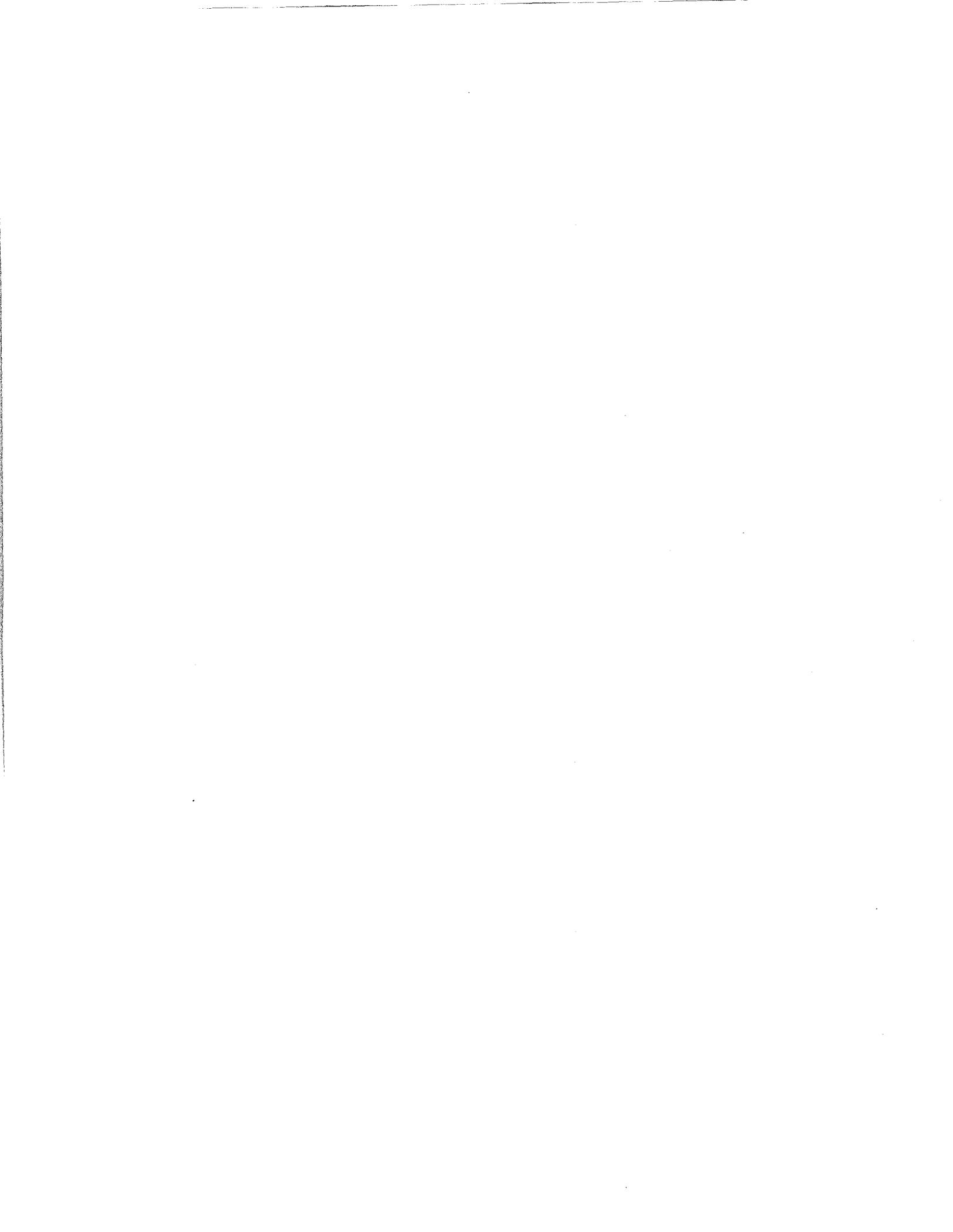


# **NORTH DAKOTA ADMINISTRATIVE CODE**

Supplement 325

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**Prepared by the Legislative Council staff  
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**TITLE 61**  
**STATE BOARD OF PHARMACY**



JULY 2007

**ARTICLE 61-12**

**PRESCRIPTION DRUG MONITORING PROGRAM**

Chapter  
61-12-01                      Prescription Drug Monitoring Program

**CHAPTER 61-12-01**  
**PRESCRIPTION DRUG MONITORING PROGRAM**

Section  
61-12-01-01                      Definitions  
61-12-01-02                      Dispenser Reporting  
61-12-01-03                      Operation of Program

**61-12-01-01. Definitions.** For purposes of this chapter:

1. "Board" means the North Dakota board of pharmacy.
2. "Central repository" means a place where electronic data related to the prescribing and dispensing of controlled substances is collected.
3. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in North Dakota Century Code chapter 19-03.1 and any other drugs required by law to be monitored by the program.
4. "De-identified information" means health information that is not individually identifiable information because an expert has made that determination under title 45, Code of Federal Regulations, section 164.514, or direct identifiers and specified demographic information have been removed in accordance with the requirements of that section.
5. "Department" means the North Dakota department of human services.

6. "Dispense" means to deliver a controlled substance to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery.
7. "Dispenser" means an individual who delivers a controlled substance to the ultimate user, but does not include:
  - a. A licensed hospital pharmacy that provides a controlled substance for the purpose of inpatient hospital care; or
  - b. A licensed health care practitioner or other authorized individual in those instances when the practitioner administers a controlled substance to a patient. For purposes of this section, administer means the direct application of a controlled substance to the body of a patient and does not include the prescribing of a controlled substance for administration by the patient or someone other than the health care practitioner.
8. "Individually identifiable health information" has the meaning set forth in title 45, Code of Federal Regulations, section 160.103.
9. "Patient" means an individual or the owner of an animal who is the ultimate user of a controlled substance for whom a prescription is issued and for whom a controlled substance is dispensed.
10. "Prescriber" means an individual licensed, registered, or otherwise authorized by the jurisdiction in which the individual is practicing to prescribe drugs in the course of professional practice.
11. "Program" means the North Dakota prescription drug monitoring program implemented under North Dakota Century Code chapter 19-03.5.

**History:** Effective December 1, 2006.

**General Authority:** NDCC 19-03.5

**Law Implemented:** NDCC 19-03.5

**61-12-01-02. Dispenser reporting.**

1. Each dispenser licensed by a regulatory agency in the state of North Dakota who dispenses a controlled substance to a patient shall submit to the central repository by electronic means information regarding each prescription dispensed for a controlled substance. The information submitted for each prescription shall include all of the data elements in the American society for automation in pharmacy rules-based standard implementation guide for prescription monitoring programs issued August 31, 2005, version 003, release 000.

2. Each dispenser shall submit the information required by this chapter to the central repository at least once every day unless the board waives this requirement for good cause shown by the dispenser.
3. An extension of the time in which a dispenser must report the information required by this chapter may be granted to a dispenser that is unable to submit prescription information by electronic means if:
  - a. The dispenser suffers a mechanical or electronic failure or cannot report within the required time for other reasons beyond the dispenser's control; or
  - b. The central repository is unable to receive electronic submissions.

**History:** Effective December 1, 2006.

**General Authority:** NDCC 19-03.5

**Law Implemented:** NDCC 19-03.5

**61-12-01-03. Operation of program.**

1. The board may charge a fee to an individual who requests the individual's own information from the central repository.
2. The board may charge a fee to a person who requests statistical, aggregate, or other de-identified information.

**History:** Effective December 1, 2006.

**General Authority:** NDCC 19-03.5

**Law Implemented:** NDCC 19-03.5



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



JULY 2007

CHAPTER 69-09-05

**69-09-05-12. Eligible telecommunications carrier applications and advertising.**

~~1. Eligible carrier applications:~~

a. 1. A telecommunications company that desires designation as an eligible telecommunications carrier as that term is defined in the Telecommunications Act of 1996 shall make application for such designation with the commission.

b. 2. An application for designation as an eligible telecommunications carrier must specifically identify:

~~(1)~~ a. The applicant's proposed designated service area. Applicants that will not be classified as the incumbent local exchange carrier shall identify the incumbent local exchange carrier study areas that are located, in whole or in part, in the proposed designated service area;

~~(2)~~ b. How the applicant meets the requirements for designation as an eligible telecommunications carrier;

~~(3)~~ c. Whether the applicant requires a waiver of any eligible telecommunications carrier requirement; and

~~(4)~~ d. If a waiver is required, the specific reasons for the waiver and the length of time for which the waiver is required.

3. An applicant for designation as an eligible telecommunications carrier shall:

a. Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

- (1) Provide service on a timely basis to requesting customers within the applicant's proposed designated service area where the applicant's network already passes the potential customer's premises; and
  - (2) Provide service within a reasonable period of time, if the potential customer is within the applicant's proposed designated service area but outside its existing network coverage, if service can be provided at reasonable cost by:
    - (a) Modifying or replacing the requesting customer's equipment;
    - (b) Deploying a roof-mounted antenna or other equipment;
    - (c) Adjusting the nearest cell tower;
    - (d) Adjusting network or customer facilities;
    - (e) Reselling services from another carrier's facilities to provide service; or
    - (f) Employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.
- b. Submit a report estimating the amount of federal high-cost universal service support the applicant expects to receive in the first year following designation as an eligible telecommunications carrier and describing how that support is projected to be used for the provision, maintenance, or upgrading of the carrier's facilities and services pursuant to section 254 of the Telecommunications Act of 1996. The report must identify specific construction, maintenance, or upgrade projects; describe how service will be improved by each project; and provide the projected start date and completion date for each improvement, the estimated amount of investment for each of the specific geographic area where each improvement will be made, and the estimated population that will be served by each improvement. For applicants that will be classified as the incumbent local exchange carrier, the information required shall be submitted at the study area level. For other applicants, the information shall be submitted at the incumbent local exchange carrier study area level. If a study area or designated service area includes geographic areas in more than one state, the information shall also be submitted at the North Dakota level.
- c. Certify that it is able to remain functional in emergency situations, including a certification that it has a reasonable amount of backup power to ensure functionality without an external power source, is

able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

- d. Certify that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the cellular telecommunications and internet association's consumer code for wireless service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.
  - e. Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the proposed designated service area.
  - f. Certify that the carrier acknowledges that the commission may require it to provide equal access to long-distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the proposed designated service area. Wireless carriers must certify that the carrier acknowledges that the federal communications commission may require it to provide equal access to long-distance carriers in the event no other eligible telecommunications carrier is providing equal access within the proposed designated service area.
4. Any common carrier that has been designated as an eligible telecommunications carrier or that has submitted its application for designation before July 1, 2007, must submit the information required by subsection 3 no later than August 1, 2007, as part of its annual reporting requirements.
5. Prior to designating an eligible telecommunications carrier, the commission shall determine that such designation is in the public interest. In doing so, the commission shall consider the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering. When an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the commission shall also conduct an analysis that compares the population density of each wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its analysis, the commission shall consider other factors, such as disaggregation of support by the incumbent local exchange carrier.
- 2- 6. Eligible telecommunications carrier advertising. The following forms of advertising of the availability of universal service are required of an eligible telecommunications carrier:

- a. A full description of available services in the eligible telecommunications carrier's official telephone directory, including the process to be used by customers to qualify for lifeline and link-up service.
- b. Advertising of the availability of universal services in media of general circulation in each eligible telecommunications carrier's designated service areas. Availability may be advertised in newspapers, company newsletters, company or civic internet sites, bill stuffers, direct mailings, or other means intended to convey availability throughout the service area.

**History:** Effective January 1, 2001; amended effective July 1, 2007.

**General Authority:** NDCC 28-32-02, 49-21-01.7

**Law Implemented:** NDCC 49-21, 49-21-01.7, 49-21-07

**69-09-05-12.1. Annual reporting requirements for designated eligible telecommunications carriers. Eligible telecommunications carriers shall file with the commission on or before August first of each year, beginning in 2007:**

1. A report describing the amount of high-cost universal service support the eligible telecommunications carrier received in the prior calendar year and how that support was used for the provision, maintenance, or upgrading of the carrier's facilities and services. The report must also explain any changes from reports that have been previously provided to the commission. The report must include an estimate of the amount of federal high-cost universal service support the carrier anticipates receiving in the following calendar year and describe how that support is projected to be used for the provision, maintenance, or upgrading of the carrier's facilities and services pursuant to section 254 of the Telecommunications Act of 1996. The prior calendar year and following calendar year reports must identify specific construction or upgrade projects, describe how service will be improved by each project, and provide the start date and completion date for each improvement, the amount of investment for each improvement, the specific geographic area where each improvement will be made, and the estimated population that will be served by each improvement. For eligible telecommunications carriers that are classified as the incumbent local exchange carrier, the information required must be submitted at the study area level. For other eligible telecommunications carriers, the information must be submitted at the incumbent local exchange carrier study area level. If a study area or designated service area includes geographic areas in more than one state, the information must also be submitted at the North Dakota level.
2. Detailed information on any outage, as that term is defined in 47 C.F.R. section 4.5, of at least thirty minutes in duration for each designated service area for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served

in a designated service area, or a 911 special facility, as defined in 47 C.F.R. section 4.5(e). Specifically, the eligible telecommunications carrier's annual report must include information detailing:

- a. The date and time of onset of the outage;
- b. A brief description of the outage and its resolution;
- c. The particular services affected;
- d. The geographic areas affected by the outage;
- e. Steps taken to prevent a similar situation in the future; and
- f. The number of customers affected.

Eligible telecommunications carriers may file a copy of federal communications commission outage reports that include the information required by this subsection to satisfy this requirement.

3. The number of requests for service from potential customers within the designated service area that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers.
4. The number of complaints per one thousand handsets or lines.
5. Certification that it is complying with applicable service quality standards and consumer protection rules.
6. Certification that the carrier is able to function in emergency situations.
7. Certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant designated service area.
8. Certification that the carrier acknowledges that the commission may require it to provide equal access to long-distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the designated service area. Wireless carriers must certify that the carrier acknowledges that the federal communications commission may require it to provide equal access to long-distance carriers in the event no other eligible telecommunications carrier is providing equal access within the designated service area.

**History:** Effective July 1, 2007.

**General Authority:** NDCC 28-32-02, 49-21-01.7

**Law Implemented:** NDCC 49-21, 49-21-01.7, 49-21-07



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



**JULY 2007**

**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. "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.
2. "Brand" means a word, name, or symbol, number, or design used to identify seed of one person to distinguish that seed from seed of another person.
3. "Bulk seed" means seed stored in bins and may mean seed stored in containers larger than one hundred sixty pounds [72.72 kilograms].
4. "Conditioning" includes all activities performed on seed between harvest and marketing. Other terms associated with conditioning could include cleaning, processing, sizing, grading, storing, seed treating, drying, scarifying, and other operations that may change the purity or germination of the seed.
5. "Field inspection" means physical examination or observation of a field by an authorized state seed employee. Inspections, tests, certifications, and other acts are not intended to induce reliance on the seed department's inspections, certifications, or any other action or inaction for any purpose relating to quantity or quality of the seed or crop produced, fitness for purpose, merchantability, absence of disease, or variety or selection identification. Certification means only that the seed crop was randomly inspected and at the time of the inspection the field or seed lot met the rules of the department.
6. "Grower" means any person that is complying with all the certification rules and regulations in the production of field-inspected seed.
7. "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.
8. "Inseparable other crops" means only other crops of similar size which are difficult to remove in the usual methods of cleaning.
  9. "Mixture" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.
  10. "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.
  11. "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.
  12. "Type" means a group of variety so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.
  13. "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.

14. "Variety" means 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 from all varieties of public knowledge, "uniform" in the sense that the variations in essential and distinctive characteristics 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; January 2, 2006; July 1, 2007.

**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 74-03-01

**74-03-01-01. Seed certification in North Dakota.** The certification of seed in North Dakota is a function of the state seed department as outlined in North Dakota Century Code sections 4-09-16, 4-09-17, 4-09-18, and 4-09-19. This chapter applies to all crops, other than potato except seed potatoes, which are regulated pursuant to North Dakota Century Code chapter 4-10 and Administrative Code article 74-04, grown for the production of all classes of North Dakota certified seed. If a North Dakota crop is accepted for field inspection and certification for which there are no North Dakota field or seed standards, the latest standards published by the association of official seed certifying agencies for that crop will apply.

**History:** Amended effective January 2, 2006; July 1, 2007.

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

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

**74-03-01-02. Purpose of seed certification.** The purpose of seed certification is to maintain and make available to the public high quality seed of crop varieties so produced, handled, and distributed as to ensure proper identity and genetic purity. This rule is exhortatory and does not create a cause of action on account of any failure by the department to correctly identify or certify seed variety or selection.

**History:** Amended effective July 1, 2007.

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

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

**74-03-01-03. Eligibility requirement for certification of crop varieties.** As used in this chapter, "variety" includes hybrids and breeding lines, and selections, clones, or strains of true varieties.

1. Only those varieties that are accepted by the North Dakota state seed department as meriting certification in accordance with the criteria established by the association of official seed certifying agencies shall be eligible for certification. A variety will normally be considered eligible for certification if it has received favorable action by one or more of the following:
  - a. A national variety review board.
  - b. The plant variety protection office, including additional information itemized in subdivisions e through i of subsection 2 of section 74-03-01-03, which is required.
  - c. An official seed certifying agency.
  - d. The organization for economic cooperation and development (OECD).

Contact the state seed commissioner for varieties not covered by one of the above categories on questions regarding eligibility. In the absence of a national review board, a state or regional variety review committee may determine the eligibility for certification, if operating under similar criteria and approved by the seed commissioner.

2. The following must be made available by the originator, developer, owner, or agent when eligibility for certification is requested by the applicant.
  - a. The name of the variety. This name must be the established name if the variety has previously been marketed.
  - b. A statement concerning the variety's origin and the breeding procedure used in its development.
  - c. A detailed description of the morphological, physiological, and other characteristics of the plants and seed that distinguish it from other varieties.
  - d. Evidence of performance of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety.
  - e. A statement delineating the geographic area or areas of adaption of the variety.
  - f. A statement on the plans and procedures for the maintenance of stock seed classes, including the number of generations through which the variety may be multiplied.
  - g. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified.
  - h. Any additional restrictions on the variety, specified by the breeder, with respect to geographic area of seed production, age of stand, or other factors affecting genetic purity.
  - i. A sample of seed representative of the variety that will be planted for certified seed production.
3. This rule does not create a mandatory duty or a cause of action on account of the department's recognizing or refusing to recognize a variety as meriting certification.

**History:** Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2007.

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

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

#### **74-03-01-09. Field inspection.**

1. **Applications.** Applications for field inspection, accompanied by the correct fees, past-due accounts, and proof of seed eligibility, must be received at the state seed department office in Fargo not later than June fifteenth. The penalty fee will apply after that date. Applications for soybeans, millet, and buckwheat will be accepted until July fifteenth without late penalty. In case of an emergency or unusual circumstances due to weather or crop conditions, the deadline may be extended at the discretion of the seed commissioner. In such an event, late application penalties may be waived.
2. **Information required on application.** The application shall be completed by the applicant and returned to the seed department. All questions must be answered completely and correctly. The location of the farm and field, including the legal description, shall be given clearly so that the inspector will be able to find the farm and field readily without waste of time and extra travel. Farm service agency field maps must be provided by the applicant. If the seed is purchased, an official certified seed tag or bulk certificates must accompany the application or be made available to the seed department prior to field inspection.
3. **Roguing and spraying fields.** Roguing fields prior to inspection is recommended to remove undesirable plants from fields that are intended for seed certification. Plants that should be removed include off-type plants, other crop plants, prohibited and restricted noxious weeds, and other impurities which may be growing in the field.

Roguing is usually done by pulling out off-types or other crop plants or weeds and removing them from the field. In the case of small grain, roguing should be done after heading as foreign plants are seen most easily at this time. In hybrid seed production, fertile off-types and undesirable plants should be removed before pollen is shed. Sterile off-types may be removed any time prior to the final inspection. Roguing is essential to maintain the purity of varieties and high standards of certified seed.

Whenever practical and advisable, seed fields should be sprayed with pesticides according to the manufacturer's label for the control of pests. Growers must follow posting requirements as specified by state and federal agencies responsible for the regulation and use of pesticides.

4. **Weeds and diseases.**
  - a. Prohibited noxious weeds under North Dakota seed laws and rules are leafy spurge, field bindweed (creeping jenny), Canada thistle, perennial sow thistle, Russian knapweed, hoary cress (perennial peppergrass), absinth wormwood, hemp having more

than three-tenths of one percent tetrahydrocannabinol, musk thistle, spotted knapweed, and yellow starthistle.

- b. Restricted noxious weeds under North Dakota seed laws and rules are dodder species, hedge bindweed (wild morning glory), wild oats, and quackgrass.
  - c. A field may be rejected if it is the opinion of the field inspector that the amount and kind of weeds present make it difficult to provide for inspection, or the condition is such that the quality of the cleaned seed may be questionable.
  - d. Objectionable weed seeds are restricted noxious weeds under North Dakota seed laws and rules and may include some common weeds which cause a specific problem in the conditioning of some individual crops.
  - e. Diseases not governed by specific crop standards may be cause for rejection if it is the opinion of the inspector that the quality of the cleaned seed may be affected or if results of tests made on the seed indicate a disease condition which will affect the crop produced from such seed.
5. Cancellation of field inspection. An application may be canceled by the grower before the field inspection is made and the application fee minus an administrative fee will be refunded to the applicant. The request for cancellation, however, must reach the state seed department before the inspector arrives in the general locality of the field or before inspection has occurred. Refunds will not be made after fields are inspected or because fields have been rejected.
  6. Appeal inspection of rejected fields will be considered, provided application for appeal allows a reasonable amount of time for reinspection prior to harvest. A fee for reinspection may be assessed.
  7. The variety name stated on the application will be standard for inspection when entering the field. Absent compelling visual evidence to the contrary, the variety or selection declared by the grower will be presumed correct if the documentation provided is valid and the variety description characteristics are met within each specific crop standard and class.
  8. Inspections, tests, certifications, and other acts are not intended to induce reliance on the seed department's inspections, certifications, or any other action or inaction for any purpose relating to quantity or quality of the seed or crop produced, fitness for purpose, merchantability, absence of disease, or variety or selection identification. Certification

means only that the seed was randomly inspected and at the time of the inspection the field or seed lot met the rules of the department.

**History:** Amended effective May 1, 1986; May 1, 1988; December 18, 1989; September 1, 2002; January 2, 2006; July 1, 2007.

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

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

#### **74-03-01-11. Seed sampling and laboratory inspection.**

1. **Identification in storage.** Field-inspected seed must be identified at all times. Identification must be traceable to field inspection numbers from the crop year in which the seed was produced. Conditioned seed in storage must be identified by kind, variety, and lot number displayed on the bin or storage container.
2. **Preconditioned sample testing.** To speed up tagging and determine the quality of seed prior to conditioning a representative sample of seed from each field which has passed field inspection may be submitted to the state seed department soon after the crop is harvested for the purpose of germination and disease testing. This sample should be cleaned on a small mill or hand sieve to correspond as nearly as possible to the condition of the entire lot after cleaning or conditioning.

Disease tests required on preconditioned samples may be used for final certification purposes. A grower may request new tests after conditioning to be used for labeling purposes. Fragile crops such as soybeans, field beans, and field peas must be tested for germination after the final conditioning of the seed lot to assure correctness of label claims. The labeler is responsible in all cases for information provided or stated on seed labels.

3. **Sampling procedures.**
  - a. All seed lots for final certification should be sampled during conditioning by taking representative samples at periodic intervals throughout the process of conditioning the seed lot.
  - b. ~~Specific instruction~~ instructions to samplers are found on the reverse side of the samplers report.
4. **Maximum lot size and numbering.**
  - a. The maximum lot size for bagged seed is two thousand bushels [704.78 dekaliters] except for small seeded legumes and grasses which is twenty-two thousand five hundred pounds [10000 kilograms]. For all crops, one sample for each lot is required, except small seeded legumes and grasses. For small seeded legumes and grasses, one sample for twenty-two thousand five

hundred pounds [10000 kilograms] is required. Bulk certified and registered class lots do not have a maximum size limit except bin capacity. Each bin is considered a separate seed lot. Bulk seed requires one sample per lot.

- b. The lot number shall be designated by the labeler. The lot number of the seed planted may not be used as the new lot number for the seed being certified during the current crop year.
5. **Commingling (mixing) of inspected seed fields.** Seed from different fields of the same kind and variety, which have passed field inspection, may be commingled if the seed is of the same class, generation, and general quality. If the seed of different classes or generations is commingled, the seed becomes eligible for the lowest class only.
6. **Conditioning.**
  - a. All field-inspected seed which is to be labeled must be conditioned and must meet the minimum seed standards for the crop and class.
  - b. Field-inspected seed may be conditioned either by the grower or at an approved seed conditioning plant.
7. **Conditioning by farmer or grower - Procedure.**
  - a. Condition the seed. A farmer or grower does not need an approved conditioning plant permit if the farmer or grower conditions the farmer's or grower's own seed on the farmer's or grower's premises with the farmer's or grower's equipment.
  - b. The farmer or grower must complete a samplers report in its entirety, attach the report to a two pound [.907 kilogram] sample that is representative of the entire seed lot, and deliver to the state seed department in Fargo for analysis.
8. **Conditioning at an approved plant.**
  - a. Growers must complete a grower's declaration if ownership of the seed lot has been transferred to a different individual or entity. Transfer of ownership of field-inspected seed is limited to an approved conditioner or bulk retailer unless the transfer has been approved by the commissioner or the commissioner's agent.
  - b. The grower's declaration shall be completed and signed when ownership of the seed lot has changed and the seed is delivered for conditioning.

- c. While conditioning, all seed must be sampled at regular intervals by an authorized sampler. The sample and completed sampler's report must be submitted to the state seed department for analysis.
9. **Regulatory sampling.** The state seed department may resample any lot of seed before final certification or after the seed is labeled.
10. **Laboratory analysis.**
- a. All laboratory testing shall be done by qualified personnel of the state seed department. Analysis and tests of seed samples and definition of analysis terms shall be in accordance with the rules of the association of official seed analysts (AOSA). In certain cases when time constraints are critical to the efficient movement of certified seed, the commissioner may accept germination or other test results from another AOSA-approved laboratory, through the certification agency of the state of origin of the seed.
  - b. If more than one sample of seed from the same lot is tested for purity without additional conditioning, an average shall be taken of all tests conducted. Results from the most recent germination or disease test shall be used as the final result.
  - c. The test results from official samples drawn by state seed department personnel shall supersede all other test results from submitted samples.
  - d. Seed from certain classes or kinds, or both, may be subject to variety identification analysis at the discretion of the department, with testing fees payable by the grower or labeler.

**History:** Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002; January 2, 2006; July 1, 2007.

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

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

#### **74-03-01-12. Labeling.**

##### **1. Bagged seed.**

- a. All bagged seed represented or sold as foundation, registered, or certified must be bagged in new bags and the official certification tag properly affixed on the bag. Certification tags are void if improperly used or not attached to the bag. Containers or tote bags larger than one hundred sixty pounds [72.77 kilograms] may be considered bulk seed.
- b. The responsibility for properly labeling foundation, registered, or certified seed rests with the grower or first distributor.

- c. The use of two tags, the official certification tag and a separate analysis tag, on foundation, registered, or certified seed is optional. When two tags are used, the certification tag, will not carry the seed analysis. An additional seed analysis tag must be used or the analysis printed on the bag.
  - d. Certified seed will be considered mislabeled unless the seed analysis is on either the certification tag or on an additional tag or printed on the bag.
  - e. Certification tags are not valid when they are transferred in any manner other than attached to the eligible seed bag.
2. **Bulk certification.** All rules for production, conditioning, and testing of certified seed shall apply except that seed does not have to be in bags.
- a. All field and seed standards applying to bagged seed shall also apply to bulk certified seed.
  - b. Certified seed may be sold in bulk by an approved retail seed facility or by the applicant producer. A maximum of two physical transfers are permitted after final certification:
    - (1) From the applicant labeler to an approved retailer or consumer.
    - (2) From an approved retailer to consumer.
  - c. The foundation and registered class may be sold in bulk. To be eligible for recertification, bulk foundation or registered seed must be sold by the applicant producer or by an approved conditioner directly to the consumer. Approved bulk handlers may be allowed to handle bulk registered seed on a case-by-case basis as authorized by state seed department personnel.
  - d. It is the seller's responsibility to:
    - (1) Handle seed in a manner to prevent mixtures and contamination.
    - (2) Supply seed that is representative of the seed tested and approved for certification.
    - (3) Ensure all bins, augers, conveyors, and other equipment are adequately cleaned before handling certified seed.
    - (4) Determine that the vehicle receiving bulk certified seed has been cleaned prior to receiving the seed. If it is not clean, this is to be noted on the bill of sale or transfer certificate.

- (5) Provide to the purchaser a bulk certificate for each load of bulk certified seed at the time of delivery.
  - (6) The conditioned lot shall not be moved from the premises of the approved conditioning plant or labeler's facility until the sample has been tested by the state seed department laboratory and shows that the lot is eligible for certification.
- e. It is the buyer's responsibility to:
- (1) Obtain a bulk certificate from the seller for each load of bulk certified seed at the time of delivery.
  - (2) Provide a clean vehicle or container in which to load seed.
  - (3) Maintain purity of the seed after it has been loaded into the buyer's vehicle.
- f. The bulk certified seed certificate takes the place of the certified seed tag. The complete seed analysis will be printed on the certificate.
- g. Bulk retail seed facilities must be approved annually before certified seed can be handled in bulk. Such facilities may be part of a seed conditioning plant or may be approved only for handling bulk certified seed. Before approval, all procedures for receiving, storing, dispensing, and recordkeeping must be inspected. The applicant must demonstrate acceptable procedures for maintaining purity and identity of bulk certified seed.
- h. For all bulk certified seed:
- (1) A separate storage bin must be available for each lot that will be sold in bulk.
  - (2) All bins, augers, conveyors, and other equipment must be cleaned before storage or handling certified seed.
  - (3) All hopper bins must be equipped with bottom access ports, inside ladders, or some other means approved by the seed department to facilitate access for cleaning.
  - (4) All augers used to convey seed must be reversible.
  - (5) All bins must be clearly and prominently marked to show crop, variety, seed class, and lot number.
  - (6) All bin openings must be closed to prevent contamination, except when seed is being put in or removed from the bin.

- i. The following records must be maintained:
  - (1) Amount of seed grown and conditioned or purchased for bulk sale.
  - (2) Amount of bulk certified seed sold by variety and lot number.
  - (3) A current inventory of seed available for sale for each variety.
  - (4) It is the seller's responsibility to maintain possession of a two-pound [.907-kilogram] sample identified by variety, kind, and lot number of each lot of certified seed, whether bagged or in bulk, sold for a period of two years after the final disposition of the seed lot.
3. No person may disclaim responsibility of the vendor of the seed for the data on the label required by law and any such disclaimer of vendor's express or implied warranty is invalid.

**History:** Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2007.

**General Authority:** NDCC 4-09-03, 4-09-05, 4-09-14(4)(e), 4-09-16

**Law Implemented:** NDCC 4-09-14(4)(e), 4-09-16, 4-09-17, 4-09-18

**74-03-01-18. Exclusion of warranty.** Field seeds certified in accordance with this chapter have been field inspected and laboratory tested as specified in this chapter. The state seed department and inspection services function and serve only in an official regulatory manner and do not relieve the grower or owner of the grower's or owner's responsibility. Neither the producer, the seller, the North Dakota seed commission, the seed commissioner, or the commissioner's employees make any warranty or representation of any kind, express or implied, as the quantity or quality of the crop produced from certified seed, including merchantability, fitness for a particular purpose, or absence of disease, or varietal or selection identity. The only representation is that the seed was produced, graded, and inspected under the seed certification rules and regulations of the North Dakota state seed department.

**History:** Effective September 1, 2002; amended effective July 1, 2007.

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

**Law Implemented:** NDCC 4-09-16, 4-09-17, 4-09-18, 4-09-20.1

## 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 or representation that the potatoes are of the variety or selection identified on the label, 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 or has been produced under experimental conditions.
7. "Field year" means the time which is required for the potato plant to complete the growing cycle from planting in the field until maturity.
8. "Foundation seed" means a primary source of a genetically identified variety from which increases are made.
9. "Grade" refers to the tuber quality, condition, and size factors as specified in this chapter.
10. "Inspection" means visual examination or observation of sample plants or tubers.
11. "Label" means an official tag or bulk certificate used to identify certified seed.
12. "Latent diseases" means diseases not detectable by visual inspection.
12. 13. "Lightly caked with soil" means approximately one-eighth of an inch [3.18 millimeters] in depth.

- ~~13.~~ 14. "Micropropagation" means the aseptic production of potato plantlets, tubers, or sprouts utilizing meristem culture.
- ~~14.~~ 15. "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, or different from the cultivar, variety, strain, or selection stated on the grower application for certification.
- ~~15.~~ 16. "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.
- ~~16.~~ 17. "Prenuclear seed" means plantlet propagation source resulting from the use of aseptic propagation techniques either in the laboratory or controlled environment.
- ~~17.~~ 18. "Seed potatoes" means Irish potato tubers to be used for planting.
- ~~18.~~ 19. "Seed warehouse" means a building for seed potato storage that is separate in structure and foundation from a commercial potato storage unit.
- ~~19.~~ 20. "Selection" means a subgroup of a variety of potato. Commonly used terms include line selection, clonal selection, or strain selection.
- ~~20.~~ 21. "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.
- ~~21.~~ 21. ~~"Tag" refers to the state seed department's official certification tag used to identify certified seed.~~
- ~~22.~~ 22. "Tolerance" means a permissible allowance for such factors as disease, grade defects, and varietal mixture.
- ~~23.~~ 23. "Variety" means a plant group within a single botanical taxon of the lowest-known rank which, without regard to whether the conditions for plant variety protection are met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one characteristic, and considered as a unit with regard to the suitability of the plant grouping for being propagated unchanged. A variety may be represented by transplants, plants, tubers, tissue culture, plantlets, and other matter.
- ~~24.~~ 24. "Virus tested" means tested for latent viruses by methods established by the state seed department.

25. "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; January 2, 2006; July 1, 2007.

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

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

#### **74-04-01-02. General requirements and responsibilities.**

##### **1. Participation and responsibility.**

- a. Participation in this seed potato program is voluntary and may be withdrawn prior to the first inspection.
- b. Responsibilities.
  - (1) Seed department responsibilities. The inspections, approvals, certification, and production of these rules and regulations will be done by the state seed department.
  - (2) Applicants' responsibilities. The farming, sanitation practices, storing, and packing will be the grower's responsibility. It is the responsibility of the applicant to maintain genetic purity and identity at all stages of certification, including planting, harvesting, storing, and handling. Evidence that any lot of seed has not been protected from contamination that might affect genetic purity or is not properly identified shall be cause for possible rejection of certification.

##### **2. General requirements.**

- a. Potatoes to be eligible for the program shall have been in a certification program and winter tested for eligibility.
- b. Fields will pass two or more inspections given by visual examination of a representative sample of the plants which method and size of sample will be determined by the state seed department.
- c. Fields passing inspection will be stored in a seed warehouse and sorted to grade at shipping time.
- d. Responsibility for the quality of work done in sorting the potatoes falls upon the grower or a thoroughly qualified agent authorized by the grower.

- e. Requirements for certification are not complete on any lot of eligible potatoes until properly tagged as described in this chapter and an official seed grade inspection certificate has been issued. Official seed grade inspections are compulsory for seed shipped interstate. Grade inspection will be voluntary for intrastate shipments.
  - f. The responsibility for properly labeling foundation or certified seed rests with the grower of the seed. The official tags or bulk certificates will be issued only on order or authorization from the grower, who must provide to the purchaser a proper and accurate label for each container or load of seed at the time of delivery. These tags or bulk certificates are to ~~be attached to the container~~ at accompany the time the potatoes are ~~being graded or loaded for shipment so as to constitute an effective seal at shipment.~~ Tags Labels must not be applied to stock other than that indicated on the tags or bulk certificates. Bulk shipments, by truck or railcar, when thoroughly disinfected, may be considered the container. Excess labels must be returned to the seed department.
  - g. Resorting or regrading. If a lot of potatoes fails to meet certified seed grade requirement upon inspection, they are to be reconditioned to meet the requirement or the official tags must be removed.
  - h. Reconditioning while in transit. In the case of any circumstance making it essential to recondition seed in transit, permission must be obtained from the state seed department.
  - i. Latent virus testing. Serological testing for latent viruses shall be voluntary and a requirement for only virus-tested seed. Virus-tested seed meeting established tolerances may be indicated on the tag.
  - j. Upon the discretion of the state seed department, potato seed lots originating from out of state may be subjected to a laboratory test, by a seed department-approved laboratory, for the detection of seedborne pathogens. Eligibility for recertification of any seed lot so tested must be based on that laboratory test. Additional documentation, including health certificates or summer or winter, or both, field readings, may be required by the seed department prior to acceptance for recertification in this state.
  - k. Failure to comply with any of the requirements of this chapter may be cause for rejection or cancellation of the lot or the certification of any seed as seed potatoes.
3. No person may disclaim responsibility of the vendor of the seed for the data or information on the label required by law and any such disclaimer of vendor's express or implied warranty is invalid.

- 4. Violations.** The state law specifically states the use of the term "certified" or the term "registered" or any term or terms conveying a meaning substantially equivalent to the meaning of any said terms, either orally or in writing, printing, marking, or otherwise in reference to or in connection with or in advertising or characterizing or labeling seed potatoes or the containers thereof is prohibited, unless such potatoes shall have been duly inspected and certified pursuant to the provisions of the law. Any violation of this law and any person on conviction thereof, shall be fined not more than one hundred dollars and cost for first offense and not more than five hundred dollars and costs of prosecution for subsequent offenses.

**History:** Amended effective December 1, 1981; June 1, 1992; January 2, 2006; July 1, 2007.

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

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

**74-04-01-03. Exclusion of warranty and limitation of remedy.** Seed potatoes certified in accordance with this chapter have been field and grade inspected as specified in this chapter. The state seed department and the inspection service function and serve only in an official regulatory manner and do not relieve the grower or owner of the grower's or owner's responsibility. Neither the producer, the seller, the North Dakota seed commission, the seed commissioner, or the commissioner's employees make any warranty or representation of any kind, express or implied, as to the quantity or quality of the crop produced from certified seed, including merchantability, fitness for a particular purpose, or absence of disease, or varietal or selection identity. The only representation is that the seed potatoes were produced, graded, packed, and inspected under the seed certification rules and regulations of the North Dakota state seed department.

**History:** Amended effective December 1, 1981; July 1, 2007.

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

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

**74-04-01-06. Seed eligibility.**

1. North Dakota seed stocks.
  - a. Seed lots of North Dakota origin to be eligible will have been grown under the seed certification program in the previous season passing field inspection and the winter test.
  - b. Seed stocks not having a winter test may be accepted on an observational basis but only after they have been laboratory tested and only with prior approval from the state seed department. The cost of laboratory testing will be borne by the applicant. The same field inspection fee structure will apply to this application.

2. Seed stocks from other sources. Seed lots from sources other than North Dakota will be of the foundation or approved classification and have passed a winter grow-out or laboratory test on a sample of the lot that is equal to or greater than the size of the winter test sample as outlined in this bulletin.
3. Purchase proof must accompany the application to provide sufficient evidence as to origin and quantity of seed. An approved combination of shipping point certificates, affidavits, North American certified seed potato health certificates, or sales receipts will be accepted. The variety or selection declared by the grower will be presumed correct if the documentation provided is valid and acceptable for all other purposes.
4. Individual seed lots will be maintained separately at all times. If separation is not maintained and commingling of lots occurs, each seed lot will automatically advance to the generation and health factors of the oldest or lowest, or both, seed health status of the commingled parts.
5. Any variety protected by patent or the Plant Variety Protection Act must have authorization from the owner.

**History:** Amended effective December 1, 1981; June 1, 1992; September 1, 1997; September 1, 2002; January 2, 2006; July 1, 2007.

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

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

**74-04-01-08. Field inspection standards.**

1. Each seed potato field will be visibly inspected based on sample inspection. The method of inspection and sample size will be at the discretion of the state seed department but a minimum of one hundred plants per acre [.40 hectare] will be inspected. For varieties that do not express readily visible symptoms of a disease, laboratory testing may be done for the pathogen.
2. The field tolerance established will be based on visible symptoms in the samples inspected. Diseases which cannot be observed visibly may be present.

	First Inspection Tolerances (%)						Certified Class Generation
	Foundation Class Generation						
	0	1	2	3	4	5	0-6
Varietal mixture	0.1	0.2	0.3	0.5	0.5	0.5	0.5
Spindle tuber viroid	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Severe mosaics (PVY)	0.2	0.3	0.4	0.5	0.5	0.5	1.0

Leaf roll (PLRV)	0.2	0.3	0.4	0.5	0.5	0.5	1.0
Total serious virus	0.2	0.3	0.4	0.5	0.5	0.5	1.0
*Bacterial ring rot	0.0	0.0	0.0	0.0	0.0	0.0	0.0

	Second and All Subsequent Inspections Tolerances (%) Foundation Class Generation						Certified Class Generation
	0	1	2	3	4	5	0-6
Varietal mixture	0.1	0.1	0.2	0.3	0.3	0.3	0.3
Spindle tuber viroid	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Severe mosaics (PVY)	0.0	0.1	0.2	0.3	0.3	0.3	1.0
Leaf roll (PLRV)	0.0	0.1	0.2	0.3	0.3	0.3	1.0
Total serious virus	0.0	0.1	0.2	0.3	0.3	0.3	1.0
*Bacterial ring rot	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Late blight found during field inspection must be confirmed by symptoms or laboratory diagnosis before being reported on the inspection report.

\* The zero tolerance means that no amount is permissible when inspected. It does not mean that the seed is absolutely free of disease or disease-causing agents, but that none was found during inspection.

Varieties that do not express visible disease symptoms. Potato varieties that do not express visible disease symptoms of a specific pathogen may be subjected to a laboratory test to determine the levels of the pathogen in a seed lot. This testing may occur during the growing season or during the winter test, or both, and may affect eligibility of the seed lot.

Blackleg. Since the blackleg disease may be latent, the inspector will record only the percentage observed during the first and second inspection, and no tolerance will be established. However, any excessive amount can be cause for rejection. Blackleg observations shall be based upon sample plants exhibiting the characteristic black, inky, soft, slimy, decomposed tissue of the stem.

Wilt. Only the percentage noted will be recorded on the first and second inspection, and may include other factors such as maturity, drought, or alkali problems but any excessive amount may be cause for rejection.

There will be zero tolerance for potato wart, corky ring spot, gangrene, golden nematode, root knot nematode, tuber moths, or other such injurious pests that have never been found and confirmed in North Dakota seed potato fields.

Tolerances for potato virus x tested seed. All of the above tolerances will apply, including a requirement that bacterial ring rot must not have been found on the

farm during the season. Seed lots with no more than two percent potato virus x infection may be identified as virus x tested on certification tags.

3. Field conditions.

- a. Insect control must be maintained early and until the vines are killed or matured. Fields suffering excessive insect injury may be disqualified for certification. A grower will notify the inspector of the date of spraying and spray material applied.
- b. Vine killing. If a field has not received final inspection, the grower must obtain approval from the inspector before killing the vines. Furthermore, if the inspector deems it appropriate, a laboratory test may be required or strips of unkilld vines must be left in the seed fields to facilitate final inspections, or both. When strips are left for inspection, the first twelve rows (if a six-row planter was used, eight rows if a four-row planter was used) must not be vine-killed. It will be the responsibility of the seed producer to identify where seed planting began. Approximately ten percent of the seed field acreage must be left in strips.
- c. Any condition such as excess weeds, hail injury, foreign plants, chemical damage, soil conditions, or insect damage that interferes with proper inspection may disqualify the seed for certification.
- d. Roguing is permitted and recommended in many cases but must be done before the inspector arrives in the field.
- e. Presence of disease or conditions not mentioned heretofore which may impair seed quality shall constitute cause for rejection or additional testing before final certification. Stocks which show an excessive percentage of total serious virus in official postharvest tests shall be considered ineligible for certification tags.

4. Appeal inspection of rejected fields will be considered, provided application is made within three days after rejection, the field is in good condition for inspection, and no additional roguing is done previous to reinspection.

5. Bacterial ring rot control.

- a. All seed produced by a farming operation in which bacterial ring rot has been found will be ineligible for recertification the following year.
- b. If the farming operation is found to be infected, all equipment and storages must be cleaned and disinfected.

- c. A farming operation found to be infected on three consecutive years shall be required to purchase all new seed, clean, and disinfect the operation under the supervision of the state seed department before entering any seed for certification.
- 6. The variety name stated on the application will be the standard for inspection when entering the field. Absent compelling visual evidence to the contrary, the variety or selection declared by the grower will be presumed correct if the documentation provided is valid and the variety description characteristics meet the requirements of the chapter.
- 7. Inspections, tests, certifications, and other acts are not intended to induce reliance on the seed department's inspections, certifications, or any other action or inaction for any purpose relating to quantity or quality of the seed or crop produced, fitness for purpose, merchantability, absence of disease, or variety or selection identification. Certification means only that the potatoes were randomly inspected, and at the time of the inspection the field or seed lot met the rules of the department.

**History:** Effective December 1, 1981; amended effective June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002; January 2, 2006; July 1, 2007.

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

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

**74-04-01-11. Official North Dakota seed potato grades.** Final grade determination shall be made based on physical defects, size, shape, and cleanliness. Two grades, first or blue tag, and second or yellow tag, are available for shipment outside the state. A white tag is available but restricted to shipments within the state. The potatoes will be packed in new burlap sacks or clean, disinfected containers identified by official tags attached as to variety, crop year, and grower and accompanied by an official state or federal grade certificate. United States department of agriculture revised standards, effective March 2002, for seed potatoes shall be the official guide for applying and interpreting all definitions and terms used in North Dakota seed potato grades. Grade inspection will be made on a sample basis.

- 1. First grade blue tag seed potatoes shall consist of unwashed potatoes of one variety which must meet the following requirements:
  - a. Shape. Fairly well-shaped except for long varieties.
    - (1) Dryland type (see definitions section 74-04-01-01).
    - (2) Except for shape (see definitions section 74-04-01-01).
  - b. Free from:
    - (1) Freezing injury.

- (2) Blackheart.
  - (3) Soft rot and wet breakdown.
  - (4) Late blight tuber rot.
  - (5) Bacterial ring rot.
  - (6) Nematode or tuber moth injury.
  - (7) Fresh cuts or fresh broken-off second growth.
- c. Free from serious damage caused by:
- (1) Hollow heart.
  - (2) Vascular ring discoloration.
  - (3) Wireworm.
  - (4) Growth cracks.
- d. Free from damage by soil and other causes (see definitions section 74-04-01-01 and classification of defects, section 6, tables I and II of section 74-04-01-11).
- e. Size:
- (1) Minimum size, unless otherwise specified, must be one and one-half inches [38.1 millimeters] in diameter.
  - (2) Maximum size may not exceed twelve ounces [340.2 grams] for round-shaped or intermediate-shaped varieties and fourteen ounces [396.9 grams] for long varieties.
  - (3) For all varieties, size B must be from one and one-half inches [38.1 millimeters] to not more than two and one-quarter inches [57.1 millimeters] in diameter.
- f. Tolerances. In order to allow for variations incident to proper grading and handling in the foregoing grade, the following tolerances, by weight, are provided as specified:
- (1) For defects:
    - (a) Ten percent for potatoes in any lot which are seriously damaged by hollow heart.

- (b) Ten percent for potatoes in any lot which are damaged by soil. (see definitions section 74-04-01-01).
- (c) Five percent for potatoes in any lot which are seriously damaged by vascular ring discoloration.
- (d) Potatoes affected by silver scurf are not grade factors.
- (e) Not more than ten percent of the potatoes seriously damaged by wireworm.
- (f) Eleven percent for potatoes which fail to meet the remaining requirements of grade, including therein not more than six percent for external defects and not more than five percent for internal defects; provided that included in these tolerances not more than the following percentages shall be allowed for the defects listed:

	Percent
Bacterial ring rot	0.00
Late blight tuber rot	1.00
Damage by dry-type or moist-type fusarium tuber rot	2.00
Nematode or tuber moth injury	0.00
Frozen, soft rot, or wet breakdown	0.50
Varietal mixture	0.50

(2) For off-size:

- (a) Undersize. Five percent for potatoes in any lot which fail to meet the required or specified minimum size.
- (b) Oversize. Ten percent for potatoes in any lot which fail to meet the required or specified maximum size.

2. Second grade yellow tag potatoes shall consist of unwashed potatoes that meet the requirements for blue tag grade except for defects caused by hollow heart, wireworm, internal discoloration, firmness, sprouts, and sunken, flattened, or depressed areas with or without underlying flesh discolored, and are not seriously damaged by soil and for increase in maximum size, and for increased tolerance for defects listed below:

Tolerances.

a. For defects:

- (1) Twenty percent for potatoes seriously damaged by hollow heart.
  - (2) Firmness, sprouts, wireworm, internal discoloration, sunken, flattened, or depressed areas with or without underlying flesh discolored and growth cracks are not grade factors.
  - (3) Twenty percent for potatoes which fail to meet the remaining requirements of the grade; provided, that included in this amount not more than six percent shall be seriously damaged and included therein not more than one-half of one percent shall be allowed for potatoes which are frozen or affected by soft rot or wet breakdown.
- b. Size. Maximum size, unless otherwise specified may not exceed fourteen ounces [396.90 grams] for round-shaped or intermediate-shaped varieties and sixteen ounces [453.60 grams] for long varieties.
3. White tag. Official white identification tags will be furnished on request for potatoes which passed field inspection requirements and are being transferred ~~for seed purposes, within the state of North Dakota only. Such stock shall meet United States number two grade requirements, except for defects caused by firmness, sunburn, hollow heart, wireworm, and sunken, flattened, or depressed areas with or without underlying flesh discolored. Not more than two percent shall be damaged by dry-type or moist-type fusarium tuber rot. Unless otherwise specified, the maximum size shall be fourteen ounces [396.60 grams] and one and one-half inches [38.1 millimeters] minimum. State seed department grade inspection on white tag lots is not compulsory, but may be obtained upon request.~~
  4. Application of tolerances. Individual samples may not have more than double the tolerances specified, except that at least one defective and one off-size potato may be permitted in any sample; provided that en route or at destination, one-tenth of the samples may contain three times the tolerance permitted for potatoes which are frozen or affected by soft rot or wet breakdown; and provided, further, that the averages for the entire lot are within the tolerances specified for the grade.
  5. Samples for grade and size determination. Individual samples shall consist of at least twenty pounds [9.06 kilograms]. The number of such individual samples drawn for grade and size determination will vary with the size of the lot.
  6. Classification of defects.
    - a. Brown discoloration following skinning, dried stems, flattened depressed areas (showing no underlying flesh discoloration),

greening, skin checks, and sunburn do not affect seed quality and may not be scored against the grade.

b. Table I - External defects.

Defect	DAMAGE	
	When materially detracting from the appearance of the potato	OR When removal causes a loss of more than 5 percent of the total weight of the potato
Air cracks		x
Bruises		x
Cuts and broken-off second growth (healed)	x	x
Elephant hide (scaling)	x	
Enlarged, discolored, or sunken lenticels	x	
Folded ends	x	
Second growth	x	
Shriveling	When more than moderately shriveled, spongy, or flabby.	
Sprouts	When more than 20 percent of the potatoes in any lot have any sprout more than 1 inch [25.4 millimeters] in length.	
Surface cracking	x	x
Flea beetle injury	x	x
Grub damage	x	x
Rodent and/or bird damage	x	x
Wireworm or grass damage	Any hole more than 3/4 inch [19.1 millimeters] long or when the aggregate length of all holes is more than 1 1/4 inches [31.8 millimeters] <sup>1</sup> .	
Dry-type or moist-type fusarium rot		x
Rhizoctonia	x	
Scab, pitted	x	x
Scab, russet	When affecting more than 1/3 of the surface.	
Scab, all surface	When affecting more than 5 percent of the surface.	

Growth cracks

When seriously detracting from the appearance.

Pressure bruises and sunken areas with underlying flesh discolored

When removal causes a loss of more than 10 percent of the total weight.

<sup>1</sup> Definitions of damage and serious damage are based on potatoes that are two and one-half inches [63.5 millimeters] in diameter or six ounces [170.10 grams] in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

C. Table II - Internal defects.

DAMAGE			
Defect	When materially detracting from the appearance of the potato	OR	When removal causes a loss of more than 5 percent of the total weight of the potato
Ingrown sprouts			x
Internal discoloration occurring interior to the vascular ring (such as, internal brown spot, mahogany browning, and heat necrosis).	When more than the equivalent of three scattered light brown spots 1/8 inch [3.2 millimeters] in diameter <sup>1</sup> .		
All other internal discoloration, excluding discoloration confined to the vascular ring.			x
SERIOUS DAMAGE			
Defect	When seriously detracting from the appearance of the potato	OR	When removal causes a loss of more than 10 percent of the total weight of the potato
Internal discoloration confined to the vascular ring.			x
Hollow heart or hollow heart with discoloration.	When affected area exceeds that of a circle 3/4 inch [19.1 millimeters] in diameter <sup>1</sup> .		

<sup>1</sup> Definitions of damage and serious damage are based on potatoes that are two and one-half inches [63.5 millimeters] in diameter or six ounces [170.10 grams] in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

7. Classification and serologically tested stocks.
  - a. Foundation seed classification may be indicated on the tag provided the lot meets foundation standards.
  - b. Serologically tested stocks for potato virus x, potato virus s, potato virus y, potato virus a, or potato virus m may be so indicated on the tag if within the specified tolerance during the current growing season.
8. Grade inspections are not intended to induce growers' or producers' reliance regarding the presence or absence of disease, the identity of the variety or selection, quantity, or quality of the seed or crop produced or the fitness of the seed.

Blue and yellow tag shipments must be inspected and meet respective grade requirements.

**History:** Effective December 1, 1981; amended effective June 1, 1985; December 1, 1987; June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002; January 2, 2006; July 1, 2007.

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

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

## CHAPTER 74-05-01

**74-05-01-03.1. License fee.** The annual license fee is two hundred dollars.  
All licenses expire on June thirtieth.

**History:** Effective July 1, 2007.

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

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

**74-05-01-09. Claims against bonds.** No person delivering potatoes to a licensed dealer shall be entitled to the benefits of any required financial instrument unless the person shall have filed the person's claim therefore with the seed commissioner within ~~one hundred eighty~~ three hundred sixty days after the delivery of the person's potatoes to the principal in the case of a sale, or within ~~one hundred eighty~~ three hundred sixty days after the sale by the principal in the case of potatoes received on consignment.

**History:** Amended effective June 1, 1998; January 1, 2005; July 1, 2007.

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

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



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



**JULY 2007**

**CHAPTER 75-02-07.1**

**75-02-07.1-01. Definitions.**

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.
3. "Adjustment factors" means indices used to adjust reported costs for inflation or deflation based on forecasts for the rate year.
4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.
5. "Aid to vulnerable aged, blind, and disabled persons" means a program that supplements the income of an eligible beneficiary who resides in a facility.
6. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by basic care regulations.
7. "Alzheimer's and related dementia facility" means a licensed basic care facility which primarily provides services specifically for individuals with Alzheimer's disease or related dementia.
8. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's-length transaction. It does not include:
  - a. A purchase of shares in a corporation that owns, operates, or controls a facility except as provided under subsection 4 of section 75-02-07.1-13;
  - b. A sale and leaseback to the same licensee;

- c. A transfer of an interest to a trust;
  - d. Gifts or other transfer for nominal or no consideration;
  - e. A change in the legal form of doing business;
  - f. The addition or deletion of a partner, owner, or shareholder; or
  - g. A sale, merger, reorganization, or any other transfer of interest between related organizations.
9. "Building" means the physical plant, including building components and building services equipment, licensed as a facility and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings if used directly for resident care.
10. "Capital assets" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.
11. "Chain organization" means a group of two or more basic care or health care facilities owned, leased, or through any other device controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to basic care or health care.
12. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.
13. "Community contribution" means contributions to civic organizations and sponsorship of community activities. It does not include donations to charities.
14. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, determination of cost limitations, and determination of rates.
15. "Cost center" means a division, department, or subdivision thereof, group of services or employees, or both, or any unit or type of activity into which functions of a facility are decided for purposes of cost assignment and allocations.
16. "Cost report" means the department-approved form for reporting costs, statistical data, and other relevant information of the facility.

17. "Department" means the department of human services.
18. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.
19. "Depreciation" means an allocation of the cost of a depreciable asset over its estimated useful life.
20. "Depreciation guidelines" means the American hospital association's depreciation guidelines as published by American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 1998 edition.
21. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.
22. "Direct care costs" means the cost category for allowable resident care, activities, social services, and laundry costs.
23. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
24. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the facility premises.
25. "Eligible beneficiary" means a facility resident who is eligible for aid to vulnerable aged, blind, and disabled persons.
26. "Employment benefits" means fringe benefits and other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, employee child care benefits, and payroll taxes.
27. "Facility" means a licensed basic care facility not owned or administered by state government and which does not meet the definition of an Alzheimer's and related dementia facility or, traumatic brain injury facility, or institution for mental disease.
28. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
29. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
30. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.

31. "Food and plant costs" means the cost category for allowable food, utilities, and maintenance and repair costs.
32. "Freestanding facility" means a facility that does not share basic services with a hospital-based provider or a nursing facility.
33. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits, uniform allowances, and medical services furnished at facility expense.
34. "Highest market-driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.
35. "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.
36. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
37. "In-house resident day" for basic care and nursing facilities means a day that a resident was actually residing in the facility. "In-house resident day" for hospitals means an inpatient day.
38. "Institution for mental disease" means a facility with a licensed capacity of seventeen or more beds which provides diagnosis, treatment, or services primarily to individuals with a primary diagnosis of mental disease.
39. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
- ~~39.~~ 40. "Limit rate" means the rate established as the maximum allowable rate.
- ~~40.~~ 41. "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence decisions made by the legislative council, and is required to register as a lobbyist.
- ~~41.~~ 42. "Medical care leave day" means any day that a resident is not in the facility but is in a licensed health care facility, including a hospital, swing bed, nursing facility, or transitional care unit, and is expected to return to the facility.

- ~~42.~~ 43. "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been discharged from the facility. It does not include maintenance of medical records for in-house residents.
- ~~43.~~ 44. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.
- ~~44.~~ 45. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
- ~~45.~~ 46. "Personal care rate" means the sum of the rates established for direct care costs, indirect care costs, and the operating margin.
- ~~46.~~ 47. "Private-pay resident" means a resident on whose behalf the facility is not receiving any aid to vulnerable aged, blind, and disabled persons program payments and whose payment rate is not established by any governmental entity with ratesetting authority.
- ~~47.~~ 48. "Private room" means a room equipped for use by only one resident.
- ~~48.~~ 49. "Property costs" means the cost category for allowable real property costs and passthrough costs.
- ~~49.~~ 50. "Provider" means the organization or individual who has executed a provider agreement with the department.
- ~~50.~~ 51. "Rate year" means the year from July first through June thirtieth.
- ~~51.~~ 52. "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.
- ~~52.~~ 53. "Related organization" means a close relative or person or an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists when an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or provider.

- ~~53.~~ 54. "Report year" means the provider's fiscal year ending during the calendar year immediately preceding the rate year.
- ~~54.~~ 55. "Resident" means a person who has been admitted to the facility but not discharged.
- ~~55.~~ 56. "Resident day" in a facility means any day for which service is provided or for which payment in any amount is ordinarily sought, including medical care leave and therapeutic leave days. The day of admission and the day of death are resident days. The day of discharge is not a resident day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought. The amount of remuneration has no bearing on whether a day should be counted as a resident day.
- ~~56.~~ 57. "Room and board rate" means the sum of the rates established for property costs and food and plant costs.
- ~~57.~~ 58. "Routine hair care" means hair hygiene which includes grooming and shampooing.
- ~~58.~~ 59. "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater. It does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds. It does not mean an increase in a facility's capacity resulting from converting beds formerly licensed as nursing facility beds.
60. "Specialized facility for individuals with mental disease" means a licensed basic care facility with a licensed capacity of less than seventeen which provides diagnosis, treatment, or services primarily to individuals with mental disease.
- ~~59.~~ 61. "Statewide minimum room and board rate" means a rate calculated based on the sum of the maximum amount of supplemental security income an eligible individual can receive as of the beginning of the rate year less sixty dollars multiplied by twelve and then divided by three hundred sixty-five.
- ~~60.~~ 62. "Therapeutic leave day" means any day that a resident is not in the facility or in a licensed health care facility.
- ~~61.~~ 63. "Top management personnel" means corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
- ~~62.~~ 64. "Traumatic brain injury facility" means a licensed basic care facility which primarily provides services to individuals with traumatic brain injuries.

- ~~63.~~ 65. "Working capital debt" means debt incurred to finance facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

**History:** Effective July 1, 1996; amended effective July 1, 1998; January 1, 2000; July 1, 2001; February 1, 2007.

**General Authority:** NDCC 50-06-16, 50-24.5-02(3)

**Law Implemented:** NDCC 50-24.5-02(3)

**75-02-07.1-22. Rate limitations.**

1. Historical costs, as adjusted, for all facilities for which a rate is established excluding specialized facilities for individuals with mental disease, must be used in the establishment of a limit rate for the direct care and indirect care cost categories. The actual rate for each cost category for each facility must be determined in accordance with this chapter. The department shall, for each cost category, rank licensed beds in all facilities reporting historical costs, excluding specialized facilities for individuals with mental disease, by the actual rate and determine the position in the ranking below which lie eighty percent of the ranked beds. This rate For each cost category, the rate associated with the position ranked at eighty percent of the ranked beds is the limit rate for that cost category. When establishing a facility's rate:
  - a. A Except for a specialized facility for individuals with mental disease, a facility with an actual rate that exceeds the limit rate for a direct care cost category shall receive the limit rate for that cost category;
  - b. A specialized facility for individuals with mental disease with an actual rate that exceeds two times the limit rate for the direct care cost category shall receive the limit rate times two for that cost category; and
  - c. A facility with an actual rate that exceeds the limit rate for the indirect care cost category shall receive the limit rate for that cost category.
2. If at any time the total number of licensed basic care beds in North Dakota exceeds one thousand three hundred eighty-two, before the beginning of each quarter beginning thereafter, the department shall review the sufficiency of appropriations provided to pay the estimated cost of supplements. If the appropriations appear insufficient, the department shall determine reduced rates for all facilities with substantial capacity increases and for all new facilities.
3. The reduced rate for each facility subject to a reduced rate is determined by:

- a. Establishing the total appropriation available for supplements during that reduced rate quarter;
  - b. Projecting the number of beds, in all facilities with substantial capacity increases and all new facilities, that will likely be occupied by persons eligible for a supplement during the reduced rate quarter;
  - c. Projecting expenditures for supplements, for that reduced rate quarter, in all facilities not subject to reduced rates;
  - d. Projecting expenditures for supplements, during a reduced rate quarter, that would be made in all facilities with substantial capacity increases and in all new facilities, if those facilities were not subject to limits;
  - e. Subtracting the amount projected under subdivision c from the amount determined under subdivision a;
  - f. Subtracting the amount determined under subdivision e from the amount projected under subdivision d;
  - g. Dividing the amount determined under subdivision f by the number projected under subdivision b; and
  - h. Reducing the established rate set for that facility by the amount determined under subdivision g.
4. A facility is not subject to reduced rates if it is not a new facility or if it has not been subject to a substantial capacity increase. All new facilities and all facilities subject to a substantial capacity increase are subject to reduced rates.
  5. A reduced rate is effective during the reduced rate quarter for which it is established.
  6. A facility subject to a reduced rate must be informed of the reduced rate no later than the usual date supplement payment is made to the facility for services furnished during the first month of the reduced rate quarter.
  7. A facility shall receive an operating margin of three percent based on the lesser of the actual direct care rate, exclusive of the adjustment factor, or the direct care limit rate, exclusive of the adjustment factor, established for the rate year. For purposes of this subsection, the adjustment factor does not include the factor necessary to adjust reported costs to December thirty-first.
  8. For purposes of this section:

- a. "New facility" means a facility for which no rate was set, under this chapter, for any period before July 1, 1995.
- b. "Quarter" means one of the four periods occurring in each calendar year, beginning January first and ending March thirtieth, beginning April first and ending June thirtieth, beginning July first and ending September thirtieth, or beginning October first and ending December thirty-first.
- c. "Substantial capacity increase" means a capacity increase to a licensed capacity six or more licensed beds greater than a facility's licensed capacity on July 1, 1995, or a capacity increase to a licensed capacity equal to or greater than one and one-tenth times that facility's licensed capacity on July 1, 1995, whichever is less.
- d. "Supplement" means payments provided or the provision of payments under North Dakota Century Code chapter 50-24.5.

**History:** Effective July 1, 1996; amended effective July 1, 1998; July 1, 1999; amendments partially voided by the Administrative Rules Committee effective June 5, 2000; amended July 1, 2001; February 1, 2007.

**General Authority:** NDCC 50-06-16, 50-24.5-02(3)

**Law Implemented:** NDCC 50-24.5-02(3)

#### **75-02-07.1-25. Special rates.**

- 1. For a new facility, the department shall establish an interim rate equal to the lesser of the limit rates for direct and indirect care for the rate year in which the facility begins operation, plus the maximum operating margin, plus a room and board rate equal to the average food and plant rate, of all facilities for which a rate was established for the rate year, plus a projected property rate calculated based on projected property costs and imputed census, or a rate established based on an annual budget submitted by the facility. The interim rate may be in effect for no more than eighteen months. No retroactive adjustment may be made to the rate.
  - a. If the effective date of the interim rate is on or after September first and on or before December thirty-first, the interim rate must be effective for the remainder of that rate year and must continue through December thirty-first of the subsequent rate year. The facility shall file an interim cost report by August thirty-first for the period ending June thirtieth of the period in which the facility first provides services. The interim cost report is used to establish the actual rate to be effective January first of the subsequent rate year.
  - b. If the effective date of the interim rate is on or after January first and on or before June thirtieth, the interim rate must remain in effect through the end of the subsequent rate year. The facility

shall file a cost report for the partial report year ending December thirty-first of the subsequent rate year. This cost report must be used to establish the rate for the next subsequent rate year.

- c. If the effective date of the interim rate is on or after July first and on or before August thirty-first, the interim rate must remain in effect through the end of the rate year in which the interim rate becomes effective. The facility shall file a cost report for the period ending December thirty-first of the current rate year. This cost report must be used to establish the rate for the subsequent rate year.
2. For a facility with renovations or replacements in excess of fifty thousand dollars, and without a significant capacity increase, the rate established for direct care, indirect care, food and plant, and the operating margin, based on the last report year, plus a property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective on the first of the month following the time the project is completed and placed into service or on the first of the month following submission of a request for a projected property rate, whichever is later. The property rate for the subsequent rate year must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.
3. For a facility with a significant capacity increase, the rate established for direct care, indirect care, food and plant, and the operating margin, based on the last report year, must be applied to all licensed beds. A property rate must be established based on projected property costs and projected census. The property rate must be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the state department of health through the end of the rate year.
4. For a facility with no significant capacity increase and no renovations or replacements in excess of fifty thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds.
5. Rates for a facility changing ownership during the rate period are set under this subsection. The total rate established by adding the

components of the rate may not exceed the limit rate established under subsection 1 of section 75-02-07.1-22.

- a. The rates established for direct care, indirect care, food and plant, and the operating margin for the previous owner must be retained through the end of the rate period and the rates for the next rate period following the change in ownership must be established:
  - (1) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; or
  - (2) For a facility with less than four months of operations under the new ownership during the report year:
    - (a) By indexing the rate established for the previous owner forward using the adjustment factors as set forth in section 75-02-07.1-21; or
    - (b) If the previous owner submits a cost report and allows the audit of that cost report, and if the change of ownership occurred after the report year end but prior to the beginning of the next rate year, by establishing a rate based on the previous owner's cost report.
- b. Unless a facility elects to have a property rate established under subdivision c, the rate established for property for the previous owner must be retained through the end of the rate period and the property rate for the next rate period following the change in ownership must be established:
  - (1) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and
  - (2) For a facility with less than four months of operation under the new ownership during the report year:
    - (a) By using the rate established for the previous owner for the previous rate year; or
    - (b) If the previous owner submits a cost report and allows the audit of that cost report, and if the change of ownership occurred after the report year end but prior to the beginning of the next rate year, by establishing a rate based on the previous owner's cost report.
- c. A facility may choose to have a property rate established during the remainder of the rate year and the subsequent rate year based

on interest and principal payments on the allowable portion of debt expended during the rate years. The property rate must go into effect on the first of the month following notification by the department. The difference between a property rate established based on the facility's election and a property rate established based on subdivision b, multiplied by actual census for the period, must be determined. The property rate established in each of the twelve years, beginning with the first rate year following the use of a property rate established using this subdivision, may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.

6. For a facility terminating its participation in the aid to vulnerable aged, blind, and disabled persons program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until eligible beneficiaries can be relocated.
7. At such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate established using subsection 2 or 3 and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using subsection 2 or 3 may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.
8. For purposes of this section, "new facility" means a facility operated in a premises for which no costs were claimed and no rate was set under this chapter for any period prior to July 1, 1995, but does not mean a facility with:
  - a. Renovations or replacements;
  - b. A capacity increase; or
  - c. A change of ownership.
9. When a nursing facility converts licensed bed capacity to basic care bed capacity and the nursing facility does not share basic services with a licensed basic care facility prior to the conversion:
  - a. For the rate year in which the conversion occurs, the personal care rate shall be the sum of the limit rates for the direct and indirect cost category, the maximum operating margin, and the room and board rate shall be calculated using the nursing facility's food and plant and property costs and census applicable to the rate year;
  - b. For the first rate year following the rate year in which the conversion occurs, the personal care rate shall be the sum of the limit rates

for the direct and indirect cost category, the maximum operating margin, and the room and board rate shall be calculated using the nursing facility's food and plant and property costs and census applicable to the rate year; and

- c. A cost report must be used to establish the rates for all subsequent rate years.
10. When a nursing facility converts licensed bed capacity to basic care bed capacity and the nursing facility shares basic services with a licensed basic care facility prior to the conversion, the rates established for the licensed basic care facility shall apply to the converted bed capacity.
11. A facility that meets the definition of a specialized facility for individuals with mental disease as a result of a reduction in licensed capacity to less than seventeen may choose to have an interim rate established for the remainder of the rate year following the capacity decrease and the subsequent rate based on the lesser of the limit rates for a specialized facility for individuals with mental disease for the rate year in which the institution for mental disease decreases its licensed capacity, plus the maximum operating margin, plus a room and board rate equal to the average food and plant rate, of all facilities for which a rate was established for the rate year, plus a projected property rate calculated based on projected property costs and imputed census, or a rate established based on an annual budget submitted by the facility. The interim rate may be in effect for no more than eighteen months. Retroactive adjustments may not be made to the rate.
  - a. If the effective date of the interim rate is on or after September first and on or before December thirty-first, the interim rate must be effective for the remainder of that rate year and must continue through December thirty-first of the subsequent rate year. The facility shall file an interim cost report by August thirty-first for the period ending June thirtieth of the period in which the facility first provides services. The interim cost report is used to establish the actual rate to be effective January first of the subsequent rate year.
  - b. If the effective date of the interim rate is on or after January first and on or before June thirtieth, the interim rate must remain in effect through the end of the subsequent rate year. The facility shall file a cost report for the partial report year ending December thirty-first of the subsequent rate year. This cost report must be used to establish the rate for the next subsequent rate year.
  - c. If the effective date of the interim rate is on or after July first and on or before August thirty-first, the interim rate must remain in effect through the end of the rate year in which the interim rate becomes effective. The facility shall file a cost report for the period ending

December thirty-first of the current rate year. This cost report must be used to establish the rate for the subsequent rate year.

**History:** Effective July 1, 1996; amended effective July 1, 1998; July 1, 2001; February 1, 2007.

**General Authority:** NDCC 50-06-16, 50-24.5-02(3)

**Law Implemented:** NDCC 50-24.5-02(3)

**TITLE 92**  
**WORKFORCE SAFETY AND INSURANCE**



**JULY 2007**

**CHAPTER 92-05-02**

**92-05-02-01. Definitions.** As used in this article:

1. "Baseline period" means the period of time immediately preceding the premium period being rated for risk management programs. The baseline period may not be less than six months and not more than eighteen months.
2. "Employer" means employer as defined in North Dakota Century Code section 65-01-02.
3. "Frequency rate" means the total number of claims accepted by the organization attributable to an employer in that employer's premium period multiplied by one million dollars and divided by the employer's gross payroll for mandatory coverage and the current wage cap for optional coverage.
4. "Good standing" for purposes of this article means an employer account that ~~has is not been sent a second billing statement in default~~ pursuant to North Dakota Century Code section 92-01-02-14 during the preceding premium period 65-04-22.
5. "Measurement year" means the premium period being rated for the risk management programs.
6. "Organization" means workforce safety and insurance.
7. "Preferred provider" means a designated medical provider of medical services, including consultations or referral by the provider. Any employer may select a designated medical provider pursuant to North Dakota Century Code section 65-05-28.1. The employer must provide written documentation that all employees have been notified of the designated medical provider selection and the employee's option to add additional providers to the employer's selection. The employer must provide written documentation that the employer has notified the

designated medical provider that it has elected to participate in the designated medical provider program.

8. "Risk management programs" means all premium reduction and premium calculation programs offered and approved by the organization. Participants in the deductible and retrospective rating program are not eligible for discounts under this chapter.
9. "Safety intervention" means any program, practice, or initiative approved by the organization intended to eliminate workplace hazards.
10. "Severity rate" means the rate calculated by multiplying the total number of days for which disability benefits were paid by the organization because of a workplace injury during the measurement year by one million dollars and divided by the employer's gross payroll for mandatory coverage and the current wage cap for optional coverage. The total number of lost time days incurred during the employer's premium period will be calculated only for those claims with acceptance dates in the measurement year and preceding four premium billing periods. Death claims shall be assessed three hundred sixty-five lost time days during the premium billing period in which the workplace death occurs and an additional three hundred sixty-five lost time days for the subsequent premium billing period.

**History:** Effective July 1, 2006; amended effective July 1, 2007.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-03-04, 65-04-19.1

## CHAPTER 92-05-03

**92-05-03-02. Eligibility.** North Dakota-based employers who have an active employer account ~~in good standing with the organization pursuant to section 92-05-02-01 for two annual premium billing periods~~ are eligible to apply for an organization grant. An applicant must submit a completed application. An applicant must demonstrate a need for grant moneys pursuant to the terms of the grant application. The organization may require the applicant to submit proof of its financial ability to support a matching grant program. A grant award under this chapter rests solely within the discretion of the organization. The organization may consider all aspects of an employer's history, including whether the employer account is in good standing, in determining eligibility for a grant award under this chapter.

**History:** Effective July 1, 2006; amended effective July 1, 2007.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-03-04



**TITLE 93**

**PRIVATE INVESTIGATIVE AND SECURITY BOARD**



**JULY 2007**

**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 ~~sixty~~ thirty 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; July 1, 2007.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-11

**93-02-03-05. Suspension, revocation, or refusal to renew license.** In addition to the causes for suspension, revocation, or refusal to renew a license listed in North Dakota Century Code section 43-30-12, the board may either refuse to renew, suspend, revoke, or place on probationary status any licensee, or issue a letter of reprimand for any of the following causes:

1. Failure or refusal to furnish information required by statute, rule, or request of the board.
2. Making or causing to be made any false entry or written statement of fact in an application for license or registration, in reports, or in other written information to be filed with the board.
3. Fraud in the taking of examination for licensing.
4. Carrying a weapon in violation of any statute or rule specifically regulating the carrying of weapons by private investigators or private security personnel, or in violation of any state and federal laws.
5. Providing private investigative or private security services under a lapsed license or registration.
6. Violation of any of the rules in this article.
7. Insufficient supervision of registered employees by the employing agency, by the licensee who is responsible for agency personnel under section 93-02-01.1-03 or 93-02-02.1-03, or by any other licensee who is responsible for supervising the employee's work under section 93-02-01.1-04 or 93-02-02.1-04.
8. Unprofessional conduct, which includes engaging:
  - a. Engaging in criminal activity and providing;
  - b. Providing incompetent services; and
  - c. Violating the code of ethics.

**History:** Effective March 1, 1990; amended effective May 1, 1998; May 1, 2000; July 1, 2007.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-12

**93-02-03-05.1. Code of ethics.** This code of ethics applies to every person licensed or registered by the board. All licensees and registered employees shall:

1. Respect the constitutional and legal rights of all people to liberty, equality, and justice;

2. Protect clients' property rights and promptly return all clients' property that was entrusted to them;
3. Safeguard the lives and property of those served and protect all persons against deception, intimidation, oppression, violence, and disorder;
4. Conduct operations professionally with honesty, sincerity, integrity, fidelity, morality, and good conscience and deal justly and impartially in each situation with each individual;
5. Preserve forever clients' confidence under any and all circumstances consistent with law, however, any physical evidence concerning crimes or planning for crimes must be reported to appropriate law enforcement or other authorities;
6. Protect clients' trade secrets or intellectual property rights;
7. Explain to the client's full satisfaction all applicable fees and charges and to render accurate, factual, and timely reports;
8. Counsel clients against any illegal or unethical course of action;
9. Avoid conflicts of interest between the licensee, registered employees, or their immediate family members and clients and avoid conflicts of interest between clients;
10. Avoid providing or recommending excessive services and avoid abusive billing practices, especially when a client may be emotionally distraught or unsophisticated; and
11. Refrain from excessive or grandiose advertising claims.

**History:** Effective July 1, 2007.

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-12



**TITLE 97**  
**BOARD OF COUNSELOR EXAMINERS**



**JULY 2007**

**CHAPTER 97-02-03**

**97-02-03-01. Code of ethics.** The board adopts the American counseling association Code of Ethics and ~~Standards of Practice and the Ethical Standards for Internet On-line Counseling~~ as approved by the American counseling association governing council in 1999 2005 as its code of ethics for the practice of counseling. A copy may be obtained from the board.

**History:** Effective February 1, 1995; amended effective February 1, 1998; December 1, 2001; July 1, 2007.

**General Authority:** NDCC 28-32-02, 43-47-03

**Law Implemented:** NDCC 43-47-03

