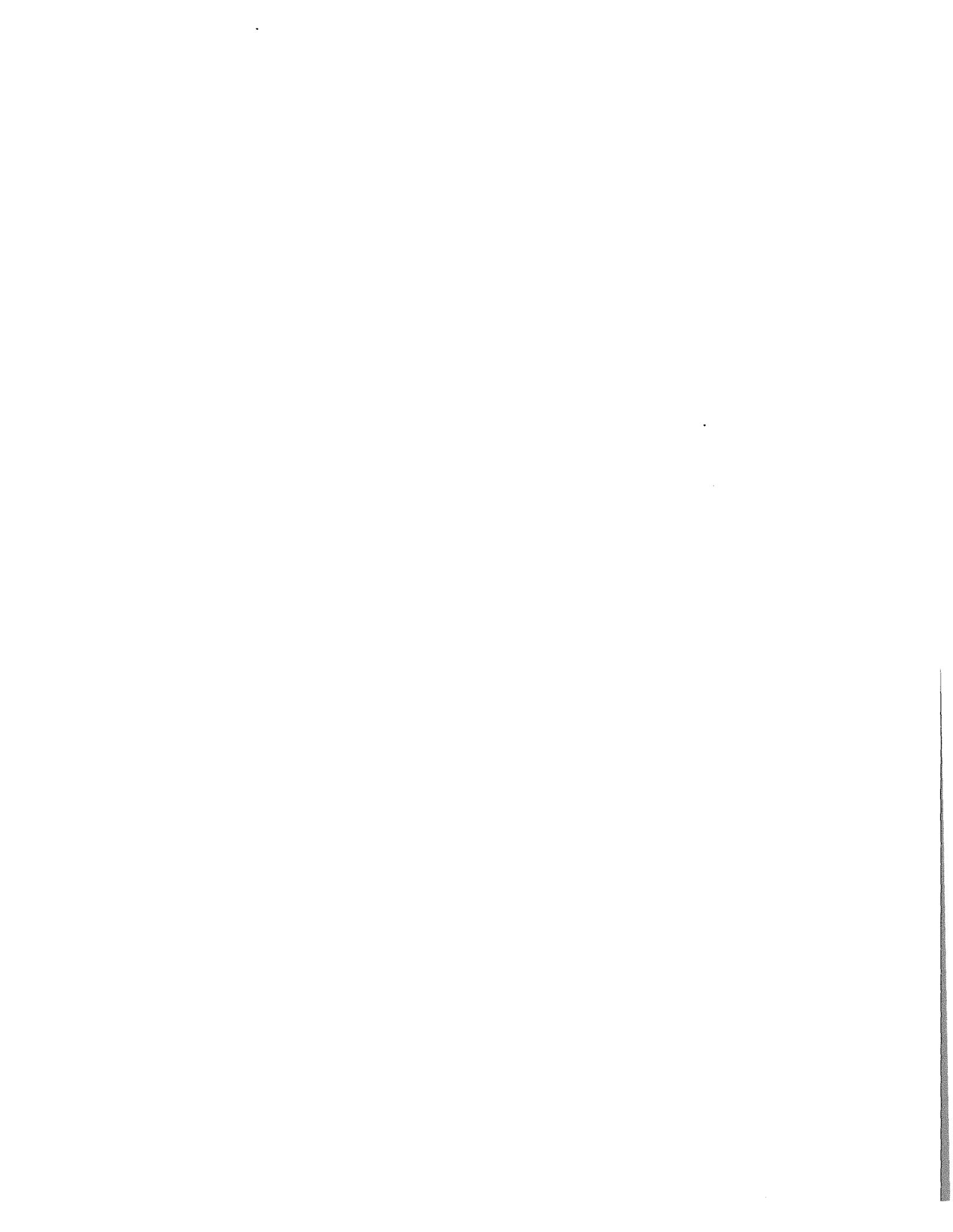
**75-09.1-09-19. Appeals.** An applicant for or a holder of a DUI seminar license may appeal a decision to deny, suspend, or revoke a license by filing a written appeal with the department within thirty days of receipt of written notice of such a decision. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

**History:** Effective October 26, 2004.

**General Authority:** NDCC 50-06-16, 50-31

**Law Implemented:** NDCC 50-31





**TITLE 93**  
**PRIVATE INVESTIGATIVE AND SECURITY BOARD**



MAY 2005

CHAPTER 93-02-01.1

**93-02-01.1-02. Licensing of individuals providing private investigative services.**

1. An individual providing private investigative services must obtain a license from the board to provide those services unless the individual is registered as an employee or independent contractor of an agency that is licensed under this chapter and is providing those services within the scope of the individual's employment relationship with the agency. An agency is responsible for registering its employees and independent contractors under section 93-02-01.1-04. This section does not apply to individuals who are exempt from the board's jurisdiction under North Dakota Century Code section 43-30-02.
2. An individual is qualified to be licensed to provide private investigative services if the individual has passed an examination conducted by or under the supervision of the board within the twelve months preceding the date of the individual's application for the license and has provided two thousand hours of private investigative services as a registered employee of a detective agency. The experience requirement in this subsection does not apply to an individual who holds a license on May 1, 2000, unless the individual's license lapses and is not renewed within one year pursuant to section 93-02-03-03.

**History:** Effective May 1, 2000; amended effective May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04, 43-30-05, 43-30-06

**93-02-01.1-04. Registration of employees and independent contractors of detective agencies.**

1. For the purposes of this chapter, the terms "employee" and "employment" ~~include any individual performing any private investigative services on a contractual basis for an agency licensed under this chapter~~ refer to an employer-employee relationship in which

the employee is working for compensation, the employer directly or indirectly controls the employee's conduct, and the employer pays taxes or makes other payments because of the employment.

2. An individual providing private investigative services as an employee or independent contractor of a detective agency who is not licensed to provide those services must obtain have a registration from the board. The agency is responsible for obtaining registration for all of its employees and independent contractors.
3. A detective agency may not employ or contract with an unregistered or unlicensed person to provide private investigative services on behalf of the agency. A person employed or contracted by a detective agency who does not provide any private investigative services need not be registered or licensed.
4. A detective agency is responsible for any activities of its licensed or registered employees and independent contractors and may be subject to administrative action by the board for the activities of its licensed or registered employees and independent contractors.
5. A registered employee or independent contractor may not provide private investigative services unless the employee or independent contractor is under the supervision of an individual who is licensed to provide private investigative services.

**History:** Effective May 1, 2000; amended effective May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04, 43-30-05, 43-30-16

**93-02-01.1-05. Armed personnel - Possession and use of firearms in the course of providing private investigative services.** It is unlawful for any individual, including agency personnel, to carry a firearm while providing private investigative services unless the individual carrying the firearm:

1. Is in compliance with all existing state and federal laws governing weapons or firearms, including certification and licensing when necessary;
2. Has completed the same requirements for firearms training as is required for North Dakota peace officers. However, if the individual fails the written examination or shooting course twice, the individual must wait at least thirty days to retake the failed portion, and if the individual fails the written examination or shooting course a third time, the individual must wait a full year before retaking the written examination or shooting course; and

3. Has provided at least one thousand hours of private investigative or private security services.

**History:** Effective May 1, 2000; amended effective May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-01.1-08. Surety requirements.**

1. Before a license to provide private investigative services can be issued to any individual or agency, the applicant must file with the board a ~~bond, irrevocable letter of credit, or~~ certificate of insurance executed by the applicant and by a surety company or insurance company in the sum of ~~a ten thousand dollar bond, ten thousand dollar letter of credit, or one~~ three hundred thousand dollars of general liability with errors and omissions insurance.
2. The ~~bond, irrevocable letter of credit, or~~ certificate of insurance must be conditioned on the faithful and honest conduct of the business of the applicant and the applicant's agents ~~and~~ employees, and independent contractors, and for the full protection of any person who deals with the applicant or the applicant's agents ~~and~~ employees, and independent contractors. The ~~bond, irrevocable letter of credit, or~~ certificate of insurance must provide that any person injured by the breach of the conditions of the ~~bond, irrevocable letter of credit, or~~ insurance policy may bring an action on that ~~bond, irrevocable letter of credit, or~~ insurance policy in the name of the state of North Dakota for the use of the person so injured to recover legal damages suffered by reason of breach of the conditions; provided, however, that the aggregate liability of the ~~bond, irrevocable letter of credit, or~~ insurance policy for all damages may, in no event, exceed the sum of the ~~bond, irrevocable letter of credit, or~~ insurance policy. The ~~surety or~~ insurance underwriter may cancel the ~~bond or~~ policy upon giving thirty days' notice in writing to the board and thereafter is relieved of liability for any breach of condition occurring after the effective date of the cancellation.

**History:** Effective May 1, 2000; amended effective May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-01.1-09. License - Posting.** Each individual who, or agency that, is licensed by the board shall conspicuously display that license at all times in the licensee's place of business. If the licensee has more than one office as a place of business, the licensee shall display a duplicate license at each office. An agency need not display the licenses of all the individual licensees employed or contracted by the agency. If the board revokes, suspends, or disapproves renewal of any

license, the board may require the holder of the license to return the license to the board within fourteen days.

**History:** Effective May 1, 2000; amended effective May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-05

**93-02-01.1-10. Issuance of pocket cards.**

1. To each individual licensed or registered by the board, the board shall issue a laminated pocket card. The board will not issue a pocket card to an individual performing private investigative services for a detective agency on a contractual basis if that individual is already licensed as a private investigator.
2. When a registered employee or independent contractor of a detective agency terminates employment or a contract with the agency, that ~~employee~~ individual shall return the pocket card to the agency immediately after termination. Within seven days after receiving the pocket card of the terminated ~~employee~~ individual, the agency shall mail or deliver the pocket card to the board for cancellation, with a letter from the holder of the agency license stating the date the registered ~~employee~~ individual was terminated and the date the agency received the terminated individual's card.
3. If the board revokes, suspends, or disapproves the renewal of a license or registration of any individual, the board may require the individual to return the individual's pocket card within fourteen days.
4. If the board revokes, suspends, or disapproves renewal of a detective agency license, the board may require the agency to return the pocket cards of all its registered employees and independent contractors within fourteen days of the request by the board.

**History:** Effective May 1, 2000; amended effective May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-05

## CHAPTER 93-02-02.1

### 93-02-02.1-02. Licensing of individuals providing private security services.

1. An individual providing private security services must obtain a license from the board to provide those services unless the individual is registered as an employee or independent contractor of an agency that is licensed under this chapter and is providing those services within the scope of the individual's employment relationship with the agency. An agency is responsible for registering its employees and independent contractors under section 93-02-02.2-04. This section does not apply to individuals who are exempt from the board's jurisdiction under North Dakota Century Code section 43-30-02.
2. An individual is qualified to be licensed to provide private security services if the individual is currently a commissioned security officer and has passed an examination conducted by or under the supervision of the board within the twelve months preceding the date of the individual's application for the license.

**History:** Effective May 1, 2000; amended effective May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04, 43-30-05, 43-30-06

### 93-02-02.1-04. Registration of employees and independent contractors of private security agencies.

1. For the purposes of this chapter, the terms "employee" and "employment" ~~include any individual performing any private security services on a contractual basis for an agency licensed under this chapter~~ refer to an employer-employee relationship in which the employee is working for compensation, the employer directly or indirectly controls the employee's conduct, and the employer pays taxes or makes other payments because of the employment.
2. An individual providing private security services as an employee or independent contractor of a private security agency who is not licensed to provide those services must ~~obtain~~ have a registration from the board as an apprentice security officer, security officer, or commissioned security officer. The agency is responsible for obtaining registration for all of its employees and independent contractors.
3. A private security agency may not employ or contract with an unregistered or unlicensed person to provide private security services on behalf of the agency. A person employed or contracted by a private security agency who does not provide any private security services need not be registered or licensed.

4. A private security agency is responsible for any activities of its licensed or registered employees and independent contractors and may be subject to administrative action by the board for the activities of its licensed or registered employees and independent contractors.
5. A registered employee or independent contractor may not provide private security services unless the employee or independent contractor is under the supervision of an individual who is licensed to provide private security services.

**History:** Effective May 1, 2000; amended effective May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04, 43-30-05, 43-30-16

**93-02-02.1-08. Armed personnel - Possession and use of firearms in the course of providing private security services.** It is unlawful for any individual, including agency personnel, to carry a firearm while providing private security services unless the individual carrying the firearm:

1. Is in compliance with all existing state and federal laws governing weapons or firearms, including certification and licensing when necessary;
2. Has completed the same requirements for firearms training as is required for North Dakota peace officers. However, if the individual fails the written examination or shooting course twice, the individual must wait at least thirty days to retake the failed portion, and if the individual fails the written examination or shooting course a third time, the individual must wait a full year before retaking the written examination or shooting course; and
3. Achieved at least the rank of security officer as defined in section 93-02-02.1-06 and been issued an armed private security certificate.

**History:** Effective May 1, 2000; amended effective May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-02.1-09.1. Qualifications for armed instructors.** Written and practical instruction and testing must be conducted by a board-certified instructor. To be certified as an armed instructor, an individual must meet at least one of the following requirements:

1. Is a certified weapons instructor by the North Dakota peace officer standards and training board.
2. Is a certified weapons instructor by the national rifle association.

3. Has completed twenty-four months of apprenticeship training under a board-certified weapons instructor. During the twenty-four-month apprenticeship period, the candidate must be at least a security officer and hold an armed certificate. After completion of the apprenticeship, the instructor must submit a notice to the board showing that the candidate has successfully completed the candidate's apprenticeship and the instructor is requesting certification for the candidate.

**History:** Effective May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

#### **93-02-02.1-12. Surety requirements.**

1. Before a license to provide private security services can be issued to any individual or agency, the applicant must file with the board a ~~bond, irrevocable letter of credit, or~~ certificate of insurance executed by the applicant and by ~~a surety company or an~~ insurance company in the sum of ~~a ten thousand dollar bond, ten thousand dollar letter of credit, or one~~ three hundred thousand dollars of general liability with errors and omissions insurance.
2. The ~~bond, irrevocable letter of credit, or~~ certificate of insurance must be conditioned on the faithful and honest conduct of the business of the applicant and the applicant's agents ~~and, employees, and independent contractors,~~ and for the full protection of any person who deals with the applicant or the applicant's agents ~~and, employees, and independent contractors.~~ The ~~bond, irrevocable letter of credit, or~~ certificate of insurance must provide that any person injured by the breach of the conditions of the ~~bond, irrevocable letter of credit, or~~ insurance policy may bring an action on that ~~bond, irrevocable letter of credit, or~~ insurance policy in the name of the state of North Dakota for the use of the person so injured to recover legal damages suffered by reason of breach of the conditions; provided, however, that the aggregate liability of the ~~bond, irrevocable letter of credit, or~~ insurance policy for all damages may, in no event, exceed the sum of the ~~bond, irrevocable letter of credit, or~~ insurance policy. The ~~surety or~~ insurance underwriter may cancel the ~~bond or~~ policy upon giving thirty days' notice in writing to the board and thereafter is relieved of liability for any breach of condition occurring after the effective date of the cancellation.

**History:** Effective May 1, 2000; amended effective May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-02.1-13. License - Posting.** Each individual who, or private security agency that, is licensed by the board shall conspicuously display that license at all times in the licensee's place of business. If the licensee has more than one office as a place of business, the licensee shall display a duplicate license at each office.

An agency need not display the licenses of all the individual licensees employed or contracted by the agency. If the board revokes, suspends, or disapproves renewal of any license, the board may require the holder of the license to return the license to the board within fourteen days.

**History:** Effective May 1, 2000; amended effective May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-05

**93-02-02.1-14. Issuance of pocket cards.**

1. To each individual licensed or registered by the board, the board shall issue a laminated pocket card.
2. When a registered employee or independent contractor of a private security agency terminates employment or a contract with the agency, that ~~employee~~ individual shall return the pocket card to the agency immediately after termination. Within seven days after receiving the pocket card of the terminated ~~employee~~ individual, the agency shall mail or deliver the pocket card to the board for cancellation, with a letter from the holder of the agency license stating the date the registered ~~employee~~ individual was terminated and the date the agency received the terminated individual's card.
3. If the board revokes, suspends, or disapproves the renewal of a license or registration of any individual, the board may require the individual to return the individual's pocket card within fourteen days.
4. If the board revokes, suspends, or disapproves renewal of a private security agency license, the board may require the agency to return the pocket cards of all its registered employees and independent contractors within fourteen days of the request by the board.

**History:** Effective May 1, 2000; amended effective May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-05

## CHAPTER 93-02-03

### 93-02-03-03. Renewal of licenses and registrations.

1. Licenses and registrations issued by the board expire on September thirtieth of each odd-numbered year.
2. Every individual or agency who previously held a license or registration issued by the board and whose license or registration has expired may have the same restored immediately upon payment of all lapsed renewal fees and any applicable late fees; provided, however, that not more than ~~one year~~ sixty days has elapsed since the date of expiration, and provided that the individual or agency has not provided private investigative or private security services during the time in which the license or registration was expired.
3. This section does not relieve any person from criminal prosecution for engaging in practice or providing services without a license as required by North Dakota Century Code chapter 43-30. Once a license or registration has lapsed, the individual or agency who held the license or registration may not provide private investigative or private security services until the license or registration is renewed or until a new license or registration is issued.
4. Any individual or agency who fails to renew a lapsed license or registration and who fails to pay all lapsed renewal fees and late fees within the time required by this section must reapply for a new license or registration and meet all the requirements for licensing or registration, including a state and nationwide criminal history record check.

**History:** Effective March 1, 1990; amended effective May 1, 2000; May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-11

**93-02-03-06. Fees - Amount - Late fees.** The ~~in addition to statutory fees,~~ the board charges the following fees:

1. An individual shall pay a fee of one hundred dollars to take the examination to become licensed to provide investigative or private security services.
2. An individual shall pay a fee of one hundred ~~fifty~~ thirty dollars to receive an initial license or renew the individual's license to provide private investigative or private security services.
3. An individual or entity shall pay a fee of one hundred dollars to apply for a license to operate a private security or detective agency.

4. An individual or entity shall pay a fee of ~~three~~ two hundred ~~fifty~~ dollars to receive an initial license or renew a license to operate a private security or detective agency.
5. An individual shall pay a fee of ~~twenty-five~~ twenty dollars to receive a private security training certificate.
6. An individual shall pay an annual fee of ~~twenty-five~~ twenty dollars to receive an armed private security certificate. Armed private security certificates expire on September thirtieth of each year.
7. An individual or entity shall pay a fee of ~~twenty~~ ten dollars to obtain a duplicate license.
8. An individual shall pay a fee of ~~twenty~~ eighteen dollars to obtain an initial registration to provide private investigative or private security services. There is no charge for renewing an individual's registration to provide private investigative or private security services, but a late fee of ten dollars must be paid for each month the renewal is late.

**History:** Effective May 1, 2000; amended effective May 1, 2005.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-16