

NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 364

April 2017

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

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TITLE 17
CHIROPRACTIC EXAMINERS, BOARD OF

APRIL 2017

CHAPTER 17-03-01

17-03-01-01. Unprofessional conduct.

The board may revoke, suspend, or deny a license to any person otherwise qualified or licensed by the board who is found to have committed unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

1. Exploitation of patients for financial gain, which includes:
 - a. Overutilization of chiropractic services. Overutilization is defined as services rendered or goods or appliances sold by a chiropractor to a patient for the financial gain of the chiropractor or a third party which are excessive in quality or quantity to the justified needs of the patient.
 - b. Ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient.
 - c. Exercising undue influence on a patient or client, including the promotion or the sale of services, goods, or appliances in such a manner as to exploit the patient or client.
 - d. The administration of treatment or the use of diagnostic procedures which are excessive as determined by the customary practices and standards of the local community of licensees.
2. Willfully harassing, abusing, or intimidating a patient, either physically or verbally.
3. Failing to maintain the chiropractic standard of care for a patient record and a billing record for each patient which accurately reflects the evaluation or treatment, or both, of the patient and the fees charged to the patient. Unless otherwise provided, all patient records must be retained for at least ten years.
4. The willful or grossly negligent failure to comply with the substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of the profession.
5. Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public including habitual alcohol abuse, illegal use of controlled substances, or conducting unauthorized experiments or tests upon patients.
6. Conviction of a crime which is substantially related to the qualifications, functions, or duties of a chiropractor.

7. Conviction of a felony or any offense involving moral turpitude, dishonesty, or corruption.
8. Violation of any of the provisions of law regulating the dispensing or administration of narcotics, dangerous drugs, or controlled substances.
9. The commission of any act involving moral turpitude or dishonesty, whether the act is committed in the course of the individual's activities as a licenseholder or otherwise.
10. Knowingly making or signing any false certificate or other document relating to the practice of chiropractic care which falsely represents the existence or nonexistence of a state of facts.
11. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violations of, or conspiring to violate any provision of the law or the rules adopted by the board.
12. Making or giving any false statement or information in connection with the application for issuance of a license.
13. Participation in any act of fraud or misrepresentation.
14. Except as required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment.
15. The offering, delivering, receiving, or accepting of any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration as compensation or inducement for referring patients to any person.
16. Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which a licensee knows or has reason to know that the licensee is not competent to perform, or performing without adequate supervision professional services which a licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger.
17. Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, by experience, or by licensure, to perform them.
18. Advertising or soliciting for patronage that is not in the public interest, which includes:
 - a. Advertising or soliciting which is false, fraudulent, deceptive, or misleading.
 - b. Advertising or soliciting which guarantees any service or result.
 - c. Advertising or soliciting which makes any claim relating to professional services or products or the cost or price thereof which cannot be substantiated by the licensee.
 - d. Advertising or soliciting which make claims of professional superiority which cannot be substantiated by the licensee.
 - e. Advertising or soliciting which is based upon a claim that the chiropractor uses a secret or special method of treatment and the chiropractor refuses to divulge the secret or special method of treatment to the board.
 - f. Advertising no out-of-pocket expenses or practicing same.
 - g. Advertising free examination or service.
 - h. Advertising that offers free items to induce patients to receive care.

19. Violation of any term of suspension or probation imposed by the board.
20. Initiating or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a current patient, even if the patient attempts to sexualize the relationship, except when the patient is the chiropractor's spouse.

History: Effective February 1, 1990; amended effective April 1, 2001; July 1, 2008; January 1, 2016; [January 1, 2017](#).

General Authority: NDCC 43-06-04.1, 43-06-15

Law Implemented: NDCC 43-06-15

TITLE 24
ELECTRICAL BOARD

APRIL 2017

**TITLE 24
ELECTRICAL BOARD**

[Repealed effective April 1, 2017]

Article

~~24-01 — General Administration~~

~~24-02 — Electrical Wiring Standards~~

TITLE 24.1
STATE ELECTRICAL BOARD

APRIL 2017

ARTICLE 24.1-01
GENERAL ADMINISTRATION

Chapter
24.1-01-01 Organization of Board

CHAPTER 24.1-01-01
ORGANIZATION OF BOARD

Section
24.1-01-01-01 History and Functions
24.1-01-01-02 Board Membership
24.1-01-01-03 Executive Director
24.1-01-01-04 Director of Inspections
24.1-01-01-05 Inspection Districts
24.1-01-01-06 Inquiries

24.1-01-01-01. History and functions.

In 1917 legislation was approved which created a state board of electricians. In 1949 the name of the board was changed to the state electrical board. The board is charged with the responsibility to examine applicants and issue licenses to those having the necessary qualifications and knowledge in the laws of electricity and electrical codes. The board has jurisdiction over all electrical installations. Electrical inspectors authorized by the board may condemn installations hazardous to life and property and order electric service to be discontinued.

History: Effective April 1, 2017.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

24.1-01-01-02. Board membership.

The board consists of five members appointed by the governor for terms of five years. Terms are arranged so that one term expires each year. To provide equal representation on the board, one member is selected from the master electricians, one from the journeymen electricians, another from the investor-owned utilities, the fourth shall be a consumer member of a rural electric cooperative, and the fifth member represents the public and cannot be directly associated with the electrical industry.

History: Effective April 1, 2017.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

24.1-01-01-03. Executive director.

The executive director has full responsibility for directing and supervising the operation of the department under the direction of the board.

History: Effective April 1, 2017.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

24.1-01-01-04. Director of inspections.

The director of inspections supervises electrical inspectors to carry out an effective inspection program. The director is responsible for reviewing plans and specifications that are submitted on various projects.

History: Effective April 1, 2017.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

24.1-01-01-05. Inspection districts.

The state is divided into districts. Each electrical inspector is assigned to a district. A map showing the districts is available on the board's website at www.ndseb.com and by this reference is herein incorporated.

History: Effective April 1, 2017.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

24.1-01-01-06. Inquiries.

All inquiries and communication relating to licensing, electrical wiring, and inspections must be directed to:

North Dakota State Electrical Board
P.O. Box 7335
Bismarck, ND 58507-7335
Phone (701) 328-9522
Fax (701) 328-9524
Email: electric@nd.gov

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

History: Effective April 1, 2017.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

ARTICLE 24.1-02
DEFINITIONS, GENERAL STATEMENT OF POLICY, AND INTERPRETATIVE RULES

Chapter
24.1-02-01 General Provisions

CHAPTER 24.1-02-01
GENERAL PROVISIONS

Section
24.1-02-01-01 Definitions
24.1-02-01-02 General Statement of Policy and Interpretative Rules
24.1-02-01-03 Administrative Powers and Duties

24.1-02-01-01. Definitions.

The terms used throughout this title have the same meaning as in the National Electrical Code except:

1. "Correction order", also marked as FS, indicates a correction is necessary before installation will be considered approved by the board. It means a notice, written by an electrical inspector to the person responsible for the electrical installation, stating violations and noncompliance of rules and regulations as listed shall be corrected within a designated time.
2. "E-cert" is an electronic version of a wiring certificate.
3. "Kitchen" means an area where food is prepared which includes a sink and one or more permanent cooking appliances.
4. "Service" means the conductors and equipment for delivering electric energy from the serving utility to the wiring system of the premises served.
5. "Service point" means the point of demarcation between the serving utility and the premises wiring. The service point is the point on the wiring system where the serving utility ends and the premises wiring begins. The serving utility generally specifies the location of the service point.
6. "Wiring certificate" means a document consisting of one or more copies which certifies electrical wiring and equipment was installed on premises and was done in strict compliance with all the provisions of North Dakota Century Code chapter 43-09 and all the requirements of the board.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-02-01-02. General statement of policy and interpretative rules.

1. Purpose and scope. The purpose of these standards is the practical safeguarding of persons and of buildings and building contents from electrical hazards arising from the use or control of electricity for light, heat, power, and control thereof and of the fire detection system. It covers the electrical conductors and equipment installed within or on public and private buildings and other premises, including yards, carnival and parking lots, railroad right of way and, also the conductors that supply street lighting, with the associated equipment necessary to its safe operation.

2. These standards, based on the National Electrical Code, are the result of years of experience and research to meet the demand for uniform standards to govern electrical wiring in North Dakota, and provide basic rules for intelligent and uniform installation and inspection.
3. All requirements contained herein must be given careful consideration to ensure greatest permanence, convenience, and safety. These standards do not constitute a design specification for any particular installation, or an instruction manual for untrained persons. Skill and experience are necessary factors for a safe and adequate wiring installation. Whenever these requirements differ or are in conflict with the requirements of the NFPA 70 2017 edition National Electrical Code and NFPA 101 2015 edition Life Safety Code®, and applicable articles in locally adopted codes or North Dakota State Building Code pertaining to fire detection, fire alarms, fire communications, and smoke detectors, the more restrictive requirements are the minimum.
4. Severability. If any section, sentence or clause, or provision of this chapter or the applicability thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances are not affected thereby.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-05, 43-09-21, 43-09-22

24.1-02-01-03. Administrative powers and duties.

1. The executive director, under the direction of the board, shall administer laws, rules, and wiring standards of this state, the electrical requirements of the NFPA 70 2017 edition National Electrical Code and applicable NFPA 72, 101, 110 2015 edition Life Safety Code®, and applicable articles in locally adopted codes or North Dakota State Building Code pertaining to fire detection, fire alarms, fire communications, and smoke detectors. Whenever any action is taken by the executive director to enforce the provisions of any sections contained in these electrical regulations, the NFPA 70 2017 edition National Electrical Code and NFPA 101 2015 edition Life Safety Code®, such acts must be done in the name of and on behalf of the state.
2. The electrical regulations of these standards, the NFPA 70 2017 edition National Electrical Code and NFPA 101 2015 edition Life Safety Code®, may be modified or waived by special permission in particular cases when such modification or waiver is specifically permitted or in particular cases when an advancement in the technology of electricity makes such modification or waiver advisable in the best interest of the people of North Dakota. Such "special permission", in all cases, must be obtained from the executive director in writing before the commencement of the work.
3. Whenever the board is authorized or mandated by law to inspect an electrical installation, the inspector may enter upon land for the purpose of conducting the inspection. Except in emergency circumstances, the inspector shall request permission from the property owner or agent before entering a dwelling, other building, or other place so enclosed as manifestly to exclude intruders. If the landowner refuses to give permission, the board may request the district court of the district containing the property for an order authorizing the inspector to enter the property to conduct the inspection. Emergency circumstances include situations presenting imminent danger to health, safety, or property.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

ARTICLE 24.1-03
LICENSURE OF ELECTRICIANS

Chapter
24.1-03-01 Licensing Requirements

CHAPTER 24.1-03-01
LICENSING REQUIREMENTS

Section
24.1-03-01-01 Application, Examination, and Annual License Fees
24.1-03-01-02 Master Electrician
24.1-03-01-03 Journeyman Electrician
24.1-03-01-04 Class B Electrician
24.1-03-01-05 Apprentice Electrician
24.1-03-01-06 Supervision and Responsibilities

24.1-03-01-01. Application, examination, and annual license fees.

1. Upon receiving an application packet for an electrician's license from an applicant, the board shall process and review the applicant's employment verification of electrical construction experience as outlined under this section. Upon final approval of the application by the board, the applicant must be sent an invitation to take the examination. The invitation must outline the available testing dates. Upon receiving the invitation, the applicant shall contact the board and inform the board as to the date chosen to take the examination. Examination fees must be paid separately to the examination testing center provider, if required.
2. The person must have the necessary qualifications, training, and technical knowledge to wire, install, and repair electrical apparatus and equipment in accordance with the standard rules and regulations of the National Electrical Code.
3. The board issues an identification card to currently licensed and registered electricians. This identification card, along with a government-issued picture identification card, must be in the possession of the electrician when doing electrical work. If the identification card is misplaced or destroyed, a replacement charge to cover board costs must be imposed.
4. The application fees are as follows:
 - a. Master - \$50.00.
 - b. Journeyman - \$25.00.
 - c. Class B - \$40.00.
5. The annual license fees are as follows:
 - a. Master license - \$50.00 - Expires April thirtieth.
 - b. Journeyman license - \$25.00 - Expires March thirty-first.
 - c. Class B license - \$40.00 - Expires April thirtieth.
 - d. Apprentice registration - \$10.00 - January thirty-first.
6. Licenses renewed after the expiration date require a reinstatement fee as follows:

- a. Master license - \$50.00.
- b. Journeyman license - \$25.00.
- c. Class B license - \$40.00.
- d. Apprentice registration \$10.00.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-13, 43-09-21, 43-09-22

24.1-03-01-02. Master electrician.

A master electrician shall have at least two thousand hours of experience working as a licensed journeyman electrician under the supervision of a contracting master electrician or master of record. There are three categories of master electricians, which are as follows:

1. A contracting master is a person responsible to adhere to all laws and rules of the North Dakota wiring standards and has shown proof of liability insurance.
2. A master of record is a person responsible to adhere to all laws and rules of the North Dakota wiring standards for the partnership, company, corporation, limited liability company, or association and has shown proof of liability insurance that the master of record is covered by the organization. The master of record may not work on other property other than property owned or leased by the organization.
3. A noncontracting master is a person responsible to adhere to all laws and rules of the North Dakota wiring standards and has the same responsibility as a journeyman electrician. Electrical work must be done under the supervision of a contracting master or master of record.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-03-01-03. Journeyman electrician.

A journeyman electrician shall have completed eight thousand hours experience, which experience may not be obtained in less than three years, registered as an apprentice electrician (of which up to three thousand hours may apply under the qualifications of a class B electrician) under the supervision of a contracting master or master of record licensed electrician in an area where electrical construction work is done in the jurisdiction regulating similar licensing and inspection rules of the state of North Dakota, and successfully completed apprentice electrician training. Two thousand hours credit may be granted for a graduate of a two-year or more electrical school accepted by the board. Practical experience consists of a minimum of four thousand hours and a maximum of eight thousand hours credit may be granted for wiring and installing electrical wiring, apparatus, and equipment. Practical electrical experience gained through a contracting master electrician also consists of an apprentice completing an approved bureau of apprenticeship training program. Credit allowed in other areas may include any combination of the following:

1. A maximum of one thousand hours credit for repairing electrical wiring, apparatus, and equipment and light, heat, and power.
2. A maximum of one thousand hours credit for wiring fire alarm technology circuits or systems;
3. A maximum of two thousand hours credit for wiring process control circuits or systems; and

4. A maximum of two thousand hours credit of electrical construction experience gained in the armed forces of the United States which the board has determined is equivalent to work performed under the supervision of a North Dakota licensed electrical contractor.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-03-01-04. Class B electrician.

A class B electrician shall have completed three thousand hours experience in farmstead or residential wiring, in one-family or two-family dwellings, under the supervision of a master or class B electrician. Commercial wiring experience may not be credited for experience toward a class B license. One thousand hours credit will be granted for a graduate of a two-year electrical school approved by the board.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-03-01-05. Apprentice electrician.

There are two categories of apprentice electrician training:

1. Apprentice electricians who have successfully completed the United States department of labor training program recognized by the office of apprenticeship.
2. Apprentice electricians who have successfully completed at least two years of electrical school approved by the board or five hundred seventy-six hours of training classes recognized by the United States department of labor office of apprenticeship. An unlicensed electrician who has prior experience outside of the state of North Dakota may take a placement examination equal to the verification of practical experience obtained in order to apply credit toward the verification of hours. If the electrician fails the placement examination, the electrician is ineligible to retake the examination. An appeal would need to be submitted in writing to the board.

An apprentice electrician who has not successfully completed training as stated in subsections 1 or 2 is required to be registered with the board, but is not eligible to take the journeyman or class B license examination. If the person receives a license from another state based on the verification that the majority of practical experience was obtained in the state of North Dakota the person will not be eligible for examination for licensure or a reciprocal license.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-03-01-06. Supervision and responsibilities.

1. A licensed electrician may not supervise more than three apprentices. Any person over sixteen years of age may work as an apprentice under a licensed master or class B electrician, but the master or class B electrician may not allow an apprentice to work on any installation without direct constant supervision by a North Dakota licensed electrician working with the apprentice at the worksite.
2. When an apprentice electrician is found to be doing electrical work not under the direct supervision of a licensed electrician, an investigative fee may be charged to cover the costs

incurred by the board. Costs are to be calculated at a rate of fifty dollars per hour and mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile of travel.

3. Electrical contractors shall maintain records of all employees who are or will be performing electrical work for that electrical contractor and shall permit the electrical board to examine and copy all such records as required by this section. It is the responsibility of the master or class B electrician to ensure all employees who are or will be performing electrical work for that electrical contractor either be licensed electricians or registered apprentices with the board.
4. Any master or class B electrician who fails or refuses to comply with this section or who fails or refuses to comply or demonstrate compliance with this section at the request of the board or its representative shall subject that person's license to nonrenewal, suspension, or revocation by the board.
5. A master or class B electrician may exercise that person's privileges as a licensed master or class B electrician for no more than one shop or business, and shall comply with provisions as required for contracting with the secretary of state's office as stated in North Dakota Century Code chapter 43-07. A master or class B electrician must be actively engaged in the supervision of every project certified under that electrician's license. A master or class B electrician shall notify the board office immediately upon changing from contracting status to noncontracting status for the shop or business they represent.
6. Maintenance personnel regularly employed by the owner may maintain or make minor repairs to existing electrical wiring devices and appliances, but are precluded from extending or changing the characteristics of existing circuits, feeders, or other electrical apparatus.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

ARTICLE 24.1-04 CONTINUING EDUCATION

Chapter
24.1-04-01 Continuing Education Requirements

CHAPTER 24.1-04-01 CONTINUING EDUCATION REQUIREMENTS

Section
24.1-04-01-01 Course Requirements for License Renewal
24.1-04-01-02 Course Approvals
24.1-04-01-03 Instructor Qualifications

24.1-04-01-01. Course requirements for license renewal.

A master, journeyman, or class B electrician license may not be renewed unless proof of eight continuing education hours have been submitted, of which a minimum of fifty percent of the hours must be based on the NFPA 70 2017 edition National Electrical Code. The remaining credits must be subjects related to the electrical industry. Approval of the course curriculum is required by the board.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-04-01-02. Course approvals.

1. Courses, seminars, and instructors must have prior approval by the board to receive credit. Request for approval of courses, seminars, and instructors must be made no later than thirty days before class instruction. Board approval of courses, seminars, and instructors accepted expires when the board adopts an updated edition of the National Electrical Code.
2. Application for approval of courses and instructors must be on a form provided by the board. A complete description (detailed curriculum outlining the subject matter along with the time and sequence of each item) and copies of all materials provided to the attendants must be submitted.
3. Continuing education programs held in other states may be considered for credit if the program meets the requirements of the board.
4. The board must be notified in writing no later than fifteen days prior to the date, time, and location of the presentation. A representative of the board is entitled to attend without charge and may audit or review continuing education presentations.
5. The board may withdraw approval of any educational program not in compliance with this section.
6. The provider of the presentation shall forward an attendance list to the board on a form supplied by the board within fifteen days following the presentation. A certificate of completion also must be provided to each licensee in attendance. Each certificate of completion and attendance list must include the name of the provider, the name of the instructor, the course identification number, the date and location of presentation, the number of code and noncode hours of instruction for continuing education units, the electrician's name, and the electrician's license number and last four digits of the electrician's social security number. It is the

responsibility of the licensee to have a copy of this certificate of completion. The certificates must be sent to the board only if requested to do so by the board. The provider is responsible to keep accurate attendance by periodically checking attendees during the class. For providers that conduct continuing education classes in North Dakota, the attendance record must be submitted electronically through the board's website.

7. Continuing education credits can be deposited with the board for a period up to two license renewal periods. Continuing education credits will not be given for attending the same continuing education class more than once in a code cycle (example: same sponsor, same title, and same course approval number).

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-04-01-03. Instructor qualifications.

Instructors shall submit their qualifications to the board before the presentation of the course or seminar. Courses may not be approved unless the instructor has one or more of the following qualifications:

1. A master electrician with at least one year's experience in electrical inspection.
2. A journeyman or master electrician who is certified as an instructor through a vocational education department.
3. A person with a valid teaching accreditation from a trade or technical school, college, or university teaching an electrical curriculum.
4. A registered or licensed electrical engineer with at least four years' experience in design of premise electrical wiring systems.
5. A representative from the national fire prevention association, testing laboratories, international association of electrical inspectors, and other product manufacturer representatives with five years' practical experience in the subject taught.
6. Instructor of an apprenticeship training program.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

ARTICLE 24.1-05
ELECTRICAL WIRING CERTIFICATES

Chapter
24.1-05-01 Certificates and Inspections

CHAPTER 24.1-05-01
CERTIFICATES AND INSPECTIONS

Section
24.1-05-01-01 Electrical Certificates
24.1-05-01-02 Fees
24.1-05-01-03 Carnivals, Circuses, Fairs, and Similar Events

24.1-05-01-01. Electrical certificates.

1. All electrical installations, including new jobs and additional work on old installations, made in this state, must have an electrical wiring certificate or e-cert (electronic version of a wiring certificate) properly executed and submitted by the master or class B electrician supervising the installation of electrical wiring. The board shall prescribe an e-cert form for a master or class B electrician licensed on or after the effective date of these rules.
2. Before work commences on any electrical installation when a new entrance is installed, an existing entrance is altered or repaired, a building is moved, when a mobile home feeder is installed, or when the cost of the repair work or additional installation exceeds three hundred dollars, the master or class B electrician supervising such installation shall submit an electrical wiring certificate and distribute as follows:
 - a. A startup copy of the certificate must be submitted to the board and a copy to the power company before work is commenced and before an electrical installation may be energized.
 - b. Within fifteen days of completion, use, or occupancy, whichever is first, the final paperwork must be submitted to the office of the board, along with the proper fee. The wiring certificate must be completed with the location and a proper description of work completed.
 - c. A copy must be retained by the master or class B electrician.
 - d. A copy must be left in or on the panel or given to the owner.
3. Certificates with job cost of twenty thousand dollars or less are valid twelve months from the original filing date. A new wiring certificate must be filed on all unfinished work.
4. E-certs are available upon request and submission of an application from any master or class B electrician holding a proper current license from the board. Electrical (paper) wiring certificates are available until August 31, 2020, or the effective date of the 2020 Laws, Rules & Wiring Standards. The master or class B electrician is responsible for all certificates issued to and by that person. A charge of twenty-five dollars to cover board costs must be assessed on each lost electrical paper wiring certificate issued to any master or class B electrician, unless returned to the board.
5. Whenever an electrical installation made by or under the supervision of a master or class B electrician is commenced or in use without submitting an electrical wiring certificate, as

directed in subsection 2, the certificate may be considered late and the normal inspection fee, as required under this section, is increased in the amount of fifty dollars. In addition when time and travel are expended by employees of the board to obtain a late certificate, an investigative fee may be charged to cover the costs incurred. Costs are to be calculated at a rate of fifty dollars per hour and mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile of travel.

6. Property owners who are self-wiring or doing their own electrical work shall comply with the following before any electrical work commences:

- a. Notify the board office of intent to self-wire.
- b. Must own and occupy the residential property or farmstead where the electrical work will be done.
- c. Review plans or drawings depicting wiring to be done with the local electrical inspector.
- d. Inspection fees will be calculated as stated in this section with a minimum of fifty dollars.
- e. Certification and inspection are required as stated in this section.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-05-01-02. Fees.

1. The electrical inspection fee must be based on the total amount of the electrical contract or total cost to the owner, including extras. The following items need not be included in the cost:

- a. Appliances, including dishwashers, heat pumps, air-conditioners, disposals, and similar equipment.
- b. Heating, ventilating, and air-conditioning (HVAC) units.
- c. Electric motors, PLC, generators; and
- d. Industrial machines.

2. The electrical contractor is responsible to collect the proper inspection fee on each installation. When the owner furnishes the material and the electrical contractor furnishes the labor, the owner shall provide the electrical contractor with the total amount expended for electrical materials used in connection with the installation, and the electrical contractor then shall calculate and collect the necessary inspection fee from the owner. Whenever electrical materials are donated or removed from an existing installation and placed at another location or labor is donated to an installation, the electrical contractor shall estimate the cost of these materials and labor and include the amount in the job cost for the purpose of calculating the proper inspection fee.

3. It is grounds for discipline of a master or class B electrician's license if an electrical contractor charges or collects from the customer an electrical inspection fee greater than the fee actually in effect.

4. Inspection fees shall be as follows:

<u>Job Cost:</u>	<u>Inspection Fee:</u>
<u>Up to \$300.00</u>	<u>\$25.00 (minimum fee)</u>

<u>\$300.00 to \$3,000.00</u>	<u>\$25.00 for the first \$300.00 plus 2% on balance up to \$3,000.00</u>
<u>\$3,000.00 to \$10,000.00</u>	<u>\$79.00 for the first \$3,000.00 plus 1.5% on balance up to \$10,000.00</u>
<u>\$10,000.00 to \$15,000.00</u>	<u>\$184.00 for the first \$10,000.00 plus 1% on balance up to \$15,000.00</u>
<u>\$15,000.00 to \$100,000.00</u>	<u>\$234.00 for the first \$15,000.00 plus 1/2 of 1% on balance up to \$100,000.00</u>
<u>Over \$100,000.00</u>	<u>\$659.00 for the first \$100,000.00 plus 1/4 of 1% on balance</u>

5. Companies that have supervision of elevators, dumbwaiters, electrically driven irrigation machine or out-of-state structures or skids installed in North Dakota shall submit reports to the board. The report must be completed, signed by owner or manager, and forwarded to the board with the inspection fee. The inspection fee is as follows:

- a. Elevators and dumbwaiters having horsepower rating up to 5 horsepower - \$25.00
- b. Elevators and dumbwaiters having horsepower rating 5 horsepower through 15 horsepower - \$40.00
- c. Elevators and dumbwaiters having horsepower rating over 15 horsepower - \$60.00
- d. Electrically driven irrigation machines - \$50.00
- e. Out-of-state structures or skids - Based on inspection fee schedule.

6. Whenever a correction order is written and corrections are not completed within the allotted time, there is an administration charge of fifty dollars, which must be paid to the board by the master or class B electrician.

7. All reinspections must be paid by the electrical contractors at a cost of fifty dollars per hour with a minimum charge of one hundred dollars.

8. For inspections not covered in this section or special services, the fee is fifty dollars per hour, including travel time, plus mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile traveled.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-05-01-03. Carnivals, circuses, fairs, and similar events.

1. All carnivals, circuses, fairs, and similar events shall comply with article 525, 2017 edition, National Electrical Code.

2. All installations must be approved by the electrical inspector before usage.

3. Each carnival, circus, fair, or similar event operating or intending to operate in North Dakota shall notify the North Dakota State Electrical Board, P.O. Box 7335, Bismarck, North Dakota 58507-7335, each year of its itinerary and make application for the initial inspection thirty days before the first engagement in the state. Failure to notify the board may result in expenses incurred for excess time and travel to inspect these installations.

4. The fee must be paid to the inspector at the first engagement or inspection as follows:

a. \$15.00 each ride or concession;

b. \$15.00 reinspection fee on each unit, if required; and

c. \$50.00 each transformer or generator truck.

5. Each ride or concession wired properly will be issued a certification of compliance, serving for an entire season, subject to subsequent inspections.

6. Minor code violations will be issued a correction order with instructions to correct each violation before the next engagement. A reinspection is required.

7. The electrical inspector is empowered to write a correction order for immediate compliance if the inspector finds a condition dangerous to life and property.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

ARTICLE 24.1-06
ELECTRICAL WIRING STANDARDS

Chapter

<u>24.1-06-01</u>	<u>General Requirements</u>
<u>24.1-06-02</u>	<u>Wiring and Protection</u>
<u>24.1-06-03</u>	<u>Wiring Methods and Materials</u>
<u>24.1-06-04</u>	<u>Appliances</u>
<u>24.1-06-05</u>	<u>Special Occupancies</u>

CHAPTER 24.1-06-01
GENERAL REQUIREMENTS

Section

<u>24.1-06-01-01</u>	<u>[Reserved]</u>
<u>24.1-06-01-02</u>	<u>[Reserved]</u>
<u>24.1-06-01-03</u>	<u>[Reserved]</u>
<u>24.1-06-01-04</u>	<u>[Reserved]</u>
<u>24.1-06-01-05</u>	<u>[Reserved]</u>
<u>24.1-06-01-06</u>	<u>[Reserved]</u>
<u>24.1-06-01-07</u>	<u>[Reserved]</u>
<u>24.1-06-01-08</u>	<u>[Reserved]</u>
<u>24.1-06-01-09</u>	<u>[Reserved]</u>
<u>24.1-06-01-10</u>	<u>Requirements for Electrical Installations</u>
<u>24.1-06-01-11</u>	<u>[Reserved]</u>
<u>24.1-06-01-12</u>	<u>[Reserved]</u>
<u>24.1-06-01-13</u>	<u>[Reserved]</u>
<u>24.1-06-01-14</u>	<u>[Reserved]</u>
<u>24.1-06-01-15</u>	<u>[Reserved]</u>
<u>24.1-06-01-16</u>	<u>[Reserved]</u>
<u>24.1-06-01-17</u>	<u>[Reserved]</u>
<u>24.1-06-01-18</u>	<u>[Reserved]</u>
<u>24.1-06-01-19</u>	<u>[Reserved]</u>
<u>24.1-06-01-20</u>	<u>Water Damaged Electrical Equipment</u>
<u>24.1-06-01-21</u>	<u>[Reserved]</u>
<u>24.1-06-01-22</u>	<u>[Reserved]</u>
<u>24.1-06-01-23</u>	<u>[Reserved]</u>
<u>24.1-06-01-24</u>	<u>[Reserved]</u>
<u>24.1-06-01-25</u>	<u>[Reserved]</u>
<u>24.1-06-01-26</u>	<u>[Reserved]</u>
<u>24.1-06-01-27</u>	<u>[Reserved]</u>
<u>24.1-06-01-28</u>	<u>[Reserved]</u>
<u>24.1-06-01-29</u>	<u>[Reserved]</u>
<u>24.1-06-01-30</u>	<u>Markings of Means of Egress, Illumination of Means of Egress, and Emergency Lighting</u>
<u>24.1-06-01-31</u>	<u>[Reserved]</u>
<u>24.1-06-01-32</u>	<u>[Reserved]</u>
<u>24.1-06-01-33</u>	<u>[Reserved]</u>
<u>24.1-06-01-34</u>	<u>[Reserved]</u>
<u>24.1-06-01-35</u>	<u>[Reserved]</u>
<u>24.1-06-01-36</u>	<u>[Reserved]</u>
<u>24.1-06-01-37</u>	<u>[Reserved]</u>
<u>24.1-06-01-38</u>	<u>[Reserved]</u>

24.1-06-01-39 [Reserved]

24.1-06-01-40 Smoke Alarms, Heat Alarms, Fire Alarm Systems, and Carbon Monoxide Alarm Requirements for Evacuation and Life Safety

24.1-06-01-01. [Reserved].

24.1-06-01-02. [Reserved].

24.1-06-01-03. [Reserved].

24.1-06-01-04. [Reserved].

24.1-06-01-05. [Reserved].

24.1-06-01-06. [Reserved].

24.1-06-01-07. [Reserved].

24.1-06-01-08. [Reserved].

24.1-06-01-09. [Reserved].

24.1-06-01-10. Requirement for electrical installations.

Electrical installations must be planned to provide adequate capacity for the load.

1. Wiring systems must have conductors of sufficient capacity to furnish each outlet without excessive line loss or voltage drop. The voltage drop may not exceed five percent at the farthest outlet of power, heating and lighting loads, or combinations of such loads. (See appendix for example.)
2. All wiring materials and equipment must be listed by nationally recognized testing laboratories to safeguard life and property. It is the duty of the electrical installer to secure permission from the executive director to use materials, devices, and methods of installation not specifically

covered by these standards. Equipment not approved under a testing laboratory category must be evaluated by a registered professional engineer and recorded on evaluation forms accepted by the board.

Exception: Manufacturing firms that install industrial machinery for use by the firm itself and employ professional engineers may evaluate the industrial machinery according to NFPA 79 or UL 508 Standards. This evaluation must be maintained with the equipment at all times and a copy submitted to the board.

3. When wiring public school buildings, approval must be received from the department of public instruction and the board.
4. Overhead conductors may not cross over water wells or known sites where water wells may be drilled. A minimum distance of twenty feet [6.10 meters] in all directions must be maintained for overhead conductors.
5. In the wiring of nursing homes and hospitals, reference must be made to the state department of health for special requirements pertaining to operating rooms, delivery rooms, and emergency lighting.
6. Aluminum conductors in sizes smaller than no. 6 may not be used. Aluminum conductors installed and all corresponding materials must be approved by testing laboratories.
7. All new construction must follow the energy-efficient related requirements for design and construction of buildings in accordance with the locally adopted codes or the State Building Code.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-06-01-11. [Reserved].

24.1-06-01-12. [Reserved].

24.1-06-01-13. [Reserved].

24.1-06-01-14. [Reserved].

24.1-06-01-15. [Reserved].

24.1-06-01-16. [Reserved].

24.1-06-01-17. [Reserved].

24.1-06-01-18. [Reserved].

24.1-06-01-19. [Reserved].

24.1-06-01-20. Water damaged electrical equipment.

Water damaged electrical equipment wiring and equipment exposed to water damage must comply with the following:

1. All breaker panel boards, breakers, fuses, disconnect switches, controllers, receptacles, switches, light fixtures, and electric heaters that have been submerged or exposed to water damage must be replaced or all electrical equipment, switchgear, motor control centers, boilers and boiler controls, electric motors, transformers, and other similar equipment, such as appliances, water heaters, dishwashers, ovens, and ranges that have been submerged must be reconditioned by the original manufacturer or by its approved representative or replaced.
2. Electrical wiring may require replacement depending on the type of wire or cable and what application it was listed for.
3. Splices and terminations must be checked to ensure compliance with article 110.14, 2017 edition, National Electrical Code.
4. Energized electrical panels that have been submerged must be de-energized to prevent loss of life and property.

Other recommendations can be found in "Guidelines for Handling Water Damaged Electrical Equipment" published by the national electrical manufacturers association (NEMA).

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-06-01-21. [Reserved].

24.1-06-01-22. [Reserved].

24.1-06-01-23. [Reserved].

24.1-06-01-24. [Reserved].

24.1-06-01-25. [Reserved].

24.1-06-01-26. [Reserved].

24.1-06-01-27. [Reserved].

24.1-06-01-28. [Reserved].

24.1-06-01-29. [Reserved].

24.1-06-01-30. Markings of means of egress, illumination of means of egress, and emergency lighting.

The purpose of this section is to provide marking of means of egress, illumination of means of egress, and emergency lighting of means of egress. Installations must comply with the requirements of NFPA 101® (7.10.6 and 7.10.7), Life Safety Code®, 2015 edition or more stringent locally adopted codes. A condensed guide is included in the appendix for convenience, for complete and official information refer to the applicable standard.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-06-01-31. [Reserved].

24.1-06-01-32. [Reserved].

24.1-06-01-33. [Reserved].

24.1-06-01-34. [Reserved].

24.1-06-01-35. [Reserved].

24.1-06-01-36. [Reserved].

24.1-06-01-37. [Reserved].

24.1-06-01-38. [Reserved].

24.1-06-01-39. [Reserved].

24.1-06-01-40. Smoke alarms, heat alarms, fire alarm systems, and carbon monoxide alarm requirements for evacuation and life safety.

Alarm systems stated in this section must be installed in accordance with the locally adopted codes or the State Building Code and state fire code. In new construction, all alarm systems must receive primary power from the building wiring and when primary power is interrupted, must receive power from a battery. Wiring must be permanent and without a disconnecting switch other than those required for overcurrent protection.

1. Dwelling units, congregate residences, and hotel or lodging house guest rooms that are used for sleeping purposes must be provided with smoke alarms. Alarms must be installed in accordance with the approved manufacturer's instructions.
 - a. When more than one smoke alarm is required to be installed within an individual dwelling unit the alarm devices must be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit. Smoke alarms must be installed in the following locations:
 - (1) In each sleeping room.
 - (2) Outside each separate sleeping area in the immediate vicinity of the bedrooms.
 - (3) On each additional story of the dwelling, including basements and habitable attics but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level suffices for the adjacent lower level if the lower level is less than one full story below the upper level.
 - (4) In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by twenty-four inches [60.96 centimeters] or more, smoke alarms must be installed in the hallway and in the adjacent room.

b. Heat alarms. For new construction, an approved heat alarm must be installed in the attached single tenant garage of a residence and interconnected with the smoke alarms within the residence.

c. Household fire alarm systems installed in accordance with NFPA 72 which include smoke alarms, or a combination of smoke detectors and audible notification device installed as required by this section for smoke alarms, are permitted. The household fire alarm system must provide the same level of smoke detection and alarm as required by this section for smoke alarms. If a household fire warning system is installed using a combination of smoke detector and audible notification device, the system becomes a permanent fixture of the occupancy and owned by the homeowner. The system must be monitored by an approved supervising station and be maintained in accordance with NFPA 72 upper level.

2. Apartment houses, hotels, and congregate residences must be provided with a manual and automatic fire alarm system in accordance with the requirements of locally adopted codes or the State Building Code and state fire codes.

3. An approved carbon monoxide alarm must be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms in dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages.

A table in the appendix is offered as a condensed guide for convenience. For further information consult the locally adopted codes or the State Building Code and state fire codes.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

CHAPTER 24.1-06-02
WIRING AND PROTECTION

Section

<u>24.1-06-02-01</u>	<u>[Reserved]</u>
<u>24.1-06-02-02</u>	<u>[Reserved]</u>
<u>24.1-06-02-03</u>	<u>[Reserved]</u>
<u>24.1-06-02-04</u>	<u>[Reserved]</u>
<u>24.1-06-02-05</u>	<u>[Reserved]</u>
<u>24.1-06-02-06</u>	<u>[Reserved]</u>
<u>24.1-06-02-07</u>	<u>[Reserved]</u>
<u>24.1-06-02-08</u>	<u>[Reserved]</u>
<u>24.1-06-02-09</u>	<u>[Reserved]</u>
<u>24.1-06-02-10</u>	<u>(NEC 210) Branch Circuits</u>
<u>24.1-06-02-11</u>	<u>[Reserved]</u>
<u>24.1-06-02-12</u>	<u>[Reserved]</u>
<u>24.1-06-02-13</u>	<u>[Reserved]</u>
<u>24.1-06-02-14</u>	<u>[Reserved]</u>
<u>24.1-06-02-15</u>	<u>[Reserved]</u>
<u>24.1-06-02-16</u>	<u>[Reserved]</u>
<u>24.1-06-02-17</u>	<u>[Reserved]</u>
<u>24.1-06-02-18</u>	<u>[Reserved]</u>
<u>24.1-06-02-19</u>	<u>[Reserved]</u>
<u>24.1-06-02-20</u>	<u>[Reserved]</u>
<u>24.1-06-02-21</u>	<u>[Reserved]</u>
<u>24.1-06-02-22</u>	<u>[Reserved]</u>
<u>24.1-06-02-23</u>	<u>[Reserved]</u>
<u>24.1-06-02-24</u>	<u>[Reserved]</u>
<u>24.1-06-02-25</u>	<u>[Reserved]</u>
<u>24.1-06-02-26</u>	<u>[Reserved]</u>
<u>24.1-06-02-27</u>	<u>[Reserved]</u>
<u>24.1-06-02-28</u>	<u>[Reserved]</u>
<u>24.1-06-02-29</u>	<u>[Reserved]</u>
<u>24.1-06-02-30</u>	<u>(NEC 203) Services</u>
<u>24.1-06-02-31</u>	<u>[Reserved]</u>
<u>24.1-06-02-32</u>	<u>[Reserved]</u>
<u>24.1-06-02-33</u>	<u>[Reserved]</u>
<u>24.1-06-02-34</u>	<u>[Reserved]</u>
<u>24.1-06-02-35</u>	<u>[Reserved]</u>
<u>24.1-06-02-36</u>	<u>[Reserved]</u>
<u>24.1-06-02-37</u>	<u>[Reserved]</u>
<u>24.1-06-02-38</u>	<u>[Reserved]</u>
<u>24.1-06-02-39</u>	<u>[Reserved]</u>
<u>24.1-06-02-40</u>	<u>(NEC 240) Overcurrent Protection</u>
<u>24.1-06-02-41</u>	<u>[Reserved]</u>
<u>24.1-06-02-42</u>	<u>[Reserved]</u>
<u>24.1-06-02-43</u>	<u>[Reserved]</u>
<u>24.1-06-02-44</u>	<u>[Reserved]</u>
<u>24.1-06-02-45</u>	<u>[Reserved]</u>
<u>24.1-06-02-46</u>	<u>[Reserved]</u>
<u>24.1-06-02-47</u>	<u>[Reserved]</u>
<u>24.1-06-02-48</u>	<u>[Reserved]</u>
<u>24.1-06-02-49</u>	<u>[Reserved]</u>
<u>24.1-06-02-50</u>	<u>(NEC 250) Grounding and Bonding</u>

24.1-06-02-01. [Reserved].

24.1-06-02-02. [Reserved].

24.1-06-02-03. [Reserved].

24.1-06-02-04. [Reserved].

24.1-06-02-05. [Reserved].

24.1-06-02-06. [Reserved].

24.1-06-02-07. [Reserved].

24.1-06-02-08. [Reserved].

24.1-06-02-09. [Reserved].

24.1-06-02-10. (NEC 210) Branch circuits.

Branch circuits must comply with article 210, 2017 edition, National Electrical Code.

1. The total connected load must be divided as evenly as practicable, between the two ungrounded conductors of a three-wire system and three conductors of a four-wire wye system.
2. A separate circuit with disconnect must be provided for the purpose of operating or controlling electrical equipment on heating units. Wiring requirements for fixed electrical space heating equipment is provided under article 424, 2017 edition, National Electrical Code.
3. A minimum of six 20-amp small appliance branch circuits must be installed for counter receptacles in kitchens that may be used to serve public gatherings at schools, churches, lodges, and similar buildings. Any island counter in these locations must have at least one receptacle.

4. In dwelling occupancies. A minimum of three 20-amp small appliance branch circuits must be installed to supply receptacle outlets in kitchen, pantry, dining room, and breakfast room. These circuits may not supply other outlets and must have conductors not smaller than no. 12. Two of these circuits must supply receptacle outlets on or near work counter area and so arranged that adjacent receptacles are not on the same circuit.
5. In dwelling occupancies, one 20-amp bathroom circuit for receptacles may not feed more than two bathrooms.
6. Fifteen and twenty ampere 125-volt receptacles that supply sewer pumps and sump pumps do not need arc fault circuit protection, but must be ground-fault protected or a single receptacle must be installed in an enclosure that is lockable.
7. Fifteen and twenty ampere 125 volt receptacles supplying power for garage door openers located in attached or detached garages associated with dwelling units must be ground-fault protected or a single receptacle installed.
8. Portable cleaning equipment receptacle outlets must be installed in corridors and located so no point in the corridor along the floor line, measured horizontally, is more than twenty-five feet [7.62 meters] from an outlet.
9. Exception: 2017 edition, National Electrical Code, article 210.11(C)(4): Requirements do not include buildings two hundred fifty square feet [23.23 meters] or smaller.
10. Exception: 2017 edition, National Electrical Code, article 210.12(A): AFCI protection is not required for refrigeration appliances if a single receptacle on a dedicated circuit is installed.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-06-02-11. [Reserved].

24.1-06-02-12. [Reserved].

24.1-06-02-13. [Reserved].

24.1-06-02-14. [Reserved].

24.1-06-02-15. [Reserved].

24.1-06-02-16. [Reserved].

| 24.1-06-02-17. [Reserved].

| 24.1-06-02-18. [Reserved].

| 24.1-06-02-19. [Reserved].

| 24.1-06-02-20. [Reserved].

| 24.1-06-02-21. [Reserved].

| 24.1-06-02-22. [Reserved].

| 24.1-06-02-23. [Reserved].

| 24.1-06-02-24. [Reserved].

| 24.1-06-02-25. [Reserved].

| 24.1-06-02-26. [Reserved].

| 24.1-06-02-27. [Reserved].

| 24.1-06-02-28. [Reserved].

24.1-06-02-29. [Reserved].

24.1-06-02-30. (NEC 230) Services.

Electrical services must comply with article 230, 2017 edition, National Electrical Code.

1. Perpendicular mast used for support of a service may not be less than two-inch [5.08-centimeter] galvanized rigid steel conduit or intermediate metal conduit, fitted with storm collar flashing.
2. Outside switch location. The equipment may not be mounted lower than two feet [.6096 meters] above grade level unless listed for such purpose. If installed outside, the service or services must be installed on the structure or within ten feet of the structure.
3. All services in single-family dwellings must be located in a single accessible location.

Exception: Special permission may be granted by the electrical inspector for a second service location to be added where there is no available space for the service equipment. The second service location must be installed in accordance with article 230.2, 2017 edition, National Electrical Code.

4. Rating of service switch. Any new or old single-family dwelling where the main house panel or service is altered or repaired, the dwelling is moved, or where the dwelling is rewired, a minimum one hundred ampere service-rated panel must be installed. Replacement of service mast or meter enclosure is an alteration of the service.
 - a. A one hundred ampere main house panel must be installed using ungrounded conductors sized for the proper ampacity. The panel must contain provisions for a minimum of twenty full-sized branch circuit spaces.
 - b. A greater than one hundred ampere but less than two hundred ampere main house panel must be installed using ungrounded conductors sized for the proper ampacity. The panel or panels must contain provisions for a minimum of thirty full-sized branch circuit spaces.
 - c. A two hundred ampere or larger main house panel must be installed using ungrounded conductors sized for the proper ampacity. The panel or panels must contain provisions for a minimum of forty full-sized branch circuit spaces.
 - d. Service and feeder calculation for electric heating loads must be sized to one hundred twenty-five percent of the full load rating.
5. For the purpose of separating services within one building, each portion of a building separated by one or more fire walls must be considered a separate building as defined by the locally adopted codes or the State Building Code and state fire codes.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-06-02-31. [Reserved].

24.1-06-02-32. [Reserved].

24.1-06-02-33. [Reserved].

24.1-06-02-34. [Reserved].

24.1-06-02-35. [Reserved].

24.1-06-02-36. [Reserved].

24.1-06-02-37. [Reserved].

24.1-06-02-38. [Reserved].

24.1-06-02-39. [Reserved].

24.1-06-02-40. (NEC 240) Overcurrent protection.

Overcurrent protection must comply with article 240, 2017 edition, National Electrical Code.

1. Exterior overcurrent devices must be located at a height of no less than two feet [.6096 meters] above grade level to the bottom of the enclosure.

Exception: If raising the switch would exceed the height requirements of NEC 240.24(A).

2. Switchboards and panel boards may not be located in bathrooms, clothes closets, stairways, or crawl spaces.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-06-02-41. [Reserved].

24.1-06-02-42. [Reserved].

24.1-06-02-43. [Reserved].

24.1-06-02-44. [Reserved].

24.1-06-02-45. [Reserved].

24.1-06-02-46. [Reserved].

24.1-06-02-47. [Reserved].

24.1-06-02-48. [Reserved].

24.1-06-02-49. [Reserved].

24.1-06-02-50. (NEC 250) Grounding and bonding.

Grounding and bonding must conform to article 250, 2017 edition, National Electrical Code.

1. At motor connections, a bonding jumper sized in accordance with table 250.122, 2017 edition, National Electrical Code, must be provided around all flexible conduit. The bonding jumper is not required if a separate grounding conductor is included.
2. Grounding of metal outdoor lighting standards.
 - a. Definition of lighting standard is a pole exceeding twelve feet [3.66 meters] in height measured from the bottom of the base or from the intended grade level of poles.
 - b. The metal lighting standard must be connected to a one-half inch [12.70-millimeter] by ten-foot [3.05-meter] copperweld ground rod, or twenty feet [6.10 meters] of one or more bare or zinc galvanized or other electrically conductive coated steel reinforcing bars or rods (rebar) of not less than one-half inch [1.27-centimeter] in diameter, by the means of a bonding jumper. The ten-foot [3.05-meter] ground rod must be driven in the center of the metal standard base and project slightly above the base. Both ground rod and equipment grounding conductor must be connected to the metal standards. The bonding

jumper must be in accordance with 2017 edition, National Electrical Code, and in no case smaller than no. 8 copper or no. 6 aluminum.

3. The grounding electrode conductor must be connected to the grounded service conductor in the enclosure for the service disconnect.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

CHAPTER 24.1-06-03

WIRING METHODS AND MATERIALS

Section

- 24.1-06-03-01 (NEC 300) Wiring Methods
- 24.1-06-03-02 [Reserved]
- 24.1-06-03-03 [Reserved]
- 24.1-06-03-04 [Reserved]
- 24.1-06-03-05 [Reserved]
- 24.1-06-03-06 [Reserved]
- 24.1-06-03-07 [Reserved]
- 24.1-06-03-08 [Reserved]
- 24.1-06-03-09 [Reserved]
- 24.1-06-03-10 [Reserved]
- 24.1-06-03-11 [Reserved]
- 24.1-06-03-12 [Reserved]
- 24.1-06-03-13 [Reserved]
- 24.1-06-03-14 (NEC 314) Boxes and Fittings

24.1-06-03-01. (NEC 300) Wiring methods.

1. Agricultural buildings. This section covers all buildings housing livestock, poultry, and other areas of similar or like nature. All electrical panel boards, wiring devices, and equipment must be installed in accordance with the provisions of article 547, 2017 edition, National Electrical Code.

A site-isolating device must be permitted to be installed at the distribution point where two or more agricultural building structures are supplied from the distribution point.

2. Electric metallic tubing may not be used in concrete below grade, in concrete slab or masonry in direct contact with earth. A vapor barrier, if used, has no effect on the requirements of the section. Electric metallic tubing may not be embedded in earth or fill.
3. Aluminum conduit may not be installed in contact with earth or embedded in concrete.
4. The installation of rigid nonmetallic conduit must comply with the provision of article 352, 2017 edition, National Electrical Code. Expansion fittings for rigid nonmetallic conduit must be provided to compensate for thermal expansion and contraction in accordance with section 352.44, 2017 edition, National Electrical Code. When installed outdoors and above grade, one hundred forty degrees Fahrenheit [60 degrees Celsius] must be considered the minimum change in degrees.
5. Fertilizer rooms, meatpacking plants, salt processing plants, and similar locations are judged to be occupancies where severe corrosive conditions are likely to be present. It is recommended nonmetallic conduit with nonmetallic boxes and fittings be used as the wiring method for such occupancies. Ferrous and nonferrous metal raceways must be used providing the raceway, boxes, and fittings are properly protected against corrosion.
6. In any room of an existing building where the sheetrock or wall covering has been removed from all walls, the electrical wiring requirements must comply with the provisions of 2017 edition, National Electrical Code.
7. Metal raceways or metal clad cable (type MC) rated for the environment must be installed in the following occupancies:

- a. Hospitals;
- b. Nursing homes;
- c. Related patient care areas;
- d. Places of assembly; and
- e. Dormitories designed to house more than sixteen people.

Metal raceways or metal clad cable (type MC) must be used in fixed wiring methods including fire alarms along with metal boxes or nonmetallic raceways encased in not less than two inches [1.27 centimeters] of concrete.

Exception 1: As provided in article 640, 2017 edition, National Electrical Code, sound reproduction and similar equipment; in article 800, 2017 edition, National Electrical Code, communication circuits; and in article 725, 2017 edition, National Electrical Code, for class 2 and class 3 remote control and signaling circuits.

Exception 2: Listed two-hour fire-rated cables as permitted in article 695.6, article 700.9D, and article 760, 2017 edition, National Electrical Code.

Adjacent areas separated by an approved fire barrier may be wired in any approved wiring method in chapter 3 of the 2017 edition, National Electrical Code. For the purpose of this section, a fire barrier is defined as a continuous assembly, vertical or horizontal, in accordance with locally adopted codes or the State Building Code.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-06-03-02. [Reserved].

24.1-06-03-03. [Reserved].

24.1-06-03-04. [Reserved].

24.1-06-03-05. [Reserved].

24.1-06-03-06. [Reserved].

24.1-06-03-07. [Reserved].

24.1-06-03-08. [Reserved].

24.1-06-03-09. [Reserved].

24.1-06-03-10. [Reserved].

24.1-06-03-11. [Reserved].

24.1-06-03-12. [Reserved].

24.1-06-03-13. [Reserved].

24.1-06-03-14. Boxes and fittings.

1. Not more than one extension ring may be used on outlet boxes unless special permission has been obtained from the electrical inspector having jurisdiction.
2. Boxes or conduit bodies must be installed at each opening, splice, or connection, except as provided in article 604, 2017 edition, National Electrical Code.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

CHAPTER 24.1-06-04
EQUIPMENT FOR GENERAL USE

Section

- 24.1-06-04-01 [Reserved]
- 24.1-06-04-02 [Reserved]
- 24.1-06-04-03 [Reserved]
- 24.1-06-04-04 [Reserved]
- 24.1-06-04-05 [Reserved]
- 24.1-06-04-06 [Reserved]
- 24.1-06-04-07 [Reserved]
- 24.1-06-04-08 [Reserved]
- 24.1-06-04-09 [Reserved]
- 24.1-06-04-10 [Reserved]
- 24.1-06-04-11 [Reserved]
- 24.1-06-04-12 [Reserved]
- 24.1-06-04-13 [Reserved]
- 24.1-06-04-14 [Reserved]
- 24.1-06-04-15 [Reserved]
- 24.1-06-04-16 [Reserved]
- 24.1-06-04-17 [Reserved]
- 24.1-06-04-18 [Reserved]
- 24.1-06-04-19 [Reserved]
- 24.1-06-04-20 [Reserved]
- 24.1-06-04-21 [Reserved]
- 24.1-06-04-22 (NEC 422) Appliances

24.1-06-04-01. [Reserved].

24.1-06-04-02. [Reserved].

24.1-06-04-03. [Reserved].

24.1-06-04-04. [Reserved].

24.1-06-04-05. [Reserved].

24.1-06-04-06. [Reserved].

| 24.1-06-04-07. [Reserved].

| 24.1-06-04-08. [Reserved].

| 24.1-06-04-09. [Reserved].

| 24.1-06-04-10. [Reserved].

| 24.1-06-04-11. [Reserved].

| 24.1-06-04-12. [Reserved].

| 24.1-06-04-13. [Reserved].

| 24.1-06-04-14. [Reserved].

| 24.1-06-04-15. [Reserved].

| 24.1-06-04-16. [Reserved].

| 24.1-06-04-17. [Reserved].

| 24.1-06-04-18. [Reserved].

24.1-06-04-19. [Reserved].

24.1-06-04-20. [Reserved].

24.1-06-04-21. [Reserved].

24.1-06-04-22. (NEC 422) Appliances.

Exception: 2017 edition, National Electrical Code, Article 422.16: The use of not more than six feet [1.83 meters] of flexible appliance cord shall be permitted on permanently installed one hundred twenty volt twenty amp or less fuel-fired furnaces in residential dwellings. The receptacle for this appliance shall be GFCI protected, or a single receptacle, with a lockable in-use cover, and the cord shall meet all requirements of NEC 422.16.

**CHAPTER 24.1-06-05
SPECIAL OCCUPANCIES**

Section

24.1-06-05-01 (NEC 500) Hazardous Locations

24.1-06-05-02 [Reserved]

24.1-06-05-03 [Reserved]

24.1-06-05-04 [Reserved]

24.1-06-05-05 [Reserved]

24.1-06-05-06 [Reserved]

24.1-06-05-07 [Reserved]

24.1-06-05-08 [Reserved]

24.1-06-05-09 [Reserved]

24.1-06-05-10 [Reserved]

24.1-06-05-11 [Reserved]

24.1-06-05-12 [Reserved]

24.1-06-05-13 [Reserved]

24.1-06-05-14 [Reserved]

24.1-06-05-15 [Reserved]

24.1-06-05-16 [Reserved]

24.1-06-05-17 [Reserved]

24.1-06-05-18 [Reserved]

24.1-06-05-19 [Reserved]

24.1-06-05-20 [Reserved]

24.1-06-05-21 [Reserved]

24.1-06-05-22 [Reserved]

24.1-06-05-23 [Reserved]

24.1-06-05-24 [Reserved]

24.1-06-05-25 [Reserved]

24.1-06-05-26 [Reserved]

24.1-06-05-27 [Reserved]

24.1-06-05-28 [Reserved]

24.1-06-05-29 [Reserved]

24.1-06-05-30 [Reserved]

24.1-06-05-31 [Reserved]

24.1-06-05-32 [Reserved]

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24.1-06-05-34 [Reserved]

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24.1-06-05-36 [Reserved]

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24.1-06-05-39 [Reserved]

24.1-06-05-40 [Reserved]

24.1-06-05-41 [Reserved]

24.1-06-05-42 [Reserved]

24.1-06-05-43 [Reserved]

24.1-06-05-44 [Reserved]

24.1-06-05-45 [Reserved]

24.1-06-05-46 [Reserved]

24.1-06-05-47 [Reserved]

24.1-06-05-48 [Reserved]

24.1-06-05-49 [Reserved]

24.1-06-05-50 (NEC 550) Mobile Home Parks

24.1-06-05-01. (NEC 500) Hazardous locations.

1. Classification of hazardous locations is required to be completed by owner, representative, or engineer that has the qualifications and must provide documentation as required by the provisions of article 500.4, 2017 edition, National Electrical Code, including the reference standards as listed in article 500.4, 2017 edition, National Electrical Code.
2. For classifications of oilfield installations refer to API RP 500, Classification of Locations for Electrical Installations at Petroleum Facilities, third edition, December 2012.
3. Surge arrestors must be provided for all services in grain elevators.
4. Hot bearing or other similar detection systems must be installed in accordance with articles 500-516, 2017 edition, National Electrical Code.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

24.1-06-05-02. [Reserved].

24.1-06-05-03. [Reserved].

24.1-06-05-04. [Reserved].

24.1-06-05-05. [Reserved].

24.1-06-05-06. [Reserved].

24.1-06-05-07. [Reserved].

24.1-06-05-08. [Reserved].

24.1-06-05-09. [Reserved].

| 24.1-06-05-10. [Reserved].

| 24.1-06-05-11. [Reserved].

| 24.1-06-05-12. [Reserved].

| 24.1-06-05-13. [Reserved].

| 24.1-06-05-14. [Reserved].

| 24.1-06-05-15. [Reserved].

| 24.1-06-05-16. [Reserved].

| 24.1-06-05-17. [Reserved].

| 24.1-06-05-18. [Reserved].

| 24.1-06-05-19. [Reserved].

| 24.1-06-05-20. [Reserved].

| 24.1-06-05-21. [Reserved].

| 24.1-06-05-22. [Reserved].

| 24.1-06-05-23. [Reserved].

| 24.1-06-05-24. [Reserved].

| 24.1-06-05-25. [Reserved].

| 24.1-06-05-26. [Reserved].

| 24.1-06-05-27. [Reserved].

| 24.1-06-05-28. [Reserved].

| 24.1-06-05-29. [Reserved].

| 24.1-06-05-30. [Reserved].

| 24.1-06-05-31. [Reserved].

| 24.1-06-05-32. [Reserved].

| 24.1-06-05-33. [Reserved].

24.1-06-05-34. [Reserved].

24.1-06-05-35. [Reserved].

24.1-06-05-36. [Reserved].

24.1-06-05-37. [Reserved].

24.1-06-05-38. [Reserved].

24.1-06-05-39. [Reserved].

24.1-06-05-40. [Reserved].

24.1-06-05-41. [Reserved].

24.1-06-05-42. [Reserved].

24.1-06-05-43. [Reserved].

24.1-06-05-44. [Reserved].

24.1-06-05-45. [Reserved].

24.1-06-05-46. [Reserved].

24.1-06-05-47. [Reserved].

24.1-06-05-48. [Reserved].

24.1-06-05-49. [Reserved].

24.1-06-05-50. (NEC 550) Mobile home parks.

1. Mobile homes, manufactured homes, and mobile home parks must comply with article 550, 2017 edition, National Electrical Code.
2. Service equipment may be installed on manufactured homes as required in article 550.32(b) if the following requirements are met:
 - a. The mobile home is located on property owned by the homeowner and not in mobile home park.
 - b. The mobile home is secured to a permanent foundation that complies with locally adopted codes or the State Building Code.

History: Effective April 1, 2017.

General Authority: NDCC 43-09-05

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

CHAPTER 24.1-06-50

APPENDIX

Short Cut
At 75° C

Voltage Drop Formulas 167° F.

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

or

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

L = length in feet, one way

I = load in amps

E = Volts

C.M.A. = circular-mil area

K-factor = 25.8 multiplying factor for copper, 42.4 multiplying factor for aluminum at 75° C.

Percent drop = permissible voltage drop times voltage of circuit as follows:

3% of 208 = 208 x .03 = 6.24 volts

3% of 120 = 120 x .03 = 3.6 volts

3% of 240 = 240 x .03 = 7.2 volts

5% of 240 = 240 x .05 = 12.0 volts

Example:

240 volts, 1,000 ft. distance, 10 ampere load, 5% drop

25.8 x 1,000 = 25,800 x 10 = 258,000

258,000 divided by 26,250 (C.M.A. of No. 6) = 9.8 volts (less than 5%)

258,000 divided by 16,510 (C.M.A. of No. 8) = 15.6 volts (more than 5%)

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

| $25.8 \times 100 = 2,580 \times 8 = 20,640$

| $20,640 \text{ divided by } 6,530 \text{ (C.M.A. of No. 12)} = 3.16 \text{ volts (less than 3\%)}$

| $20,640 \text{ divided by } 4,107 \text{ (C.M.A. of No. 14)} = 5.0 \text{ volts (more than 3\%)}$

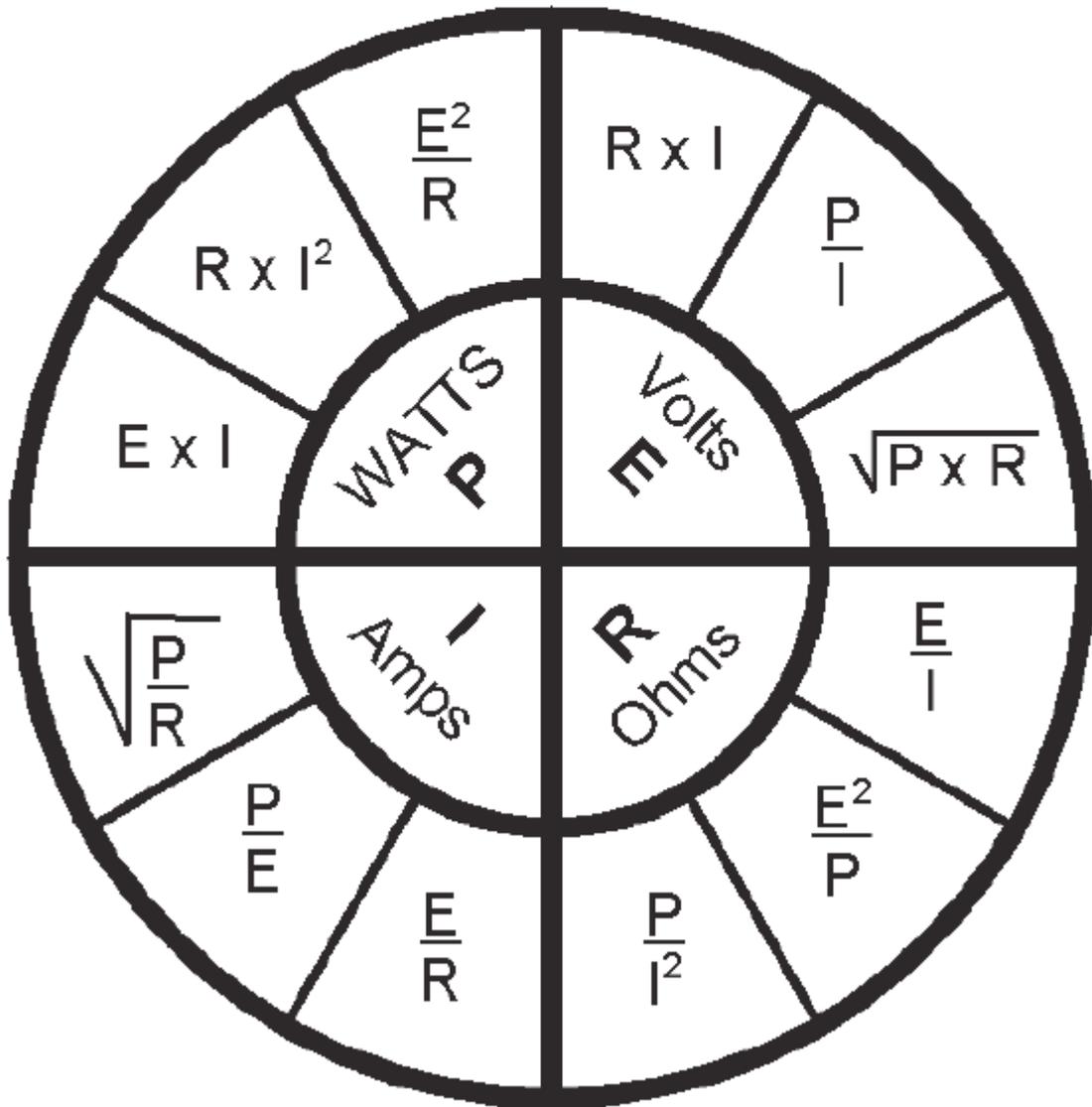
| or

| $25.8 \times 8 \text{ amps} \times 100 \text{ ft.} = 20,640$

| $20,640 \text{ divided by } 3.6 \text{ (volts representing 3\%)} = 5,733 \text{ C.M.A. (No. 12)}$

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

OHM'S LAW



Means of Egress Condensed Guide

1. Marking of means of egress. All required exits and access to exits shall be marked by readily visible signs. For externally illuminated signs, letters may not be less than six inches [150 millimeters] high. Internally illuminated signs must be listed per ANSI/UL 924 which assures proper letter size. Chevron-shaped arrows are required to indicate direction to exits. Every sign must be suitably illuminated. For externally illuminated signs see subsection 7.10.6, Life Safety Code®, NFPA 101, 2015 edition and for internally illuminated signs see subsection 7.10.7.
2. Illumination of means of egress. Illumination of means of egress must provide continuous, dependable, illumination of not less than one foot-candle at floor level for all areas such as corridors, stairways, and exit doorways, providing a lighted path of travel to the outside of the building and public way during all times that the means of egress is available for use. For new stairs, the required minimum illumination level is ten foot-candle during conditions of stair use. Illumination must be from a source of reasonable assured reliability and may be supplied from normal lighting circuits or special circuits with switching controlled by authorized personnel. Illumination required for exit marking also must serve for illumination of means of egress and be so arranged that failure of a single unit, such as burning out of a single bulb will not leave any area in darkness.
3. Emergency lighting. Emergency lighting systems must be so arranged to provide the required illumination automatically in event of any interruption or failure of the normal power supply. An acceptable alternate source of power may be an electric generator or approved battery. In occupancies where emergency lighting is required, the circuits supplying exit marking and illumination of means of egress must be supplied by the emergency system. Other areas of the facilities only requiring exit marking and illumination of means of egress may be supplied by the normal source.
4. Classification of occupancy based on chapter 6, Life Safety Code®, NFPA 101, 2015 edition.

Note: Check with local building officials to determine occupancy and occupant load.

Assembly. Assembly occupancies include all buildings or portions of buildings used for gathering together fifty or more persons for such purposes as deliberation, worship, entertainment, eating, drinking, amusement, or awaiting transportation. Assembly occupancies also include special amusement buildings regardless of occupant load.

Assembly occupancies might include the following:

<u>Armories</u>	<u>Libraries</u>
<u>Assembly halls</u>	<u>Mortuary chapels</u>
<u>Auditoriums</u>	<u>Motion picture theaters</u>
<u>Bowling lanes</u>	<u>Museums</u>
<u>Clubrooms</u>	<u>Passenger stations and terminals of air, surface, underground, and marine public transportation facilities</u>
<u>Colleges and university</u>	<u>Places of religious worship</u>
<u>Classrooms, fifty persons and over</u>	<u>Poolrooms</u>
<u>Conference rooms</u>	<u>Recreation piers</u>
<u>Courtrooms</u>	<u>Restaurants</u>
<u>Dance halls</u>	<u>Skating rinks</u>
<u>Drinking establishments</u>	<u>Theaters</u>

Exhibition halls

Gymnasiums

Occupancy of any room or space for assembly purposes by fewer than fifty persons in a building or other occupancy and incidental to such other occupancy must be classified as part of the other occupancy and is subject to the provisions applicable thereto.

Educational. Educational occupancies include all buildings or portions of buildings used for educational purposes through the twelfth grade by six or more persons for four or more hours per day or more than twelve hours per week.

Educational occupancies include the following:

Academies

Schools

Kindergartens

Other occupancies associated with educational institutions shall be in accordance with the appropriate part of Life Safety Code®, NFPA 101, 2015 edition.

In cases when instruction is incidental to some other occupancy, the section of Life Safety Code®, NFPA 101, 2015 edition, governing such other occupancy applies. For example:

College and university classrooms under fifty persons - business occupancy

College and university classrooms fifty persons and over - assembly

Instructional building - business occupancy

Laboratories, instructional - business occupancy

Laboratories, noninstructional - industrial

Day care. Day care occupancies include all buildings or portions of buildings in which four or more clients receive care, maintenance, and supervision, by other than their relatives or legal guardians, for less than twenty-four hours per day.

Day care occupancies include the following:

Child day care occupancies

Adult day care occupancies, except where part of a health care occupancy

Nursery schools

Day care homes

Kindergarten classes that are incidental to a child day care occupancy

In areas when public schools offer only half-day kindergarten programs, many child day care occupancies offer state-approved kindergarten classes for children who require full day care. As these classes are normally incidental to the day care occupancy, the requirements of the day care occupancy should be followed.

Health care. Health care occupancies are those used for purposes such as medical or other treatment or care of persons suffering from physical or mental illness, disease, or infirmity and for the care of infants, convalescents, or infirm aged persons. Health care occupancies provide sleeping facilities for four or more occupants and are occupied by persons who are mostly incapable of self-preservation because of age, physical or mental disability, or because of security measures not under the occupants' control.

Health care occupancies include the following:

Hospitals

Nursing homes
Limited care facilities

Ambulatory health care. Ambulatory health care occupancies are those used to provide services or treatment simultaneously to four or more patients on an outpatient basis. The patients are considered incapable of self-preservation due to the treatment rendered, the use of anesthesia, or the injury for which they are receiving emergency or urgent care.

Detention and correctional. Detention and correctional occupancies are used to house individuals under varied degrees of restraint or security and are occupied by persons who are mostly incapable of self-preservation because of security measures not under the occupants' control.

Detention and correctional occupancies include the following:

Adult and juvenile substance abuse centers
Adult and juvenile work camps
Adult community residential centers
Adult correctional institutions
Adult local detention facilities
Juvenile community residential centers
Juvenile detention facilities
Juvenile training schools

Residential. Residential occupancies are those occupancies in which sleeping accommodations are provided for normal residential purposes and include all buildings designed to provide sleeping accommodations.

Exception. Those classified under health care or detention and correctional occupancies.

Residential occupancies are treated separately in Life Safety Code®, NFPA 101, 2015 edition, in the following groups:

One-family and two-family dwelling unit
Lodging or rooming house
Hotels
Dormitory
Apartment building
Residential board and care occupancy

Mercantile occupancy. An occupancy used for the display and sale of merchandise.

Mercantile occupancies include the following:

<u>Auction rooms</u>	<u>Restaurants with fewer than</u> <u>fifty persons</u>
<u>Department stores</u>	<u>Shopping centers</u>
<u>Drugstores</u>	<u>Supermarkets</u>

Office, storage, and service facilities incidental to the sale of merchandise and located in the same building should be considered part of the mercantile occupancy.

Business. Business occupancies are those used for the transaction of business other than those covered under mercantile.

Business occupancies include the following:

<u>Air traffic control towers (ATCTs)</u>	<u>Doctors' offices</u>
<u>City halls</u>	<u>Townhalls</u>
<u>College and university instructional buildings, classrooms under fifty persons, and instructional laboratories</u>	<u>General offices</u>
<u>Courthouses</u>	<u>Outpatient clinics, ambulatory</u>
	<u>Dentists' offices</u>

Doctors' and dentists' offices are included unless of such character as to be classified as ambulatory health care occupancies.

Industrial. Industrial occupancies include factories making products of all kinds and properties devoted to operations such as processing, assembling, mixing, packaging, finishing or decorating, and repairing.

Industrial occupancies include the following:

<u>Dry cleaning plants</u>	<u>Power plants</u>
<u>Factories of all kinds</u>	<u>Pumping stations</u>
<u>Food processing plants</u>	<u>Refineries</u>
<u>Gas plants</u>	<u>Sawmills</u>
<u>Hangars (for servicing or maintenance)</u>	<u>Telephone exchanges</u>
<u>Laundries</u>	

In evaluating the appropriate classification of laboratories, the authority having jurisdiction should determine each case individually based on the extent and nature of the associated hazards. Some laboratories may be classified as occupancies other than industrial, for example, a physical therapy laboratory or a computer laboratory.

Storage. Storage occupancies include all buildings or structures utilized primarily for the storage or sheltering of goods, merchandise, products, vehicles, or animals.

Storage occupancies include the following:

<u>Barns</u>	<u>Hangars (for storage only)</u>
<u>Bulk oil storage</u>	<u>Parking structures</u>
<u>Cold storage</u>	<u>Warehouses</u>
<u>Freight terminals</u>	<u>Truck and marine terminals</u>
<u>Grain elevators</u>	

Storage occupancies are characterized by the presence of relatively small numbers of persons in proportion to the area. Any new use that increases the number of occupants to a figure comparable with other classes of occupancy changes the classification of the building to that of the new use.

Multiple occupancies. A building or structure in which two or more classes of occupancy exists shall be classified as a multiple occupancy. Multiple occupancies must be protected either as mixed occupancies or as separated occupancies, in accordance with subsection 6.1-14.3 or 6.1-14.4.

respectively, of Life Safety Code®, NFPA 101, 2015 edition. Where exit access from an occupancy traverses another occupancy, the multiple occupancy must be protected as a mixed occupancy. In implementing the mixed occupancies form of protection, the building must comply with the most restrictive requirements of the occupancies involved, unless separate safeguards are approved.

5. Occupant load factor table.

<u>Use</u>	<u>Square Feet per Person</u>
<u>Assembly use - less concentrated use</u>	<u>15 net*</u>
<u>Areas of concentrated use without fixed seating</u>	<u>7 net*</u>
<u>Waiting space</u>	<u>3 net*</u>
<u>Bleachers, pews, and similar bench-type seating</u>	<u>Note 1</u>
<u>Fixed seating</u>	<u>Note 2</u>
<u>Kitchens</u>	<u>100 gross**</u>
<u>Libraries</u>	
<u>In stack areas</u>	<u>100 gross**</u>
<u>In reading rooms</u>	<u>50 net*</u>
<u>Swimming pools</u>	
<u>Water surface</u>	<u>50 gross**</u>
<u>Pool decks</u>	<u>30 gross**</u>
<u>Stages</u>	<u>15 net*</u>
<u>Educational use</u>	
<u>Classroom area</u>	<u>20 net*</u>
<u>Shops, laboratories, and similar vocational areas</u>	<u>50 net*</u>
<u>Day care use</u>	
<u>Maximum number of persons intended to occupy that floor, but not less than</u>	<u>35 net*</u>
<u>Health care use</u>	
<u>Sleeping departments</u>	<u>120 gross**</u>
<u>Inpatient departments</u>	<u>240 gross**</u>
<u>Ambulatory health care</u>	<u>150 gross**</u>
<u>Detention and correctional use</u>	
<u>Maximum number of persons intended to occupy that floor, but not less than</u>	<u>120 gross**</u>
<u>Residential use</u>	
<u>Hotels, motels, dormitories, apartment buildings:</u>	
<u>Maximum probable population, but not less than</u>	<u>200 gross**</u>
<u>Residential board and care use</u>	<u>Note 3</u>
<u>Mercantile use (including malls)</u>	
<u>Street level and below (sales)</u>	<u>30 gross**</u>
<u>Upper floor (sales)</u>	<u>60 gross**</u>
<u>Storage, receiving, or shipping (not open to the general public)</u>	<u>300 gross**</u>

<u>Assembly areas</u>	<u>See "Assembly"</u>
<u>Business use (other than below)</u>	<u>100 gross**</u>
<u>Concentrated business use</u>	<u>50 gross**</u>
<u>Air traffic control tower observation levels</u>	<u>40 gross**</u>
<u>Other purposes</u>	<u>Note 4</u>
<u>Industrial use</u>	
<u>General and high hazard industrial</u>	<u>100 gross**</u>
<u>Special purpose industrial</u>	<u>N/A</u>
<u>Storage use</u>	
<u>In storage occupancies</u>	<u>N/A</u>
<u>In mercantile occupancies</u>	<u>300 gross**</u>
<u>In other than storage and mercantile occupancies</u>	<u>500 gross**</u>

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

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

Notes to occupant load table.

Note 1. Bleachers, pews, and similar bench-type seating: one person per eighteen linear inches.

Note 2. Fixed seating. The occupant load of an area having fixed seats shall be determined by the number of fixed seats installed. Required aisle space serving the fixed seats shall not be used to increase the occupant load.

Note 3. Refer to chapters 32 and 33 of Life Safety Code®, NFPA 101, 2015 edition.

Note 4. Occupant load factors associated with the use.

6. Building classification table.

x - indicates required

o - indicates not required

<u>Occupancy</u>	<u>Marking of Means Egress</u>	<u>Illumination of Means Egress</u>	<u>Emergency Lighting</u>
<u>Assembly</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Educational</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Day care</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Interior stairs and corridors</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Assembly use spaces</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Flexible and open plan buildings</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Interior or limited access portions of buildings</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Shops and laboratories</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Family day care homes (more than three but fewer than seven persons)</u>	<u>o</u>	<u>x</u>	<u>o</u>

<u>Group day care homes (seven to twelve persons)</u>	<u>o</u>	<u>x</u>	<u>o</u>
<u>Health care occupancies (Note 1) (for complete details see article 517 of NEC and NFPA standard 99)</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Detention and correctional</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Residential</u>			
<u>Hotels and dormitories</u>	<u>x</u>	<u>x</u>	<u>x Note 2</u>
<u>Apartment buildings</u>			
<u>Twelve or less apartments</u>	<u>x</u>	<u>x</u>	<u>o Note 3</u>
<u>More than twelve apartments or greater than three stories in height</u>	<u>x</u>	<u>x</u>	<u>x Note 3</u>
<u>Residential board and care</u>			
<u>More than sixteen residents</u>	<u>x</u>	<u>x</u>	<u>x Note 2</u>
<u>Mercantile</u>			
<u>Class A - Over thirty thousand square feet [2787.09 square meters] or greater than three stories</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Class B - Three thousand square feet to thirty thousand square feet [278.71 square meters to 2787.09 square meters] or three thousand square feet [278.71 square meters] or less and two or three stories</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Class C - Under three thousand square feet [278.71 square meters] and one story</u>	<u>x Note 5</u>	<u>x</u>	<u>o</u>
<u>Malls</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Business</u>	<u>x</u>	<u>x</u>	<u>o</u>
<u>Three or more stories in height</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Fifty or more persons above or below level of exit discharge</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Three hundred or more persons</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>All limited access and underground</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Industrial</u>	<u>x</u>	<u>x Note 6</u>	<u>x Note 6 and 7</u>
<u>Storage</u>	<u>x</u>	<u>x Note 8</u>	<u>x Note 8 and 9</u>

Special structures (refer to chapter 11, Life Safety Code®, NFPA 101, 2015 edition).

Mixed occupancies (Note 5).

NOTES:

Note 1. Exception: Power supply for exit and emergency lighting shall conform to NFPA 110.

Note 2. Exception: Where each guest room, guest suite, or resident sleeping room has an exit direct to the outside of the building at street or ground level emergency lighting is not required.

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

Note 4. Exception: Where the same means of egress serve multiple use or combined occupancies, exit lighting, exit signs, and emergency lighting shall be provided for the occupancy with the most stringent lighting requirements. The occupant load of each type of occupancy shall be added to arrive at the total occupant load.

Note 5. Exception: Where an exit is immediately apparent from all portions of the sales area, the exit

marking is not required.

Note 6. Exception: Special purpose industrial occupancies without routine human habitation.

Note 7. Exception: Structures occupied only during daylight hours, with skylights or windows arranged to provide the required level of illumination on all portions of the means of egress during these hours.

Note 8. Exception: Storage occupancies do not require emergency lighting when not normally occupied.

Note 9. Exception: In structures occupied only during daylight hours, with skylights or windows arranged to provide the required level of illumination of all portions of the means of egress during these hours, emergency lighting is not required.

Fire Alarm System Condensed Guide
O - NOT required X - required

<u>Occupancy</u>	<u>Manual Stations</u>	<u>Smoke Detector</u>	<u>Heat Detector</u>	<u>Flow Switch</u>	<u>Fire Station Alarm</u>
<u>Assembly under three hundred</u>	<u>o</u>	<u>o</u>	<u>o</u>	<u>o</u>	<u>o</u>
<u>Assembly over three hundred</u>	<u>x Note 1</u>	<u>o</u>	<u>o</u>	<u>o</u>	<u>o</u>
<u>Amusement buildings</u>	<u>x</u>	<u>x</u>	<u>o</u>	<u>o</u>	<u>x</u>
<u>Hotel-motel</u>					
<u>Nineteen rooms or less</u>	<u>o</u>	<u>x Note 2</u>	<u>o</u>	<u>o</u>	<u>o</u>
<u>Three or more story*</u>	<u>x</u>	<u>x</u>	<u>o</u>	<u>o</u>	<u>o</u>
<u>Hotel-motel</u>					
<u>Twenty rooms or more* and congregate residences</u>	<u>x</u>	<u>x Note 2</u>	<u>x</u>	<u>x</u>	<u>o</u>
<u>Commons area</u>					
<u>Hotels-motels-apartment houses</u>	<u>X</u>	<u>X</u>	<u>X Note 3</u>	<u>Note 5</u>	
<u>Educational</u>					
<u>North Dakota Century Code Section 18-12-16</u>					
<u>Institutional*</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>Office - High-rise</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	
<u>Apartments (see #2 above)</u>	<u>o</u>	<u>o</u>	<u>o</u>	<u>o</u>	<u>o</u>
<u>Industrial - Check with the local fire authority or the state fire marshal</u>					
<u>Office building - Check with local jurisdiction</u>					

*State Department of Health rules.

Note 1. Placement of devices must be at exit on each level.

Note 2. Detectors required in each sleeping room and one detector for each seventy-five feet [22.86 meters] of hallway.

Note 3. When automatic sprinklers and flow detectors are installed, they must be connected to the alarm system. Heat detectors are required in mechanical rooms, laundry rooms, and storerooms.

Note 4. Institutional includes hospitals, nursing homes, jails, and similar facilities, including any occupancy where movement is restricted.

Note 5. If equipped with sprinkler.

Note 6. Emergency voice alarm and signal.

Note 7. One hundred or more sprinkler heads.

All signaling devices for all occupancies must meet Americans with Disabilities Act (ADA) requirements (check ADA requirements).

Smoke detectors in hotels, motels, and apartments are not to be tied to the central alarm system (alarm in room or apartment only).

Central alarm trouble indicator must be located where it will be heard.

Systems with two or more zones must have an annunciator panel located at an entrance approved by the local fire department.

Cities shall have additional or more stringent requirements.

Be aware the table is the minimum and the owner or designer shall ask for more.

TITLE 45
INSURANCE, COMMISSIONER OF

APRIL 2017

CHAPTER 45-03-07.1

45-03-07.1-04.1. Credit for reinsurance - Certified reinsurers.

1. Pursuant to subsection 5 of North Dakota Century Code Section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of subsection 5 of North Dakota Century Code section 26.1-31.2-01 and section 26.1-31.2-02 and North Dakota Administrative Code section 45-03-07.1-07, 45-03-07.1-08, or 45-03-07.1-09. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

- | a. Ratings | Security Required |
|----------------|-------------------|
| Secure - 1 | 0% |
| Secure - 2 | 0% 10% |
| Secure - 3 | 20% |
| Secure - 4 | 50% |
| Secure - 5 | 75% |
| Vulnerable - 6 | 100% |
- b. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.
- c. The commissioner shall require the certified reinsurer to post one hundred percent, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.
- d. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as

reported on the national association of insurance commissioners annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- (1) Line 1: Fire.
- (2) Line 2: Allied lines.
- (3) Line 3: Farmowners multiple peril.
- (4) Line 4: Homeowners multiple peril.
- (5) Line 5: Commercial multiple peril.
- (6) Line 9: Inland marine.
- (7) Line 12: Earthquake.
- (8) Line 21: Auto physical damage.

- e. Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.
- f. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

2. Certification procedure.

- a. The commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty days after posting the notice required by this subdivision.
- b. The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in the notice shall be the rating assigned the certified reinsurer in accordance with subsection 1. The commissioner shall publish a list of all certified reinsurers and their ratings.
- c. In order to be eligible for certification, the assuming insurer shall meet the following requirements:
 - (1) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subsection 3.
 - (2) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars calculated in accordance with paragraph 8 of subdivision d. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital

and surplus equivalents, net of liabilities, of at least two hundred fifty million dollars and a central fund containing a balance of at least two hundred fifty million dollars.

- (3) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:
- (a) Standard & Poor's;
 - (b) Moody's Investors Service;
 - (c) Fitch Ratings;
 - (d) A.M. Best Company; or
 - (e) Any other nationally recognized statistical rating organization.
- (4) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.
- d. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include the following:
- (1) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification.

Ratings	Best	S&P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, GGG CCC+, CC, CCC-, DD

- (2) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

- (3) For certified reinsurers domiciled in the United States, a review of the most recent applicable national association of insurance commissioners annual statement blank, either schedule F for property and casualty reinsurers, or schedule S for life and health reinsurers;
 - (4) For certified reinsurers not domiciled in the United States, a review annually of form CR-F for property and casualty reinsurers, or form CR-S for life and health reinsurers, attached as exhibits to this chapter;
 - (5) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety days past due or are in dispute. with specific attention given to obligations payable to companies that are in administrative supervision or receivership;
 - (6) Regulatory actions against the certified reinsurer;
 - (7) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph 8;
 - (8) For certified reinsurers not domiciled in the United States. audited financial statements. regulatory filings, and actuarial opinion as filed with the non-United States jurisdiction supervisor. Acceptable audited financial statements are those performed using:
 - (a) United States generally accepted accounting principles;
 - (b) International financial reporting standards if an audited footnote reconciling equity and net income to United States generally accepted accounting principles is included; or
 - (c) With the permission of the commissioner, audited international financial reporting standards statements with a reconciliation to United States generally accepted accounting principles certified by an officer of the company.

Upon the initial application for certification, the commissioner will consider audited financial statements for the last three years filed with its non-United States jurisdiction supervisor;
 - (9) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
 - (10) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
 - (11) Any other information deemed relevant by the commissioner.
- e. Based on the analysis conducted under paragraph 5 of subdivision d of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under paragraph 1 of subdivision d if the commissioner finds that:

- (1) More than fifteen percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed one hundred thousand dollars for each cedent; or
 - (2) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds fifty million dollars.
- f. The assuming insurer must submit a properly executed form CR-1, attached as an exhibit to this chapter, as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.
- g. The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under North Dakota Century Code section 44-04-18 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:
- (1) Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons therefor;
 - (2) Annually, form CR-F or CR-S, as applicable;
 - (3) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph 4;
 - (4) Annually, audited financial statements, regulatory filings, and actuarial opinion as filed with the certified reinsurer's supervisor. Acceptable audited financial statements are those performed using:
 - (a) United States generally accepted accounting principles;
 - (b) International financial reporting standards if an audited footnote reconciling equity and net income to United States generally accepted accounting principles is included; or
 - (c) With the permission of the commissioner, audited international financial reporting standards statements with a reconciliation to United States generally accepted accounting principles certified by an officer of the company.
- Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;
- (5) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;
 - (6) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(7) Any other information that the commissioner may reasonably require.

h. Change in rating or revocation of certification.

- (1) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of paragraph 1 of subdivision d.
- (2) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.
- (3) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.
- (4) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with section 45-03-07.1-06 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with section 45-03-07.1-04, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of the funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

3. Qualified jurisdictions.

- a. If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of the recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.
- b. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commissioner shall determine the appropriate approach for evaluating the qualifications of jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction.

Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include the following:

- (1) The framework under which the assuming insurer is regulated.
 - (2) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
 - (3) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
 - (4) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
 - (5) The domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular.
 - (6) The history of performance by assuming insurers in the domiciliary jurisdiction.
 - (7) Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.
 - (8) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the international association of insurance supervisors or successor organization.
 - (9) Any other matters deemed relevant by the commissioner.
- c. A list of qualified jurisdictions shall be published through the national association of insurance commissioners committee process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under paragraphs 1 through 9 of subdivision b.
- d. United States jurisdictions that meet the requirements for accreditation under the national association of insurance commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.
4. Recognition of certification issued by a national association of insurance commissioners accredited jurisdiction.
- a. If an applicant for certification has been certified as a reinsurer in a national association of insurance commissioners accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed form CR-1 and the additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.
 - b. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within ten days after receiving notice of the change.

- c. The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with paragraph 1 of subdivision g of subsection 2.
 - d. The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with paragraph 2 of subdivision g of subsection 2, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.
5. Mandatory funding clause. In addition to the clauses required under section 45-03-07.1-10, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.
 6. The commissioner shall comply with all reporting and notification requirements that may be established by the national association of insurance commissioners with respect to certified reinsurers and qualified jurisdictions.

History: Effective January 1, 2016; [amended effective April 1, 2017](#).

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-08. Letters of credit qualified under section 45-03-07.1-06.

1. The letter of credit must be clean, irrevocable, unconditional, and issued or confirmed by a qualified United States financial institution as defined in subsection 1 of North Dakota Century Code section 26.1-31.2-03. The letter of credit must contain an issue date and expiration date and stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit must also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself may not contain reference to any other agreements, documents, or entities, except as provided in subdivision a of subsection 9. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver, including conservator, rehabilitator, or liquidator.
2. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section must be clearly marked to indicate that the information is for internal identification purposes only.
3. The letter of credit must contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.
4. The term of the letter of credit must be for at least one year and must contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" must provide for a period of no less than thirty days' notice prior to the expiration date or nonrenewal.

5. The letter of credit must state whether it is subject to and governed by the laws of this state or the uniform customs and practice for documentary credits of the international chamber of commerce, publication 600 (UCP 600) or international standby practices of the international chamber of commerce publication 590 (ISP98), and all drafts drawn thereunder must be presentable at an office in the United States of a qualified United States financial institution.
6. If the letter of credit is made subject to the uniform customs and practice for documentary credits of the international chamber of commerce, publication ~~500~~600 (UCP 600) or international standby practices of the international chamber of commerce publication 590 (ISP98), or any successor publication, then the letter of credit must specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in article ~~17~~36 of publication ~~500~~600 or any other successor publication occur.
7. If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection 1, then the following additional requirements must be met:
 - a. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and
 - b. The "evergreen clause" must provide for thirty days' notice prior to the expiration date for nonrenewal.
8. Reinsurance agreement provisions.
 - a. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
 - (1) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.
 - (2) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:
 - (a) To pay or reimburse the ceding insurer for:
 - [1] The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies;
 - [2] The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and
 - [3] Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.
 - (b) If the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and if the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts

equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in paragraph 2 of subdivision a as may remain after withdrawal and for any period after the termination date.

- (3) All of the provisions of this subdivision must be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.
- b. Nothing contained in subdivision a precludes the ceding insurer and assuming insurer from providing for:
- (1) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph 2 of subdivision a; or
 - (2) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; January 1, 2016; [April 1, 2017](#).

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

CHAPTER 45-03-20 ANNUAL FINANCIAL REPORTING MODEL REGULATION

Section

45-03-20-01	Purpose and Scope
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45-03-20-03	General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Report and Audit Committee Appointment
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45-03-20-14	Canadian and British Companies
<u>45-03-20-15</u>	<u>Internal Audit Function Requirements</u>

45-03-20-02. Definitions.

The terms and definitions in this section are intended to provide definitional guidance as the terms are used within this chapter.

1. "Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American institute of certified public accountants and in all states in which they are licensed to practice. For Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.
2. An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
3. "Audit committee" means a committee or equivalent body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, the internal audit function of an insurer or group of insurers, if applicable, and external audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this chapter at the election of the controlling person. Refer to subsection 56 of section 45-03-20-12.1 for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.
4. "Audited financial report" means and includes those items specified in section 45-03-20-04.
5. "Group of insurers" means those licensed insurers included in the reporting requirements of North Dakota Century Code chapter 26.1-10, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financing reporting.

6. "Indemnification" means an agreement of indemnity or a release from liability if the intent or effect is to shift or limit in any manner the potential liability of a person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.
7. "Independent board member" has the same meaning as described in subsection ~~3~~4 of section 45-03-20-12.1.
8. "Insurer" means a licensed insurer as defined in North Dakota Century Code chapter 26.1-02.
9. "Internal audit function" means a person that provides independent, objective, and reasonable assurance designed to add value and improve an organization's operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.
10. "Internal control over financial reporting" means a process effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, that is those items specified in subsections 2 through 7 of section 45-03-20-04 and includes those policies and procedures that:
 - a. Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;
 - b. Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in subsections 2 through 7 of section 45-03-20-04 and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and
 - c. Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in subsections 2 through 7 of section 45-03-20-04.
- ~~10~~.11. "Section 404" means section 404 of the Sarbanes-Oxley Act of 2002 [Pub. L. 107-204; 116 Stat. 745] and the United States securities and exchange commission's rules and regulations promulgated thereunder.
- ~~11~~.12. "Section 404 report" means management's report on internal control over financial reporting as defined by the United States securities and exchange commission and the related attestation report of the independent certified public accountant as described in subsection 1.
- ~~12~~.13. "SOX-compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002 [Pub. L. 107-204; 116 Stat. 745]:
 - a. The preapproval requirements of section 201 (section 10A(i) of the Securities Exchange Act of 1934 [Pub. L. 73-291; 48 Stat. 881]);
 - b. The audit committee independence requirements of section 301 (section 10A(m)(3) of the Securities Exchange Act of 1934 [Pub. L. 73-291; 48 Stat. 881]; and
 - c. The internal control over financial reporting requirements of section 404 (item 308 of the United States securities and exchange commission regulation S-K).

History: Effective October 1, 1995; amended effective January 1, 2008; April 1, 2010; April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-12.1. Requirements for audit committees.

This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX-compliant entity or a direct or indirect wholly owned subsidiary of a SOX-compliant entity.

1. The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to this chapter. Each accountant shall report directly to the audit committee.
2. The audit committee of an insurer or group of insurers is responsible for overseeing the insurer's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by section 45-03-20-15.
3. Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection ~~56~~ of this section and subsection 3 of section 45-03-20-02.
- ~~3.4.~~ In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in the member's capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.
- ~~4.5.~~ If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.
- ~~5.6.~~ To exercise the election of the controlling person to designate the audit committee for purposes of this chapter, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.
- ~~6.7.~~ a. The audit committee shall require the accountant that performs for an insurer any audit required by this chapter to timely report to the audit committee in accordance with the requirements of statements on auditing standards no. 61, communication with audit committees, or its replacement, including:
 - (1) All significant accounting policies and material permitted practices;
 - (2) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

- (3) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.
- b. If an insurer is a member of an insurance holding company system, the reports required by subdivision a may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

7.8. The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
\$0-\$300,000,000	Over \$300,000,000-\$500,000,000	Over \$500,000,000
No minimum requirements. See also notes A and B.	Majority (50% or more) of members shall be independent. See also notes A and B.	Supermajority of members (75% or more) shall be independent. See also note A.

Note A: The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a risk-based capital action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

8.9. An insurer with direct written and assumed premium, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than five hundred million dollars may make application to the commissioner for a waiver from this section requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the national association of insurance commissioners. If the nondomestic state accepts electronic filing with the national association of insurance commissioners, the insurer shall file the approval in an electronic format acceptable to the national association of insurance commissioners.

History: Effective April 1, 2010; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-13. Exemptions and effective dates.

1. Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this chapter if the commissioner finds, upon review of the application, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from this chapter, the insurer may request in writing a hearing on its application for an exemption. The hearing must be held in accordance with the rules and

regulations of the North Dakota insurance department pertaining to administrative hearing procedures.

2. Domestic insurers retaining a certified public accountant on October 1, 1995, who qualify as independent shall comply with this chapter for the year ending December 31, 1996, and each year thereafter unless the commissioner permits otherwise.
3. Domestic insurers not retaining a certified public accountant on October 1, 1995, who qualify as independent may meet the following schedule for compliance unless the commissioner permits otherwise:
 - a. As of December 31, 1996, file with the commissioner an audited financial report.
 - b. For the year ending December 31, 1996, and each year thereafter, the insurers shall file with the commissioner all reports and communications required by this chapter.
4. Foreign insurers shall comply with this chapter for the year ending December 31, 1996, and each year thereafter, unless the commissioner permits otherwise.
5. The requirements of subsection 4 of section 45-03-20-06 shall be in effect for audits of the year beginning January 1, 2010, and thereafter.
6. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.
7. The requirements of section 45-03-20-01, subsection 3 of section 45-03-20-03, subsections 7 through 12 of section 45-03-20-06, and sections 45-03-20-08 and 45-03-20-12.3, except for section 45-03-20-12.1 covered above, are effective beginning with the reporting period ending December 31, 2010, and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded, but not earlier than December 31, 2010, to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

8. If an insurer that is exempt from section 45-03-20-15 no longer qualifies for that exemption, the insurer has one year after the year the threshold is exceeded to comply with the requirements of this article.

History: Effective October 1, 1995; amended effective April 1, 2010; April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

45-03-20-15. Internal audit function requirements.

1. Exemption. An insurer is exempt from the requirements of this section if:

- a. The insurer has annual direct written and unaffiliated premium, including international direct and assumed premium, but excluding premiums reinsured with the federal crop

insurance corporation and federal flood program, less than five hundred million dollars; and

- b. If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than one billion dollars.

An insurer or group of insurers exempt from the requirements of this section is encouraged, but not required, to conduct a review of the insurer business type, sources of capital, and other risk factors to determine whether an internal audit function is warranted. The potential benefits of an internal audit function should be assessed and compared against the estimated costs.

2. Function. The insurer or group of insurers shall establish an internal audit function providing independent, objective, and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management, and internal controls. This assurance must be provided by performing general and specific audits, reviews, and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.
3. Independence. To ensure internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function may not defer ultimate judgment on audit matters to others, and must appoint an individual to head the internal audit function who has direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.
4. Reporting. The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits, and the appropriateness of corrective actions implemented by management as a result of audit findings.
5. Additional requirements. If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level.

History: Effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-03-07, 26.1-03-11.1

**ARTICLE 45-06
ACCIDENT AND HEALTH INSURANCE**

Chapter	
45-06-01	Medicare Supplement Insurance Minimum Standards [Superseded]
45-06-01.1	Medicare Supplement Insurance Minimum Standards
45-06-02	Intercarrier Health Insurance Pool
45-06-02.1	Comprehensive Health Association of North Dakota
45-06-03	Standard Health Insurance Proof of Loss Forms [Superseded]
45-06-03.1	Standardized Health Claim Form Model Regulation
45-06-04	Advertising Rules
45-06-05	Long-Term Care Insurance Model Regulation
45-06-05.1	Long-Term Care Insurance Model Regulation
45-06-06	North Dakota Small Employer Health Reinsurance Program [Repealed]
45-06-06.1	Regulation to Implement The Small Employer Health Insurance Availability Act
45-06-07	Model Regulation to Implement Rules Regarding Contracts and Services of Health Maintenance Organizations
45-06-08	Loss Ratios
45-06-09	Group Health Insurance Purchasing Cooperatives
45-06-10	Utilization Review
45-06-11	Regulation on the Crediting of Qualifying Previous Coverage Toward the Reduction of Preexisting Condition Exclusion Periods
45-06-12	Regulation to Implement North Dakota Century Code Chapter 26.1-36.4, Relating to Hospital and Medical Insurance
45-06-13	Provider-Sponsored Organizations
45-06-14	Self-Insurance Pools <u>Multiple Employer Welfare Arrangements</u>

CHAPTER 45-06-14

~~SELF-INSURANCE POOLS~~MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

Section	
45-06-14-01	Definitions
45-06-14-02	Purpose
45-06-14-03	Scope
45-06-14-04	Bylaws
45-06-14-05	Board
45-06-14-06	Application
45-06-14-07	Ending Self-Insurance <u>Self-Funding</u> , Runoff Period, and Plan Dissolution
45-06-14-08	Administration
45-06-14-09	Membership
45-06-14-10	Coverage
45-06-14-11	Premiums, Cashflow, and Dividends
45-06-14-12	Reserves
45-06-14-13	Stop-Loss Insurance
45-06-14-14	Deficit and Assessments
45-06-14-15	Financial Integrity
45-06-14-16	Reporting
<u>45-06-14-17</u>	<u>Trade Practices</u>
<u>45-06-14-18</u>	<u>Disclosure</u>
<u>45-06-14-19</u>	<u>Sanctions</u>

45-06-14-01. Definitions.

1. "Board" means a ~~pool's~~multiple employer welfare arrangement's board of trustees.

2. "Bylaws" means the statements and organizational documents adopted by a ~~pool~~multiple employer welfare arrangement that prescribe its purpose, government, and administration.
3. "Commissioner" means the insurance commissioner.
4. "Coverage" means the right of a covered person or entity to benefits or indemnification provided directly or indirectly by a ~~pool~~multiple employer welfare arrangement, by virtue of the coverage document.
5. "Coverage document" means the document specifying the characteristics and duration of coverage provided through a ~~pool~~multiple employer welfare arrangement. Characteristics of coverage include the kind of loss or benefit that the ~~pool~~multiple employer welfare arrangement will reimburse, subject to specific exclusions, limitations, or deductibles.
6. "Days" means calendar days.
7. "Employee ~~healthwelfare~~ benefit ~~pool~~plan" means ~~a pool that covers employee health benefits, disability benefits, or both~~an employee welfare benefit plan as defined by 29 U.S.C. section 1002.
8. "Financial administrator" means an entity employing persons trained and experienced in money management and investments, and possessing no less than five years' experience as an organization in money management and investments with demonstrated competence.
9. "Fully insured" means that for the health care benefits or coverage provided or offered by or through a multiple employer welfare arrangement:
 - a. An admitted insurer is directly obligated by contract to each participant to provide all of the coverage under the plan or arrangement; and
 - b. The liability and responsibility of the admitted insurer to provide covered services or to pay benefits is not contingent, and is provided directly to the individual employee, member, or dependent.
- ~~10.~~ 10. "Fund year" means a ~~pool's~~multiple employer welfare arrangement's twelve-month fiscal year.
- ~~10.~~ "Member" means a public school district, a political subdivision, or private employer member of a pool. Reference to actions of a member include actions on behalf of the member's covered employees or other covered persons.
11. ~~"Pool" means any self-insurance fund or agreement for the reciprocal assumption of risk established by or among two or more groups for coverage of each group's employee health benefits and disability benefits. Actions of a pool include actions by the pool's designated agents.~~"Multiple employer welfare arrangement" means a multiple employer welfare arrangement as defined by 29 U.S.C. section 1002.
12. "Premium" means the amount charged by the ~~pool~~multiple employer welfare arrangement for health coverage. "Premium" does not include assessments or penalties.
13. "Professional employer organization" means an arrangement, under contract or otherwise, whereby one business or entity represents it co-employs or leases workers to another business or entity for an ongoing and extended, rather than a temporary or project-specific, relationship.
- ~~14.~~ 14. "Runoff ~~pool~~multiple employer welfare arrangement" means a ~~pool~~multiple employer welfare arrangement that no longer has authority to ~~self-insure~~self-fund but that continues to exist for

the purpose of paying claims, preparing reports, and administering transactions associated with the period when the ~~pool~~multiple employer welfare arrangement provided coverage.

~~14.~~ "Self-insure" means to assume primary liability or responsibility for certain risks or benefits, rather than transferring liability or responsibility to some other entity.

15. "Self-funded multiple employer welfare arrangement" means a multiple employer welfare arrangement that does not provide for payment of benefits under the arrangement solely through a policy or policies of insurance issued by one or more insurance companies with a certificate of authority under North Dakota Century Code title 26.1.

~~16.~~ "Service company" means an entity licensed under North Dakota Century Code chapter 26.1-27 as an administrator or an entity licensed under North Dakota Century Code title 26.1 as an insurance company, health maintenance organization, or nonprofit health service corporation.

~~16-17.~~ "Sponsoring association" means a group that sponsors or organizes a ~~pool~~multiple employer welfare arrangement. A multiple employer welfare arrangement may have more than one sponsoring association.

~~17-18.~~ "Surplus" means a ~~pool's~~multiple employer welfare arrangement's total assets minus total liabilities. "Surplus" includes paid-in capital and retained earnings. The amount of a ~~pool's~~multiple employer welfare arrangement's surplus is determined according to the instructions provided for a ~~pool's~~multiple employer welfare arrangement's financial statements.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-02. Purpose.

This chapter governs the formation, operation, and dissolution of ~~an employee health benefit pool~~a multiple employer welfare arrangement. The provisions are intended to ensure the financial integrity and the competent and equitable administration of the ~~pool~~multiple employer welfare arrangement.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-03. Scope.

~~The following are subject to the requirements of this chapter:~~

~~1. A group that organizes an employee health benefit pool;~~

~~2. A group that forms, joins, or leaves an employee health benefit pool; and~~

~~3. A service company that provides services to an employee health benefit pool.~~This chapter applies to all multiple employer welfare arrangements that offer or maintain an employee welfare benefit plan that is not fully insured, to or on behalf of an employer domiciled in this state or to an employer that has its principal headquarters or principal administrative offices in this state and to all service companies that provide services to the employee welfare benefit plan or multiple employer welfare arrangement.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-04. Bylaws.

1. **Content.** Bylaws may contain any provision that does not conflict with this chapter. Bylaws must, at a minimum, contain the following provisions:
 - a. The ~~employee health benefit pool's~~multiple employer welfare arrangement's name, purpose, fiscal year, and initial date of existence;
 - b. Definitions of key terms;
 - c. A statement of the powers, duties, and responsibilities assigned to the board, the service company, the financial administrator, and reserved by the membership;
 - d. The number, term of office, and method of selection and replacement of the members of the board;
 - e. The procedure for calling board meetings;
 - f. The method of periodic selection and review of the service company and financial administrator;
 - g. The procedure for amending the bylaws;
 - h. The procedure for resolving disputes among members, which must not include submitting disputes to the commissioner;
 - i. The criteria for membership in the ~~pool~~multiple employer welfare arrangement, including standards of financial integrity and loss experience;
 - j. The procedure for admitting new members to the ~~pool~~multiple employer welfare arrangement;
 - k. The criteria for expelling members from the ~~pool~~multiple employer welfare arrangement for reasons, including nonpayment of premiums;
 - l. The procedure for withdrawal and expulsion of members from the ~~pool~~multiple employer welfare arrangement, including the minimum required period of membership;
 - m. A statement of the coverages to be provided by the ~~pool~~multiple employer welfare arrangement;
 - n. The procedure for including and excluding a member's participation in a particular coverage;
 - o. The proposed initial premium payments by members and, if applicable, by the members' employees;
 - p. The procedure for changing premium rates;
 - q. The procedure for levying and collecting an assessment;
 - r. A statement identifying those with access to ~~pool~~multiple employer welfare arrangement funds and the purposes for which ~~pool~~multiple employer welfare arrangement funds may be spent;
 - s. The procedure for distributing dividends, and the eligibility of past members and past covered employees for dividends; and

- t. The procedure for distributing any assets remaining upon the pool's multiple employer welfare arrangement's dissolution.
2. **Adoption and changes.** The bylaws must be adopted in writing by all initial members. Authority to change the bylaws must reside with the membership or the board, according to the terms of the bylaws. The pool multiple employer welfare arrangement must file bylaws changes with the commissioner within thirty days after adoption.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-05. Board.

1. **Structure.** A pool multiple employer welfare arrangement must have a board of trustees consisting of at least three persons, who must be officials or employees of the members of the multiple employer welfare arrangement or of the sponsoring association, ~~if any of the multiple employer welfare arrangement.~~ No member may have more than one representative on the board, unless the pool multiple employer welfare arrangement has only two members, in which case each member must have at least one representative on the board. ~~The sponsoring association must not have majority representation on the board.~~ No trustee may be an employee, ~~agent, or representative of,~~ or receive compensation from, the pool's multiple employer welfare arrangement's service company, financial administrator, or insurer, ~~or other person or entity under contract with the pool, except that a trustee may be an employee, agent, or representative of the sponsoring association.~~ A trustee may be an employee, agent, or representative of the sponsoring association. Trustees shall be elected by the membership or appointed by the sponsoring association. A majority of the trustees must be employees of members and be covered by the benefits provided by the multiple employer welfare arrangement. One trustee shall be designated the chairperson. The board shall meet no less than four times annually.
2. **Duties.** The board is responsible for operation of the pool multiple employer welfare arrangement. The board may delegate some or all of its responsibilities to the chairperson or other trustees between board meetings. All responsibilities of the pool multiple employer welfare arrangement not expressly delegated by the board or this chapter are the responsibility of the board. The board shall, at a minimum, have the following responsibilities:
 - a. Exercise fiduciary responsibility for the pool's multiple employer welfare arrangement's operation and financial condition;
 - b. Select, supervise, and evaluate the service company, financial administrator, accountant, insurer, and any other contractors;
 - c. On the basis of the pool's multiple employer welfare arrangement's overall financial condition, authorize changes in premium, reserve, or investment practices and declare assessments or dividends as appropriate;
 - d. Approve all reports concerning the pool's multiple employer welfare arrangement's operations and status and oversee filing of reports with the commissioner;
 - e. Monitor delinquent premiums, loss experience, and the financial condition of individual members and authorize disciplinary action or expulsion as appropriate;
 - f. Accept or reject applications for membership;

- g. As permitted by the bylaws, make or recommend changes to the bylaws for the improvement of the pool's multiple employer welfare arrangement's operation and financial integrity; and
- h. Monitor the pool's multiple employer welfare arrangement's compliance with all statutes and rules governing its operation.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-06. Application.

1. **Initial application.** ~~Two or more groups may apply to the commissioner for authority to form a self-insurance pool.~~ A multiple employer welfare arrangement that seeks to offer an employee welfare benefit plan that is not fully insured shall apply for a certificate of authority. Applications must be submitted on forms prescribed by the commissioner ~~and must include a proposed business plan.~~ The appropriate filing fee pursuant to North Dakota Century Code section 26.1-01-07 must accompany the application. An application must be submitted no later than sixty days prior to the requested date for authority to ~~self-insure~~ self-fund. An incomplete application must be returned to the applicant. An application not returned to the applicant within fourteen days of receipt must be acted upon within sixty days of receipt.
2. **Documents which must accompany application.** A multiple employer welfare arrangement shall file all of the following with its initial application:
 - a. A copy of the organizational documents of the multiple employer welfare arrangement, including the articles of incorporation and bylaws, partnership agreement, or instrument;
 - b. A copy of each insurance or reinsurance contract that purports to insure or guarantee any portion of benefits or coverage offered by the multiple employer welfare arrangement;
 - c. A copy of the benefit plan description and any other materials intended to be distributed to potential members; and
 - d. The names and addresses of all persons performing or expected to perform the functions of a financial administrator or service company.
3. **Renewal.** Authority to operate as an existing ~~pool~~ multiple employer welfare arrangement will automatically renew annually with the filing of the ~~pool's multiple employer welfare arrangement's~~ annual report to the commissioner and the payment of the appropriate fee pursuant to North Dakota Century Code section 26.1-01-07, subject to the ~~pool~~ multiple employer welfare arrangement maintaining its financial ability to pay claims and expenses.
- ~~3.4.~~ **Merger.** Two or more existing ~~pools~~ multiple employer welfare arrangements may apply to merge, provided the merged ~~pool~~ multiple employer welfare arrangement assumes all financial and regulatory obligations of the former ~~pools~~ multiple employer welfare arrangements. Merger applications must be filed with the commissioner and are subject to the same requirements as prospective new ~~pools~~ multiple employer welfare arrangements.
- ~~4.5.~~ **Approval or disapproval.** Upon approval of an application, the commissioner shall issue a certificate authorizing the proposed ~~self-insurance pool~~ self-funded multiple employer welfare arrangement. The initial certificate for a new ~~pool~~ multiple employer welfare arrangement is effective until revoked by the commissioner. Approval of an application for authority to ~~self-insure~~ self-fund must be granted if the proposed ~~pool~~ multiple employer welfare arrangement conforms with all requirements of this chapter.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-07. Ending ~~self-insurance~~self-funding, runoff period, and plan dissolution.

1. **Termination.** A ~~pool~~multiple employer welfare arrangement may terminate its ~~self-insurance~~self-funded authority and cease to provide coverage effective at the end of a fund year. The ~~pool~~multiple employer welfare arrangement must notify the commissioner within ~~fourteen~~ninety days of its decision to terminate. A ~~pool~~multiple employer welfare arrangement may not terminate its ~~self-insurance~~self-funding authority less than ~~forty-five~~ninety days prior to the end of the fund year in question. The voluntary termination of ~~self-insurance~~self-funding authority does not constitute ~~pool~~multiple employer welfare arrangement dissolution under subsection 4.
2. **Revocation.** The commissioner shall, by order, revoke the authority of a ~~pool~~multiple employer welfare arrangement to ~~self-insure~~self-fund upon no less than ten days' written notice if any of the following events occur or conditions develop, and if the commissioner determines that the conditions are material:
 - a. Failure of the ~~pool~~multiple employer welfare arrangement to comply with this chapter or with other applicable North Dakota laws or rules or the applicable laws and rules of any other state;
 - b. Failure of the ~~pool~~multiple employer welfare arrangement to comply with any lawful order of the commissioner or the lawful order of the commissioner of another state;
 - c. Commission by the ~~pool~~multiple employer welfare arrangement of a prohibited practice as defined by North Dakota Century Code chapter 26.1-04 or in related rules; or
 - d. A deterioration of the ~~pool's~~multiple employer welfare arrangement's financial integrity to the extent that its present or future ability to meet its obligations is or will be significantly impaired.
3. **Runoff ~~pool~~multiple employer welfare arrangement.** A ~~pool~~multiple employer welfare arrangement must continue to exist as a runoff ~~pool~~multiple employer welfare arrangement after its authority to ~~self-insure~~self-fund has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period during which the ~~pool~~multiple employer welfare arrangement provided coverage. A runoff ~~pool~~multiple employer welfare arrangement must continue to comply with this chapter and with other applicable North Dakota laws and rules.
4. **Dissolution.** A ~~pool~~multiple employer welfare arrangement, including a runoff ~~pool~~multiple employer welfare arrangement, must apply to the commissioner for authorization to dissolve. An application must be approved or disapproved within sixty days of receipt. Dissolution without authorization is prohibited and void and does not absolve a ~~pool~~multiple employer welfare arrangement or runoff ~~pool~~multiple employer welfare arrangement from fulfilling its continuing obligations and does not absolve its members from assessments under subsection 3 of section 45-06-14-14. The ~~pool's~~multiple employer welfare arrangement's assets at dissolution must be distributed to the members and covered persons as provided in the bylaws. Authorization to dissolve must be granted if either of the following conditions is met:
 - a. The ~~pool~~multiple employer welfare arrangement demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or
 - b. The ~~pool~~multiple employer welfare arrangement has obtained an irrevocable commitment from a licensed insurer to pay all outstanding liabilities and to provide all related services,

including the payment of claims, preparation of reports, and the administration of transactions associated with the period during which the pool/multiple employer welfare arrangement provided coverage.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-08. Administration.

1. **Service company.** A pool/multiple employer welfare arrangement must contract with a service company for services necessary to conduct the pool's/multiple employer welfare arrangement's day-to-day operations, except services and responsibilities reserved to the members, the board, individual trustees, the financial administrator, the accountant, or other contractors unless the multiple employer welfare arrangement has the staff and expertise to perform the day-to-day operations. The service company must have expertise in and be licensed for the coverages provided by the pool/multiple employer welfare arrangement. Subject to the oversight of the board, the service company shall, directly or through subcontractors, provide all services directly related to the administration of coverage. These services include:
 - a. Accounting and recordkeeping;
 - b. Billing and collection of premiums and assessments;
 - c. Claims investigation, settlement, and reserving;
 - d. Claims payment, including claims wholly or partially subject to stop-loss insurance or member deductibles;
 - e. General administration;
 - f. Loss control, safety programs, or both; and
 - g. Underwriting.
2. **Financial administrator.** A pool/multiple employer welfare arrangement must contract with a financial administrator for investment of the pool's/multiple employer welfare arrangement's assets and other financial or accounting services. A staff member of the financial administrator may not be an owner, officer, employee, or agent of the service company, or of a subcontractor of the service company.
3. **Recordkeeping and examination authority.** A pool/multiple employer welfare arrangement must maintain ~~within North Dakota~~ all records necessary to verify the accuracy and completeness of all reports submitted to the commissioner under section 45-06-14-16. The commissioner may examine the pool's/multiple employer welfare arrangement's records in order to verify the pool's/multiple employer welfare arrangement's compliance with this chapter and with other statutes and rules. The provisions of North Dakota Century Code chapter 26.1-03 apply to the commissioner's examination. All records concerning claims, reserves, financial transactions, and other matters necessary for the pool's/multiple employer welfare arrangement's operations are the pool's/multiple employer welfare arrangement's property and shall be retained for the current year plus the previous five years.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-09. Membership.

1. **Availability.** A pool/multiple employer welfare arrangement must establish nondiscriminatory criteria for membership. A pool/multiple employer welfare arrangement may reject applicants or dispel members that do not meet the pool's/multiple employer welfare arrangement's underwriting standards.
2. **Joining.** A new member must be admitted according to the standards and procedures specified in the bylaws. Membership is not effective until the applicant has signed a membership agreement affirming its commitment to comply with the bylaws and this chapter, including joint and several liability for the pool's/multiple employer welfare arrangement's obligations. The membership agreement must disclose that under the rules governing the pool/multiple employer welfare arrangement, the board of trustees, or the commissioner, may order that an assessment be levied against the members if necessary to maintain the pool's/multiple employer welfare arrangement's sound financial condition.

- ~~3. **Public and private pool membership.** Only North Dakota domiciled employers whose primary places of employment are within North Dakota are eligible for membership in a pool. As a condition of a private employer's membership in a pool, the employer must furnish a surety bond in a form prescribed by the commissioner. The pool shall be the bond's obligee, conditioned on the employer paying all premiums, penalties, and assessments when due. The bond must be maintained on file with the commissioner until the end of the period of continuing liability, or until the pool terminates, whichever occurs first. The period of continuing liability is as defined in subsection 1 of section 45-06-14-14. The bond must provide a penalty amount no less than:~~

- ~~a. The greatest one-year premium paid by the member for the coverage through the pool during the past three years;~~
- ~~b. If the member has not belonged to the pool for one full fund year, the annual premium to be paid by the member for the first year's coverage; or~~
- ~~c. If the member no longer belongs to the pool, the greatest one-year premium paid by the past member during the final three years in the pool.~~

- ~~4. **Withdrawal.** The membership agreement must include the procedures for withdrawing from the pool/multiple employer welfare arrangement. A member must notify the pool/multiple employer welfare arrangement of its desire to withdraw not less than thirty days before the date upon which it desires to withdraw. If the board determines that the withdrawal would cause the pool/multiple employer welfare arrangement to be in violation of the minimum annual premium requirement or would compromise the pool's/multiple employer welfare arrangement's financial integrity, the pool/multiple employer welfare arrangement must notify the commissioner as required under subsection 2 of section 45-06-14-11. Withdrawal is prohibited and void unless:~~

- ~~a. The member has belonged to the pool/multiple employer welfare arrangement continuously for the period required by the bylaws, which shall provide for a minimum of one complete fund year.~~
- ~~b. All outstanding premiums and assessments owed by the member have been paid.~~

- ~~5.4. **Expulsion.** At least annually a pool/multiple employer welfare arrangement must review the status and experience of each member relative to the criteria for expulsion in the bylaws. Expulsion is subject to the procedures and requirements for voluntary withdrawal of a member, except that:~~

- ~~a. A member may be expelled with outstanding premiums or assessments owing; and~~

- b. A member may be expelled notwithstanding that the minimum term of membership has not been satisfied.

6-5. Runoff ~~pool~~multiple employer welfare arrangement membership. After revocation of a ~~pool's self-insurance~~multiple employer welfare arrangement's self-funding authority or after a ~~pool~~multiple employer welfare arrangement notifies the commissioner in writing of its intent to terminate the ~~pool~~multiple employer welfare arrangement, no member may join, leave, or be expelled from the ~~pool~~multiple employer welfare arrangement.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-10. Coverage.

1. **Coverage.** A ~~pool~~multiple employer welfare arrangement must provide coverage as authorized by the board.
2. **Uniform underwriting.** A ~~pool~~multiple employer welfare arrangement must offer its coverages subject to the same underwriting standards to all members and, if applicable, to all members' employees.
3. **Continuing responsibility.** Notwithstanding cancellation or termination of coverage to a particular member, ceasing to offer a particular coverage, or termination or revocation of authority to ~~self-insure~~self-fund, a ~~pool~~multiple employer welfare arrangement retains indefinitely all responsibilities to members and other covered persons associated with the period while coverage was in force. This responsibility ceases only after a ~~pool~~multiple employer welfare arrangement dissolves under subsection 4 of section 45-06-14-07.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-11. Premiums, cashflow, and dividends.

1. **Minimum annual premium.** A ~~pool~~multiple employer welfare arrangement must have and maintain an annual premium volume of no less than three hundred thousand dollars. A ~~pool~~multiple employer welfare arrangement or prospective ~~pool~~multiple employer welfare arrangement may apply to the commissioner for a reduction of the minimum annual premium requirement, stating the amount of reduction and the reasons supporting the request. The commissioner must act on the application within sixty days after receipt. The ~~pool~~multiple employer welfare arrangement must demonstrate that the lesser premium volume would not compromise its financial integrity and stability.
2. **Monitoring premium volume.** A ~~pool~~multiple employer welfare arrangement must monitor its premium volume. If annual premium is more than three hundred thousand dollars but less than four hundred thousand dollars, or less than one hundred thirty-three percent of the amount approved pursuant to subsection 1, the ~~pool~~multiple employer welfare arrangement must notify the commissioner at monthly intervals of the then-current annualized premium volume, until the annualized volume exceeds four hundred thousand dollars. "Annualized premium volume" means the gross premiums written for the previous twelve months. If premium decreases to an annualized volume of less than three hundred thousand dollars, or a lesser amount if approved pursuant to subsection 1, the ~~pool~~multiple employer welfare arrangement must notify the commissioner:
 - a. Of its intent to end its ~~self-insurance~~self-funding authority; or

- b. Of its proposal for restoring compliance with subsection 1. If the proposal is unlikely, in the commissioner's judgment, to restore compliance with subsection 1 within ninety days, or if after ninety days the ~~pool~~multiple employer welfare arrangement continues to be out of compliance, the commissioner may revoke the ~~pool's self-insurance~~multiple employer welfare arrangement's self-funding authority.
3. **Surplus or stop-loss advancement.** To maintain its financial integrity, a ~~pool~~multiple employer welfare arrangement must either:
 - a. Establish and maintain a surplus consisting of funds contributed by members and the ~~pool's~~multiple employer welfare arrangement's retained earnings sufficient to pay claims as they occur; or
 - b. Negotiate a stop-loss insurance policy requiring the insurer to advance funds to the ~~pool~~multiple employer welfare arrangement if the ~~pool's~~multiple employer welfare arrangement's policy limits have been or are likely to be exceeded. The funds may be considered an advance against the insurer's potential liability for the policy period.
4. **New ~~pool~~multiple employer welfare arrangement deposit premium.** As a condition for authorization to ~~self-insure~~self-fund, a prospective ~~pool~~multiple employer welfare arrangement must submit evidence that an initial premium payment has been made.
 - a. The initial premium payment must be no less than ~~twenty-five~~ten percent of the combined initial members' first-year premium. If the initial payment is less than one hundred percent of the initial members' first-year premium, the remainder of the initial members' first-year premium must be paid in six or more equal installments at equal intervals throughout the year.
 - b. A prospective ~~pool~~multiple employer welfare arrangement may apply to the commissioner for reduction of the ~~new-pool-deposit~~initial premium deposit requirement, stating the payment schedule requested and the reasons supporting the request. The commissioner may approve the applications within sixty days after receipt if the ~~pool~~multiple employer welfare arrangement has demonstrated that the proposed payment schedule would not compromise its ability to pay large claims promptly during its first year of operation. The commissioner may consider arrangements the ~~pool~~multiple employer welfare arrangement has made under subsection 3 in evaluating the application.
5. **Premium payments.** A ~~pool~~multiple employer welfare arrangement must promptly take appropriate action to collect premiums, assessments, or penalties that are past due. Collection costs are the obligation of the delinquent member.
6. **Dividend procedures.** A ~~pool~~multiple employer welfare arrangement may declare and pay a dividend or distribution from its surplus only if:
 - a. The dividend will not impair the ~~pool's~~multiple employer welfare arrangement's surplus; and
 - b. The ~~pool~~multiple employer welfare arrangement does not have an outstanding loan or an outstanding advancement from a stop-loss carrier.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-12. Reserves.

A ~~pool~~multiple employer welfare arrangement must establish reserves for all incurred losses, both reported and unreported, and for unearned premiums. To the extent that the amount of a loss is uncertain, the reserve must be set conservatively and adjusted as new information becomes available. Accounting for reserves must be as required by the financial statement forms and instructions under subsection 2 of section 45-06-14-16.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-13. Stop-loss insurance.

1. **Purchase.** A ~~pool~~multiple employer welfare arrangement may purchase stop-loss insurance to cover a portion of its losses. If a stop-loss insurance policy is terminated or modified causing a violation of subsection 2, or otherwise compromising the ~~pool's~~multiple employer welfare arrangement's financial integrity, the ~~pool~~multiple employer welfare arrangement must notify the commissioner prior to the termination or modification. The ~~pool~~multiple employer welfare arrangement must inform the commissioner of corrective action that will be taken to maintain the ~~pool's~~multiple employer welfare arrangement's financial integrity.
2. **Required stop-loss coverage.** A ~~pool~~multiple employer welfare arrangement may not retain liability on any one incident of more than ten percent of its annual premium volume during the most recent fund year, plus twenty percent of its surplus. A ~~pool~~multiple employer welfare arrangement with less than one year's experience must use the ~~pool's~~multiple employer welfare arrangement's estimated premium volume during the first full fund year. The ~~pool~~multiple employer welfare arrangement must purchase stop-loss insurance for liability exposure. The stop-loss carrier must be licensed to do business in North Dakota. ~~A pool's self-insured retention per person per year may not exceed fifty thousand dollars.~~
3. **Return of liability.** Liability transferred to an insurer under subsection 2 may not be directly or indirectly returned to a ~~pool~~multiple employer welfare arrangement or a member.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-14. Deficit and assessments.

1. Each current member of a ~~pool~~multiple employer welfare arrangement is jointly and severally liable for all liabilities and expenses of the ~~pool~~multiple employer welfare arrangement. Each past member is jointly and severally liable for all liabilities and expenses of the ~~pool~~multiple employer welfare arrangement for three complete fund years after leaving the ~~pool~~multiple employer welfare arrangement. After the period of continuing liability, a past member is no longer jointly and severally liable for the ~~pool's~~multiple employer welfare arrangement's liabilities and expenses, except as provided in subsection 2.
2. **Runoff liability.** If a ~~pool's self-insurance~~multiple employer welfare arrangement's self-funding authority is ended under subsection 1 or 2 of section 45-06-14-07, members and past members continue to be jointly and severally liable for the ~~pool's~~multiple employer welfare arrangement's liabilities and expenses until final ~~pool~~multiple employer welfare arrangement dissolution, as follows:
 - a. All members at the termination of ~~self-insurance~~self-funding authority are jointly and severally liable for all ~~pool~~multiple employer welfare arrangement liabilities and expenses until the ~~pool~~multiple employer welfare arrangement is dissolved; and

- b. All past members that were jointly and severally liable under subsection 1 at the time ~~self-insurance~~self-funding authority is ended continue to be jointly and severally liable until the ~~pool~~multiple employer welfare arrangement is dissolved.
3. Deficits. If at any time a ~~pool's~~multiple employer welfare arrangement's total liabilities exceed its total assets, the board must restore a positive surplus and must do so within ninety days. A deficit may be corrected using one or more of the types of assessments set forth below. A ~~pool~~multiple employer welfare arrangement may elect to assess some but not all jointly and severally liable members and past members. The method of assessment may not arbitrarily exclude members or past members, or impose arbitrary amounts in relation to the amounts imposed on other members and past members. The bylaws may identify methods of assessment. If the board fails to do so when required, the commissioner must order an assessment to correct a deficit using the procedure described in subdivision a.
 - a. All jointly and severally liable members and past members may be assessed proportionately to their share of the total premiums paid and owed during the assessment base period. The assessment base period at the time of a ~~pool's self-insurance~~multiple employer welfare arrangement's self-funding authority ending under subsection 1 or 2 of section 45-06-14-07 is the basis of assessments until final ~~pool~~multiple employer welfare arrangement dissolution. The assessment base period includes all completed quarters of the current fund year and the most recent three complete fund years.
 - b. Jointly and severally liable members and past members may be assessed, whereby members and past members are assessed in proportion to the member's loss experience over the assessment base period if provided for in the bylaws.
 - c. Jointly and severally liable members and past members may be assessed, whereby current members pay more than past members if provided for in the bylaws.
 - d. Jointly and severally liable members and past members may be assessed whereby members belonging to the ~~pool~~multiple employer welfare arrangement in poor loss years are assessed more than members belonging to the ~~pool~~multiple employer welfare arrangement in better loss years if provided for in the bylaws.
 - e. Jointly and severally liable members and past members may be assessed according to any formula stated in the bylaws, including combinations of subdivisions a to d, if the formula is consistent with the provisions of this section.
 4. Assessment to increase surplus. The board may assess current members in order to increase the surplus. The assessment may be made at any time in the discretion of the board to improve the ~~pool's~~multiple employer welfare arrangement's financial strength. The assessment may be calculated using any reasonable procedure consistent with the ~~pool's~~multiple employer welfare arrangement's bylaws.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-15. Financial integrity.

1. **Fidelity bond.** All contractors and individuals who handle ~~pool~~multiple employer welfare arrangement funds or who will have access to ~~pool~~multiple employer welfare arrangement funds, including board members, must be covered by a fidelity bond providing standard fidelity coverage, including coverage against dishonesty, theft, forgery, alteration, misplacement, or mysterious and unexplainable disappearance. The amount of coverage for each occurrence must be at least three hundred thousand dollars. The ~~pool~~multiple employer welfare arrangement

arrangement must purchase a fidelity bond covering the required contractors and individuals, or submit separate proof of coverage for all required contractors and individuals not covered under the plan's bond.

2. **Integrity of assets.** A ~~pool's~~multiple employer welfare arrangement's assets may not be:
 - a. Commingled with the assets of any member;
 - b. Loaned to anyone for any purpose or used as security for a loan, except as permitted under subsection 5 for investments;
 - c. Employed for any purpose other than for the purposes stated in the bylaws and in compliance with this chapter and related statutes; or
 - d. Considered the property or right of any member or covered person, except:
 - (1) For benefits under the coverage documents;
 - (2) For dividends declared in accordance with subsection 5 of section 45-06-14-11; and
 - (3) For a portion of the assets remaining after the plan's dissolution, in accordance with subsection 4 of section 45-06-14-07.
3. **Sources and uses of funds.** A ~~pool~~multiple employer welfare arrangement may expend funds for payment of losses and expenses and for other costs similar to those incurred by insurers under conventional insurance policies in North Dakota. Except as provided in subdivision b of subsection 3 of section 45-06-14-11, a ~~pool~~multiple employer welfare arrangement may not borrow money or issue debt instruments. A ~~pool~~multiple employer welfare arrangement may bring legal suits to collect delinquent debts. A ~~pool~~multiple employer welfare arrangement may not obtain funds through subrogation of the rights of covered persons. A ~~pool~~multiple employer welfare arrangement may receive funds only from:
 - a. Its members as premiums, assessments, or penalties;
 - b. Its insurers or indemnitors pursuant to insurance or indemnification agreements;
 - c. Dividends, interest, or the proceeds of sale of investments;
 - d. Refunds of excess payments;
 - e. Coordination of benefits with other insurance or group self-insurance coverages; or
 - f. Collection of money owed to the ~~pool~~multiple employer welfare arrangement.
4. **Separate accounts.** A ~~pool~~multiple employer welfare arrangement may establish separate accounts for the payment of claims or certain types of expenses. These accounts must be used only by the service company, its authorized subcontractors, or the financial administrator, as appropriate to the account's purpose. The amount in a special account may not exceed an amount reasonably sufficient to pay the claims or expenses for which it is established.
5. **Investments.** A ~~pool's~~multiple employer welfare arrangement's investments are subject to North Dakota Century Code chapter 26.1-05, as regards both permitted and prohibited investments, maturities, and depositories. In addition, a ~~pool~~multiple employer welfare arrangement may not invest in securities or debt of a member, or a member's parent, subsidiary, or affiliate, or any person or entity under contract with the ~~pool~~multiple employer welfare arrangement.

6. **Monitoring financial condition.** The board must monitor the pool's multiple employer welfare arrangement's revenues, expenses, and losses and evaluate its current and expected financial condition. The board must maintain the pool's multiple employer welfare arrangement's sound financial condition at all times. The board may adjust premium rates, underwriting standards, dividend rates, expulsion standards, and invoke other powers granted in this chapter and the bylaws. If the commissioner determines that the board's actions are inadequate to maintain the pool's multiple employer welfare arrangement's sound financial condition, the commissioner may order an increase in the premium rates, revoke the pool's self-insurance multiple employer welfare arrangement's self-funding authority, order that an assessment be levied against the members, or take other appropriate action.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-16. Reporting.

1. **Financial statements.** A pool multiple employer welfare arrangement must prepare annual financial statements containing a balance sheet; a statement of revenues, expenses, and surplus; a statement of changes in financial position; and a schedule of investments. The statements must be prepared on forms and according to instructions prescribed by the commissioner. The financial statements must be filed with the commissioner no later than ~~March first of each year.~~ The one hundred eighty days after the end of the multiple employer welfare arrangement's fund year. For multiple employer welfare arrangements with annual premiums greater than two million dollars, the financial statements must be audited by an independent certified public accountant, and the auditor's report must be submitted no later than one hundred eighty days after the end of the pool's multiple employer welfare arrangement's fund year. ~~The first annual financial statement and every second annual financial statement thereafter must be accompanied by a statement from a qualified actuary. The actuary's statement and the scope of the actuarial review must be according to requirements prescribed by the commissioner.~~
2. **Quarterly reports.** If the commissioner determines that a pool's multiple employer welfare arrangement's financial integrity is such that the pool's multiple employer welfare arrangement's ability to meet obligations promptly and in full will be significantly impaired, the commissioner may require that the pool multiple employer welfare arrangement file quarterly reports with the commissioner no later than thirty days after the end of the first, second, and third quarters of each fund year. The commissioner may remove the requirement to file quarterly reports when the pool's multiple employer welfare arrangement's financial integrity is restored. A quarterly report must contain statements of the pool's multiple employer welfare arrangement's:
 - a. Current total cash on hand and on deposit, and total investment;
 - b. Current total reserve for unearned and advance premiums, and total reserve for outstanding losses reported and unreported;
 - c. Dividends declared and dividends paid during the quarter;
 - d. Gross premiums written during the quarter;
 - e. Losses paid during the quarter;
 - f. Current total members; and
 - g. Any other information that the commissioner requests.

3. **Extraordinary audits.** As necessary, the commissioner may require a ~~pool~~multiple employer welfare arrangement to investigate the accuracy of one or more entries on its financial statements or quarterly reports and to report its findings. The commissioner may require that a ~~pool~~multiple employer welfare arrangement hire a qualified actuary, claims specialist, auditor, or other specialist as appropriate to the type of entry being investigated. If warranted by the investigation's findings, the commissioner may require changes in the ~~pool's~~multiple employer welfare arrangement's reserving, accounting, or recordkeeping practices. The audits are in addition to the commissioner's rights to examine ~~self-insurance pools~~self-funded multiple employer welfare arrangements directly, as applicable to insurance companies under North Dakota Century Code chapter 26.1-03. ~~The commissioner may investigate:~~

~~a. Losses that appear significantly different than losses experienced by other self-insurance pools or insurance companies for similar coverage;~~

~~b. Unusual changes in the amount of entries from period to period that are not sufficiently explained by the financial statements or footnotes; or~~

~~c. Other indications that a pool's financial statements may not accurately reflect the pool's status and transactions.~~

~~4. **Annual status report.** On or before March first of each year, a pool must file with the commissioner a statement describing any changes that have occurred in the information filed with its initial application for authority to self-insure or with the pool's most recent status report. The status report must be filed in a form and according to instructions prescribed by the commissioner. The commissioner may inquire into the condition of the pool as allowed in North Dakota Century Code section 26.1-02-03.~~

~~5-4. **Penalty.** The financial statements and status report required under subsections ~~subsection 1 and 4~~ are considered together to be a ~~pool's~~multiple employer welfare arrangement's annual statement. This filing and other filings required by this chapter and related statutes are subject to North Dakota Century Code chapter 26.1-03, as applicable to licensed insurance companies for comparable filings.~~

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-17. Trade practices.

Multiple employer welfare arrangements are subject to North Dakota Century Code section 26.1-04-03.

History: Effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-04-03, 26.1-07.1

45-06-14-18. Disclosure.

Each policy issued by a self-funded multiple employer welfare arrangement must contain, in at least ten-point type on the front page and the declaration page, the following notice:

NOTICE

This policy is issued by a self-funded multiple employer welfare arrangement. A self-funded multiple employer welfare arrangement may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for a self-funded multiple employer welfare arrangement.

History: Effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-19. Sanctions.

The commissioner may sanction a multiple employer welfare arrangement or suspend or revoke any certificate of authority issued to a multiple employer welfare arrangement upon any of the following grounds:

1. Failure to comply with any provision of these rules or any applicable provision of the North Dakota Century Code;
2. Failure to comply with any lawful order of the commissioner of North Dakota or of any other state;
3. Committing an unfair or deceptive act or practice;
4. Deterioration of financial condition adversely affecting the multiple employer welfare arrangement's ability to pay claims;
5. A finding that the application or any necessary forms that have been filed with the commissioner contain fraudulent information or omissions; or
6. A finding that the multiple employer welfare arrangement or its service company or financial administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any moneys that belong to a member, a participant, or a person otherwise entitled thereto and that have been entrusted to the multiple employer welfare arrangement or its service company or financial administrator in its fiduciary capacity.

History: Effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

CHAPTER 45-12-01

45-12-01-01. Definitions.

As used in this article:

1. "Alteration" means a change in an item described on an original manufacturer's data report which affects the pressure retaining capability of the pressure retaining item. An alteration includes nonphysical changes such as an increase in the maximum allowable internal or external working pressure, an increase in design temperature, or a reduction in minimum temperature. For boilers used in the power generation industry exceeding one hundred thousand pounds of steam per hour output, increases in steaming capacity shall not be considered an alteration if a new baseline steaming capacity is established based on either an engineering evaluation or a review of the operating history and a conditional assessment of the boiler and its components. An engineering evaluation or conditional assessment must be made by the boiler owner with review and comment by the authorized inspection agency responsible for the in-service inspection of the boiler. Engineering evaluations and conditional assessments are subject to the review and approval of the chief boiler inspector.
2. "Apartments" means all multiple dwellings, including condominiums.
3. "Approved" means approved by the commissioner.
4. "A.S.M.E. code" means the boiler and pressure vessel construction code of the American society of mechanical engineers of which sections I, II, IV, V, VIII (divisions 1, 2 and 3), IX, and X, ~~2013~~2017 edition, are hereby adopted by the commissioner and incorporated by reference as a part of this article. A copy of the American society of mechanical engineers code is on file at the office of the boiler inspection program. The American society of mechanical engineers code may be obtained from the American society of mechanical engineers headquarters at 2 park avenue, New York, New York 10016-5990 or from www.asme.org.
5. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels or from electricity or nuclear energy. The term boiler includes fired units for vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves, as provided under North Dakota Century Code section 26.1-22.1-01.
6. "Certificate inspection" means an inspection, the report of which is used by the chief boiler inspector to decide whether a certificate may be issued under North Dakota Century Code section 26.1-22.1-10.
7. "Certificate of competency" means a certificate issued by a jurisdiction indicating that a person has passed an examination prescribed by the national board of boiler and pressure vessel inspectors.
8. "Chief inspector" means the chief boiler inspector appointed by the commissioner to serve in the capacity as stated by law.
9. "Commissioner" means the insurance commissioner of North Dakota.
10. "Condemned boiler" means a boiler that has been inspected and declared unsafe or disqualified by legal requirements by an inspector qualified to take such action who has applied a stamping or marking designating its rejection.
11. "Deputy inspector" means a boiler inspector or inspectors employed by the commissioner to assist the chief inspector in making inspections of boilers.

12. "Existing installations" includes any boiler constructed, installed, or placed in operation before July 1, 1973.
13. "External inspection" means an inspection made when a boiler is in operation.
14. "Fusion welding" means a process of welding metals in a molten or molten and vaporous state, without the application of mechanical pressure or blows. Such welding may be accomplished by the oxyacetylene or oxyhydrogen flame or by the electric arc. Thermic welding is also classed as fusion.
15. "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] or temperatures exceeding two hundred fifty degrees Fahrenheit [121.16 degrees Celsius]. For practical purposes it must be deemed the same as a power boiler.
16. "Hot water supply boiler" means a fired boiler used exclusively to supply hot water for purposes other than space heating and includes all service-type and domestic-type water heaters not otherwise exempt by North Dakota Century Code section 26.1-22.1-06.
17. "Inspector" means the chief boiler inspector or any deputy inspector or special inspector.
18. "Internal inspection" means an inspection made when a boiler is shut down and handholes and manholes are opened for inspection of the interior.
19. "Low pressure and heating boiler" means a boiler operated at pressures not exceeding fifteen pounds per square inch gauge [103 kilopascals] for steam or at pressures not exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] and temperatures not exceeding two hundred fifty degrees Fahrenheit [121.1 degrees Celsius] for water.
20. "Major repair" means a repair upon which the strength of a boiler would depend. Major repairs are those that are not of a routine nature as described in the national board inspection code.
21. "Miniature boiler" means any boiler that does not exceed any of the following limits:
 - a. Sixteen-inch [40.64-centimeter] inside diameter of shell.
 - b. Twenty square feet [1.86 square meter] heating surface.
 - c. Five cubic feet [.142 cubic meter] gross volume, exclusive of casing and insulation.
 - d. One hundred pounds per square inch gauge [689.48 kilopascals] maximum allowable working pressure.
22. "National board" means the national board of boiler and pressure vessel inspectors, 1055 crupper avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the American society of mechanical engineers code.
23. "National board inspection code" means the manual for boiler and pressure vessel inspectors supplied by the national board. The national board inspection code, ~~2013~~2017 edition, is hereby adopted by the commissioner and incorporated by reference as a part of this article. Copies of this code may be obtained from the national board at 1055 crupper avenue, Columbus, Ohio 43229.
24. "New boiler installations" includes all boilers constructed, installed, or placed in operation after July 1, 1973.

25. "Nonstandard boiler" means a boiler that does not bear the state stamp, the national board stamping, the American society of mechanical engineers stamp, or the stamp of any state or political subdivision which has adopted a standard of construction equivalent to that required by this article.
26. "Owner or user" means any person, firm, corporation, state, or political subdivision owning or operating any boiler which is not specifically exempt under North Dakota Century Code section 26.1-22.1-06 within North Dakota.
27. "Power boiler" means a closed vessel in which steam or other vapor (to be used externally to itself) is generated at a pressure of more than fifteen pounds per square inch gauge [103 kilopascals] by the direct application of heat.
28. "Reciprocal commission" means a commission issued by the commissioner to persons who have passed a written examination prescribed by the national board and who hold a national board commission issued by the national board, or to persons who have passed the written examination prescribed by the national board and are employed by an accredited national board owner/user inspection organization.
29. "Reinstalled boiler" means a boiler removed from its original setting and reerected at the same location or erected at a new location without change of ownership.
30. "Reinstalled pressure vessel" means a pressure vessel removed from its original setting and reerected at the same location or erected at a new location without change of ownership.
31. "Repair" is a restoration of any damaged or impaired part to an effective and safe condition.
32. "Secondhand boiler" means a boiler of which both the location and ownership have been changed after primary use.
33. "Secondhand pressure vessel" means a pressure vessel of which both the location and ownership have been changed after primary use.
34. "Service-type or domestic-type water heater" means a fired water heater of either instantaneous or storage type, used for heating or combined heating and storage of hot water to be used exclusively for domestic or sanitary purposes, with temperatures not exceeding two hundred ten degrees Fahrenheit [98.68 degrees Celsius], and a heat input not in excess of two hundred thousand British thermal units [2.11 x 10 to the 8th power joules] per hour, and pressure not to exceed one hundred sixty pounds per square inch [1103.17 kilopascals].
35. "Special inspector" means an inspector regularly employed by an accredited national board authorized inspection agency or an inspector who has passed the national board examination and is employed by an accredited national board owner/user inspection organization.
36. "Standard boiler" means a boiler that bears the stamp of North Dakota or of another state that has adopted a standard of construction equivalent to that required by this article or a boiler that bears the national board stamping or American society of mechanical engineers stamp.
37. "State of North Dakota boiler construction code" is used to designate the accepted reference for construction, installation, operation, and inspection of boilers and will be referred to as this article. Anything not amended or specifically covered in this article must be considered the same as the American society of mechanical engineers code.
38. "Steam traction engines" means boilers on wheels which are used solely for show at state fairs and other exhibitions in which the public is invited to attend.

History: Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000; October 1, 2002; January 1, 2006; January 1, 2008; April 1, 2010; July 1, 2012; January 1, 2014; [April 1, 2017](#).

General Authority: NDCC 26.1-22.1-14

Law Implemented: NDCC 26.1-22.1-14

CHAPTER 45-15-01

45-15-01-01. Insurance fraud.

A person engaged in the business of insurance having knowledge or a reasonable belief that a fraudulent insurance act has been, is being, or will be committed shall provide information concerning the known or suspected fraudulent insurance act to the commissioner in writing within sixty days of having that knowledge or reasonable belief. The information may be reported on the national association of insurance commissioners uniform suspected insurance fraud reporting form, a copy of which is attached as appendix A. Thereafter, the person engaged in the business of insurance shall promptly provide to the commissioner any additional information that the commissioner may request concerning the known or suspected fraudulent insurance act. For the purposes of this rule, a reasonable belief means that the person engaged in the business of insurance has ~~ascertained, after reviewing the facts surrounding the possible fraudulent insurance act through its internal fraud activities and processes, if such activities and processes are in place, that~~ a given fact or combination of facts ~~exist and that the circumstances~~ which in their totality result in a determination that more likely than not, a fraudulent insurance act ~~was~~ has been, is being, or will be committed.

History: Effective March 1, 2004; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02.1, 26.1-02.1-11

TITLE 61
STATE BOARD OF PHARMACY

APRIL 2017

CHAPTER 61-02-01

61-02-01-03. Pharmaceutical compounding standards.

The minimum standards and technical equipment to be considered as adequate shall include:

1. Definitions.
 - a. "Active chemical or ingredient" refers to chemicals, substances, or other components of articles intended for use in the diagnostics, cure, mitigation, treatment, or prevention of diseases.
 - b. "Aseptic processing" is the method of preparing pharmaceutical and medical products that involves the separate sterilization of the product and of the package, the transfer of the product into the container and closure of the container under ISO class 5 or superior conditions, and using procedures designed to preclude contamination of drugs, packaging, equipment, or supplies by micro-organisms during the process.
 - c. "Beyond-use date" refers to the date placed on preparation label that is intended to indicate to the patient or caregiver a time beyond which the contents of the preparation are not recommended to be used. The beyond-use date is determined from the date and time compounding of the preparation is completed.
 - d. "Component" is any ingredient used in the compounding of a drug product, including any that are used in its preparation, but may not appear on the labeling of such a product.
 - e. "Compounded sterile preparation" (CSP) will include all of the following:
 - (1) Preparations prepared according to the manufacturer's labeled instructions and other manipulations when manufacturing sterile products that expose the original contents to potential contamination.
 - (2) Preparations containing nonsterile ingredients or employing nonsterile components or devices that must be sterilized before administration.
 - (3) Biologics, diagnostics, drugs, nutrients, and radiopharmaceuticals that possess either of the above two characteristics, and which include baths and soaks for live organs and tissues, implants, inhalations, injections, powders for injection, irrigations, metered sprays, and ophthalmic preparations.

- f. "Compounder or compounding personnel" is the pharmacist or other licensed or registered health care professional responsible for preparing the compounded preparations.
- g. "Compounding" is the preparation, mixing, assembling, packaging, and labeling of a drug or device in accordance to a licensed practitioner's prescription or medication order. Compounding does not include tablet splitting, reconstitution of oral or topical products as intended by the manufacturer, or repackaging of nonsterile dosage forms for redistribution, dispensing, or administration. Compounding includes:
- (1) Preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.
 - (2) The addition of one or more ingredients to a commercial product as a result of a licensed practitioner's prescription drug order.
 - (3) Preparation of drugs or devices for the purposes of, or as an incident to, research, teaching, or chemical analysis.
 - (4) Categories of compounding.
 - (a) ~~Category 1~~—Nonsterile simple. Should be conducted according to USP chapter 795.
 - ~~[1] Simple—Mixing of two or more commercial products.~~
 - ~~[2] Complex—Compounding with the bulk drug substances or when calculations are required.~~
 - (b) ~~Category 2~~—Sterile compounds. Risk levels of compounded sterile preparations. Risk levels are assigned according to the corresponding probability of contaminating a preparation with microbial organisms, spores, and endotoxins, or chemical and physical contamination such as foreign chemicals and physical matter. Preparations should be compounded according to USP chapter 797 based on the appropriate risk level.
 - ~~[1] Immediate-use compounded sterile preparations. Immediate-use preparations must not be medium-risk level or high-risk level compounded sterile preparations. Immediate-use preparations must be designed for immediate administration and are exempt from the requirements described for low-risk level compounded sterile preparations only when all the following criteria are met:~~
 - ~~[a] The compounding process involves simple transfer of no more than three commercially manufactured packages of sterile nonhazardous products from the manufacturer's original containers and no more than two entries into any one container.~~
 - ~~[b] Unless required for the preparation, such as a long dissolution time, the compounding procedure is a continuous process not to exceed one hour.~~
 - ~~[c] During preparation and prior to administration, aseptic technique must be followed. At no point may critical sites and ingredients of the compounded sterile preparation be directly exposed to contact contamination. If not immediately administered, the finished compounded sterile preparation must be under continuous~~

~~supervision to minimize the potential for contact with nonsterile surfaces, introduction of particulate matter, or biological fluids, mixups with other products, and direct contact of outside surfaces.~~

~~[d] Administration must begin no later than one hour following the start of the preparation and must be completed within twelve hours.~~

~~[e] Must be immediately and completely administered by the person who prepared it, or immediate and complete administration is witnessed by the preparer, the GSP shall bear a label listing patient identification information, the names and amounts of all ingredients, the name or initials of the person who prepared the GSP, and the exact one-hour BUD and time.~~

~~[f] If administration has not begun within one hour following the start of preparing the compounded sterile preparation, it must be promptly, properly, and safely discarded and not stored for later use.~~

~~[2] Low-risk level compounded sterile preparations. Low-risk preparations are compounded sterile preparations under the following conditions:~~

~~[a] Compounded with aseptic manipulations entirely with ISO class 5 or superior air quality using only sterile ingredients, products, components, and devices.~~

~~[b] The compounding involves only transferring, measuring, and mixing using not more than three commercially manufactured packages of sterile products and not more than two entries into any one sterile container.~~

~~[c] Manipulations must be limited to aseptically opening ampules, penetrating disinfected stoppers with sterile needles and syringes, and transferring sterile liquids into sterile administration devices or containers for storage.~~

~~[d] In the absence of passing a sterility test, the storage periods cannot exceed forty-eight hours at controlled room temperature, for not more than fourteen days at a refrigerated temperature, or forty-five days in solid frozen state, from minus twenty-five degrees Celsius and minus ten degrees Celsius, unless supported by manufacturer or medical literature.~~

~~[e] Examples of low-risk compounded sterile preparations include:~~

~~{1} Single volume transfers of sterile dosage forms from ampules, bottles, bags, and vials with sterile needles.~~

~~{2} Simple aseptic measuring and transferring with not more than three packages of manufactured sterile products, including infusion and diluents solutions. The solution content of ampules must be passed through a sterile filter to remove any particles.~~

~~[f] Low-risk quality assurance programs must include routine disinfection, air quality testing, visual confirmation that compounding~~

personnel are properly gowned and garbed, review of all orders and packages of ingredients, and visual inspection of the compounded sterile preparation to ensure the absence of particulate matter or leakage, and thoroughness of labeling in addition to annual media fill tests by each of the compounding personnel specific for low-risk preparation.

[3] ~~Medium-risk level compounded sterile preparations. Medium-risk preparations are compounded sterile preparations prepared aseptically under low-risk level conditions and one or more of the following conditions exist:~~

[a] ~~Multiple small doses of sterile products are combined or pooled to prepare the sterile preparation that will be administered either to multiple patients or to one patient on multiple occasions.~~

[b] ~~The compounding process includes complex aseptic manipulations other than the single volume transfer.~~

[c] ~~The compounding process requires unusually long duration such as that required to complete dissolution.~~

[d] ~~In the absence of passing a sterility test, the storage periods cannot exceed thirty hours at controlled room temperature, for not more than nine days at refrigerated temperature and for forty-five days in solid frozen state, between minus twenty-five degrees Celsius and minus ten degrees Celsius, unless supported by manufacturer or medical literature.~~

[e] ~~Examples of medium-risk compounded sterile preparations include:~~

{1} ~~Total parenteral nutrient fluids using manual or automated devices.~~

{2} ~~Filling reservoirs of injection and infusion devices with more than three sterile drug products.~~

{3} ~~Transfer volumes from multiple ampules or vials into one or more final sterile containers.~~

[f] ~~Medium-risk quality assurance includes all elements of low-risk compounded sterile preparations in addition to annual media fill tests by each of the compounding personnel specific for medium-risk preparations.~~

[4] ~~High-risk level compounded sterile preparations. High risk preparations are compounded sterile preparations that are either contaminated or at a high risk to become contaminated.~~

[a] ~~When the following criteria take place, the preparations will be considered high risk:~~

{1} ~~If nonsterile ingredients, including manufactured products not intended for sterile routes of administration (e.g., oral) are~~

~~incorporated or a nonsterile device is employed before terminal sterilization.~~

~~{2} If there has been exposure to air quality inferior to ISO class 5 for more than one hour by the sterile contents, sterile surfaces of devices and containers, or a lack of effective antimicrobial preservatives.~~

~~{3} If personnel are improperly garbed and gloved.~~

~~{4} If nonsterile water-containing preparations are stored for more than six hours before being sterilized.~~

~~[b] Storage periods cannot exceed twenty-four hours at controlled room temperature; three days at refrigerated temperature or forty-five days in sold frozen state, between minus twenty-five degrees Celsius and minus ten degrees Celsius, unless supported by manufacturer or medical literature.~~

~~[c] All nonsterile measuring, mixing, and purifying devices must be rinsed thoroughly with sterile pyrogen-free water, then thoroughly drained or dried immediately before use for high-risk compounding.~~

~~[d] All high-risk solutions subjected to terminal sterilization are prefiltered by passing through a filter not larger than 1.2 microns. Sterilization of high-risk level solutions by filtration should be performed with a sterile 0.2 micron normal pore size filter entirely within an ISO class 5 or superior air quality environment.~~

~~[e] An example of high-risk compounded sterile preparations is dissolving nonsterile bulk drug and nutrient powders to make solutions that will be terminally sterilized.~~

~~[f] High-risk quality assurance includes all elements of low-risk compounded sterile preparations in addition to semiannual media fill tests by each of the compounding personnel specific for high-risk preparations.~~

(c) ~~Category 3~~—Radiopharmaceuticals. See article 61-05.

(d) ~~Category 4~~—Veterinary pharmaceuticals. Standards for veterinary pharmaceuticals are consistent with all parts of section 61-02-01-03.

- h. "Compounding supervisor" is a person who supervises and is responsible for the compounding and dispensing of a nonsterile or sterile preparation. This may be the pharmacist on duty or the pharmacist-in-charge.
- i. "Critical site" is a location that includes any component or fluid pathway surfaces (such as injection ports) or openings (such as opened ampules or needle hubs) exposed and at risk of direct contact with air, moisture, or touch contamination.
- j. "Direct and contiguous compounding area" refers to the specific area where a compound is prepared.

- k. "Disinfection" is the process by which the total number of micro-organisms is reduced to a safe level or eliminated by applying an agent to inanimate objects that destroys disease-causing pathogens or other harmful micro-organisms but may not kill bacterial and fungal spores.
 - l. "Hazardous drug" is one of those which studies in animals or humans indicate that exposures to them have a potential for causing cancer, development, or reproductive toxicity or harm to organs.
 - m. "ISO class" is a description of an atmospheric environment characterized by the number of particles of 0.5 microns or larger, within a cubic foot of air. "ISO class 5" atmospheric environment contains less than 100 particles, 0.5 microns or larger in diameter, per cubic foot of air.
 - n. "Media fill test" refers to tests used to validate aseptic techniques of compounding personnel and of processes that ensure the personnel and processes used are able to produce sterile products without microbial contamination. Testing uses a microbiological growth medium to substitute for actual drug product to simulate admixture compounding in determining the quality of a person's technique.
 - o. "NDC number" is the national drug code given to each drug separately and specifically approved by the food and drug administration for identification and reporting.
 - p. "Preparation" is a drug dosage form, dietary supplement, or a finished device. It contains one or more substances formulated for use on or for the patient or consumer.
 - q. "Primary engineering control (PEC)" refers to a device or room that provides an ISO class 5 or superior environment during the compounding process, including laminar airflow workbenches (LAFWs), biological safety cabinets (BSCs), compounding aseptic isolators (CAIs), and compounding aseptic containment isolators (CACIs).
 - r. "Product" is a commercially manufactured drug or nutrient that has been evaluated for safety and efficacy by the food and drug administration, accompanied by full prescribing information.
 - s. "Repackaging" is the transfer of an ingredient from one container to another.
 - t. "Risk levels" of CSPs determine the level assigned that represent the probability that it will be contaminated with microbial organisms, spores, endotoxins, foreign chemicals, or other physical matter.
 - u. "Seventy percent sterile isopropyl" or IPA is an antimicrobial used to clean surfaces used in sterile preparations.
 - v. "Stability" means the extent to which a preparation retains, with specified limits, and throughout its period of storage and use, the same properties and characteristics it possessed at the time of compounding.
 - w. "US pharmacopeia (USP)" is the book of official compendia of standards for the United States.
2. General compounding.
- a. Responsibility of the compounder.

- (1) Personnel engaging in compounding must be proficient, capable, and qualified to perform assigned duties in the compounding area while expanding the individual's knowledge of compounding through seminars or appropriate literature.
 - (2) Compounding personnel must be familiar with USP standards and North Dakota regulations, including:
 - (a) Certifying all prescriptions orders.
 - (b) Approving or rejecting all components, drug product containers, closures, in-process materials, and labeling ensuring preparations and ingredients are of acceptable strength, quality, and purity, with appropriate packaging.
 - (c) Preparing and reviewing all compounding records to assure that errors have not occurred in the compounding process and the finished product has expected qualities as well as implementing procedures to prevent cross-contamination.
 - (d) Assuring the proper maintenance, cleanliness, sanitization, and use of all equipment used in prescription compounding practice, including the direct and contiguous compounding area allowing for the compounding environment to be suitable for its intended purpose.
 - (e) Assuring that the drug product and components of drug products are not on the list of federally recognized drug products that have been withdrawn or removed from the market for public health reasons.
 - (3) Policies and procedures must be established concerning washing and donning the appropriate clothing specific to the type of process performed to protect the personnel from chemical exposures and prevent drug contamination.
- b. Training. All compounding supervisors and all personnel involved in compounding must be well trained and must participate in current, relevant training programs. All training activities will be covered by standard operating procedures and must be properly documented. Steps in the training procedure include:
- (1) Be familiar with pharmaceutical compounding and nonsterile compounding (USP 795), pharmaceutical compounding and sterile compounding (USP 797), [hazardous drug compounding \(USP 800\)](#), and pharmaceutical calculations in prescription compounding (USP 1160).
 - (2) Be familiar with all procedures relating to compounding specific to the individual's facility, equipment, personnel, compounding process, evaluation, packaging, storage, and dispensing.
 - (3) Compounding supervisors must be responsible to follow the instructions below to show that personnel are appropriately trained:
 - (a) Demonstrate compounding procedures to compounding personnel.
 - (b) Guide personnel through the compounding process with assistance.
 - (c) Observe personnel performing a compound without assistance but under supervision.
 - (d) Review the compound, correct mistakes, and answer questions concerning compounding and associated processes.

- (e) Confirm verbal and functional knowledge of the personnel concerning compounding.
 - (f) Have personnel perform a compounding procedure without supervision, yet checking off the final preparation.
 - (g) If properly compounded and when satisfied, sign the documentation records confirming appropriate training.
 - (h) Continually monitor the work of the personnel, including calculations.
- (4) The pharmacist on duty and the pharmacist-in-charge are ultimately responsible for the finished product.
- c. Procedures and documentation. Procedures must be developed for the facility, equipment, personnel, preparation, packaging, and storage of the compounded preparation to ensure accountability, accuracy, quality, safety, and uniformity in compounding. This allows for a compounder, whenever necessary, to systematically trace, evaluate, and replicate the steps included throughout the preparation process of a compounded preparation.
- d. Nonsterile drug compounding ~~facilities must include all of the following:~~must meet the facility, equipment, packaging, storage, and beyond-use date standards set in USP chapter 795. Policies and procedures should be developed to ensure compliance with those standards.
- ~~(1) Compounding facilities and equipment that are clean, accurate, of appropriate size and construction, and properly inspected and the compounding environment is properly maintained, isolated, and inspected. Personnel must have a written plan and schedule while maintaining records of cleaning and disinfecting.~~
 - ~~(2) Aseptic processes must be conducted in an area separate from the area used for nonsterile preparations.~~
 - ~~(3) Areas designated for compounding, including space for storage, must have adequate space, designed and well-lighted to prevent mixups, errors, or adventitious cross-contamination.~~
 - ~~(4) Heating, ventilation, and air-conditioning systems are controlled to avoid decomposition of chemicals.~~
 - ~~(5) A supply of potable water is available for washing with adequate washing facilities that are easily accessible, including hot and cold water, soap or detergent, and an air dryer or single-use towels. The plumbing system should be free of defects that could contribute to contamination of the compounded product.~~
 - ~~(6) All areas maintained in a clean and sanitary condition and trash, sewage, and other refuse should be disposed of in a safe and timely manner.~~
 - ~~(7) Bulk drugs, chemicals, or materials must be properly labeled and stored in an area that is clean, dry, at appropriate temperature (i.e., controlled room, refrigerator, or freezer), and protected from contamination.~~
- ~~e. Nonsterile drug compounding equipment.~~

~~(1) Equipment and utensils must be of appropriate design and capacity and properly stored to avoid contamination while located in a place appropriate for facility operations for its use, maintenance, and cleaning.~~

~~(2) All equipment must be constructed so that surfaces that contact components, in-process materials, or finished preparations are not reactive, additive, or absorptive to avoid altering the preparation.~~

~~(3) Equipment, apparatus, and devices used to compound a preparation must be calibrated, maintained, and monitored for proper function. Records must be kept for the lifetime of the equipment.~~

~~f. Packaging, drug preparation containers, storage, and beyond-use dating for nonsterile preparations.~~

~~(1) Containers and container closures.~~

~~(a) Must meet USP requirements found under containers—glass (USP 660), containers—plastic (USP 661), and containers—performance testing (USP 671).~~

~~(b) Those intended for compounding of sterile and nonsterile preparations must be handled, sterilized (if appropriate), and stored according to pharmaceutical compounding—sterile preparations (USP 797) and pharmaceutical compounding—nonsterile preparations (USP 795).~~

~~(c) Must be stored off the floor and handled and stored to prevent contamination.~~

~~(d) Must be stored in a way to facilitate inspection and cleaning.~~

~~(e) Must be constructed in such a way that surfaces are not reactive, additive, or absorptive.~~

~~(f) The containers and closures shall be of suitable material so as not to alter the quality, strength, or purity of the compounded drug.~~

~~(2) Storage area.~~

~~(a) Compounded preparations must be stored strictly in accordance with the conditions stated on the label of ingredient products and finished preparations.~~

~~(b) Monitoring of appropriate temperatures must occur daily for controlled storage areas and temperatures recorded in the temperature log.~~

~~[1] Controlled room temperature areas, twenty degrees Celsius to twenty-five degrees Celsius.~~

~~[2] Controlled cold temperature, two degrees Celsius to eight degrees Celsius.~~

~~[3] Controlled freezing temperature, minus twenty-five degrees Celsius to minus ten degrees Celsius.~~

~~(3) Beyond-use dates for nonsterile preparations.~~

~~(a) The compounder must establish an appropriate beyond-use date determined by drug-specific chemical and physical stability parameters of the components~~

~~in conjunction with the manufacturer's product label, appropriate literature, and USP standards.~~

~~(b) The compounder must establish a beyond-use date considering the nature of the drug, degradation mechanism, purposed container, expected storage conditions, and intended duration of therapy.~~

~~(c) Beyond-use dating is assigned conservatively to all compounded preparations. Immediate-use preparations do not require a beyond-use date.~~

~~[1] For nonaqueous liquids and solid formulations where the manufactured drug product is the source of the active ingredient, the beyond-use date is no later than twenty-five percent of the time remaining until the product's expiration date or six months, whichever is earlier.~~

~~[2] For water-containing, liquid formulations prepared from ingredients in solid form, the beyond-use date is no later than fourteen days when stored at cold temperatures from two to eight degrees Celsius.~~

~~[3] For all other formulations the beyond-use date is no later than the intended duration of therapy or thirty days, whichever is earlier, unless supporting valid scientific stability information can be applied.~~

g.e. Compounding controls for nonsterile preparations.

- (1) The compounder must ensure that the written procedures for compounding are available electronically or in hard copy and assure the finished products have the correct identity, strength, quality, and purity.
- (2) Procedures must be established that give a description of the following:
 - (a) Components and their amounts.
 - (b) Order of component additives.
 - (c) Compounding process.
 - (d) Drug product.
 - (e) Required equipment and utensils, including container and closure systems.
- (3) The compounder will accurately weigh, measure, and subdivide all components as appropriate.
 - (a) The compounder must check and recheck each procedure at each point of the process to ensure that each weight or measure is correct.
 - (b) If a component is transferred from the original container to another, the new container must be identified with the component, name, weight or measure, the lot or control number, the expiration or beyond-use date, and the transfer date.
- (4) The compounder must write procedures that describe the tests or examinations that prove uniformity and integrity of the compounded preparations.
- (5) Control procedures must be established to monitor the output and validate the performance of compounding personnel that affect variability of final preparations, such as:

- (a) Capsule weight variation.
 - (b) Adequacy of mixing to assure uniformity and homogeneity.
 - (c) Clarity, completeness, or pH of solutions.
- (6) The compounder must establish an appropriate beyond-use date for each compounded preparation.
- (7) Facilities engaging in compounding must have a specifically designated and adequate space for orderly compounding, including the placement and storage of equipment and materials.

h.f. Labeling of nonsterile preparations.

- (1) The compounder's preparation label must contain all information required by North Dakota state law and accepted standards of practice found under chapter 61-04-06, prescription label requirements, plus the beyond-use date and assigned lot number.
- (2) The compounder must label any excess compounded products so as to refer to the formula used.
- (3) Preparations compounded in anticipation of a prescription prior to receiving a valid prescription should be made in a regularly used amount based on the history of prescriptions filled and they should be labeled with:
 - (a) Complete list of ingredients or preparation time and reference or established chemical name or generic name.
 - (b) Dosage form.
 - (c) Strength.
 - (d) Preparation date and time.
 - (e) Inactive ingredients.
 - (f) Batch or lot number.
 - (g) Assigned beyond-use date.
 - (h) Storage conditions.
- (4) The compounder must examine the preparation for correct labeling after completion.

i.g. Records and reports for nonsterile preparations.

- (1) Records must be maintained, including a hard copy of the prescription with formulation and compounding records.
- (2) Adequate records of controlled substances used in compounds.
- (3) All records must be kept for five years according to North Dakota state law and be available for inspection.
- (4) Formulation record provides a consistent source document for preparing the preparation to allow another compounder to reproduce the identical prescription at a future date and must list:

- (a) Name, strength, and dosage form of the preparation compounded.
 - (b) All ingredients and their quantities.
 - (c) Equipment needed to prepare the preparation, when appropriate.
 - (d) Mixing instructions including order of mixing, mixing temperatures, and other valid instructions, such as duration of mixing.
 - (e) Assigned beyond-use date.
 - (f) Container used in dispensing.
 - (g) Storage requirements.
 - (h) Any quality control procedures.
- (5) Compounding record documents the actual ingredients in the preparation and the person responsible for the compounding activity and includes:
- (a) Name and strength of the compounded preparation.
 - (b) The formulation record reference.
 - (c) Sources and lot numbers of the ingredients.
 - (d) Total number of dosage units compounded.
 - (e) Name of compounding personnel who prepared the preparation.
 - (f) The date of preparation.
 - (g) The assigned internal identification number, lot number, and prescription numbers.
 - (h) Assigned beyond-use date.
 - (i) Results of all quality control procedures.
- (6) Temperature log records the daily monitoring of temperatures in the storage area specifically for the controlled room temperature, refrigerator, freezer, or incubator.
3. Nonsterile compounding. Compounders are to use the following steps to minimize error and maximize the prescriber's intent, specifics can be found in pharmaceutical compounding - nonsterile compounding (USP 795):
- a. Judge the suitability of the prescription of the preparation in terms of safety and intended use.
 - b. Perform necessary calculations to establish the amounts of ingredients needed.
 - c. Identify equipment and utensils needed.
 - d. Don the proper attire and properly wash hands and arms.
 - e. Clean the compounding area and needed equipment.
 - f. Only one prescription can be compounded at a time in the specified compounding area.

- g. Assess weight variation, adequacy of mixing, clarity, odor, color consistency, and pH as appropriate of the completed preparation.
 - h. Annotate the compounding and formulation records.
 - i. Label the prescription containers appropriately.
 - j. Sign and date the prescription or compounding record affirming that all procedures were carried out to ensure uniformity, identity, strength, quantity, and purity.
 - k. Thoroughly clean all equipment immediately when finished.
4. Compounding process for compounded sterile preparations. Compounders are to [follow the USP chapter 797 standards and](#) use the following steps to minimize error and maximize the prescriber's intent, ~~specifics can be found in pharmaceutical compounding sterile compounds (USP 797):~~
- a. Judge the suitability of the prescription for the compounded sterile preparation in terms of safety and intended use.
 - b. Perform necessary calculations to establish the amounts of ingredients needed.
 - c. Identify equipment and utensils needed for the preparation of the compounded sterile preparation.
 - d. Sterile compounding areas and critical areas must be structurally isolated from other areas designated to avoid unnecessary traffic and airflow disturbances [according to USP chapter 797](#), separate from nonsterile compounding areas, and restricted to qualified compounding personnel.
 - e. Policies and procedures must be established [in accordance with USP chapter 797](#) for personnel cleaning and garbing for protection and avoidance of containment, ~~including:~~
 - ~~(1) Remove all jewelry from hands and arms, no artificial nails allowed.~~
 - ~~(2) Don proper garb, including shoe covers, head and facial hair covers, face mask, and nonshedding gown, if the manufacturer of the primary engineering control has research and documentation demonstrating that specific things are not necessary, they are not required.~~
 - ~~(3) Wash hands and arms prior to donning powder-free gloves.~~
 - ~~(4) Abstain from gum chewing, candy, or food items in or near the compounding area.~~
 - f. Clean and sanitize the compounding area and needed equipment [according to USP chapter 797](#).
 - ~~(1) At the beginning of each work shift and after spills, the surface of the compounding area should be cleaned with sterile water to remove water soluble residues, then immediately with seventy percent sterile isopropyl alcohol, or another antimicrobial agent, using nonlinting wipe.~~
 - ~~(2) All rubber stops of vials and bottles and the neck of ampules must be sanitized with seventy percent sterile isopropyl alcohol prior to introduction of a needle or spike for the removal of a product.~~
 - ~~(3) After procedures are completed, used syringes, bottles, vials, and other supplies must be moved.~~

~~(4) Only one preparation can be compounded at a time in the specified compounding area.~~

~~(5) Assess weight variation, adequacy of mixing, clarity, odor, color consistency, and pH as appropriate of the completed compounded sterile preparation.~~

~~(6) If preparing in anticipation of future orders, annotate the compounding and formulation records with date of preparation, ingredients and their lot numbers, total number of dosage units prepared, initials of preparer and pharmacist who checked the batch, assigned beyond-use date, and assigned internal batch or lot number.~~

~~(7) Label the preparation containers with name and strength of preparation, internal batch or lot number, and appropriate beyond-use date.~~

~~(8) Sign and date the compounding record affirming that all procedures were carried out to ensure uniformity, identity, strength, quantity, purity, and sterility.~~

5. Facilities for sterile compounding should conform with USP chapter 797.

~~a. The facilities that engage in low-risk and medium-risk preparations must meet the standards, including:~~

~~(1) Limits access and activities to qualified personnel, materials, and processes that are directly related to productions of sterile compounded products.~~

~~(2) Structurally isolated from other areas, including other nonsterile compounding areas.~~

~~(3) Designed to avoid unnecessary traffic and airflow disturbances.~~

~~(4) Of sufficient size to accommodate all primary engineering control devices, as required by the compounding risk level.~~

~~(5) Able to provide storage and preparation of drugs, supplies, and finished products under appropriate temperature, light, moisture, sanitation, ventilation, and security conditions.~~

~~(a) Ventilation must maintain appropriate ISO class designations of each separate working area and avoid disruption and cross-room currents.~~

~~(b) Walls, floors, and ceilings, along with fixtures, counters, shelves, and cabinets must be resistant to damage that could occur from routine disinfection with cleaning agents.~~

~~(c) Policies and procedures must be established for personnel in the sterile compounding area regarding proper hand washing, proper donning of appropriate attire, and restrictions on items and practices within the compounding area.~~

~~(d) Policies and procedures must be established for cleaning and sanitizing.~~

~~[1] All cleaning and sanitizing must not occur simultaneously with aseptic operations.~~

~~[2] Counters and easily cleanable work surfaces cleaned and sanitized daily.~~

~~[3] Storage shelving cleaned and sanitized monthly.~~

~~[4] Floors must be mopped daily. Trash must be collected and removed daily.~~

~~b. The facilities that engage in high-risk preparations must meet the standards, including:~~

~~(1) All of the facilities listed for low-risk and medium-risk preparations.~~

~~(2) Buffer areas must have the following standards:~~

~~(a) Maintain ISO class 7 or superior air quality during compounding activity.~~

~~(b) Be physically divided or have designated boundaries that separate it from the anteroom with appropriate ventilation that assures contamination from the anteroom does not enter the buffer area through utilization of filtered unidirectional flow and principles of air displacement.~~

~~(c) Must not have unsealed windows or doors that connect to the outdoors, or be located adjacent to a construction site, warehouse, or food preparation area.~~

~~(d) Must not contain sinks or drains and shall be void of all materials, equipment, and fixtures that are not directly involved in the current processing of compounded sterile preparations.~~

~~(e) The construction, arrangement, and ventilation must not allow conditions that could adversely affect compounding, such as aberrant heating, cooling, door drafts, and personnel traffic air currents.~~

~~(f) Policies and procedures must be established for cleaning and sanitizing.~~

~~[1] Cleaning and sanitizing must occur in the buffer area first, then move to the anteroom and other areas.~~

~~[2] All cleaning and sanitizing must occur simultaneously with aseptic operations.~~

~~[3] Storage shelving cleaned and sanitized weekly.~~

~~[4] Floors must be mopped daily. Trash must be collected and removed daily.~~

~~(3) Anteroom must have the following standards:~~

~~(a) Located adjacent to the buffer area and maintained at ISO class 8 or superior air quality during compounding activity.~~

~~(b) Must be established with the purpose of unpacking and disinfecting supplies for storage and areas to support hand and arm washing and donning of appropriate attire.~~

~~(c) Hands-free sinks and closed system soap dispenser must be used for hand and arm washing.~~

~~(d) Procedures must be established for cleaning and sanitizing.~~

~~[1] Compounding must occur secondary to cleaning and sanitizing.~~

~~[2] All cleaning and sanitizing must not occur simultaneously with aseptic operations.~~

~~[3] Counters and easily cleanable work areas must be cleaned daily.~~

~~[4] Supplies and equipment must be removed and wiped with a sanitizing agent weekly.~~

~~[5] Floors must be mopped daily.~~

~~[6] Storage shelving and walls must be emptied and cleaned and sanitized monthly.~~

~~(4) Storage areas for sterile preparations. When ingredients and finished preparations are exposed to temperatures warmer than the warmest labeled limit, but not exceeding forty degrees Celsius for more than four hours, they must be discarded.~~

6. Equipment specific for sterile compounding should conform with USP chapter 797.

~~a. Primary engineering controls:~~

~~(1) Are not required for immediate-use compounding.~~

~~(2) One primary engineering control is required for compounding low-risk and medium-risk preparations.~~

~~(3) For compounding high-risk preparations the primary engineering control must be placed in a buffer area, if required, where HEPA filters are employed and the air quality is maintained at ISO class 7 or superior. If the manufacturer has research and documentation demonstrating that the primary engineering control does not need to be in a buffer area, this is not required. If used, the primary engineering control must be maintained as continuously powered on, if turned off, however, the blowers must be allowed to run continuously for at least thirty minutes before using.~~

~~b. Environmental monitoring.~~

~~(1) Barrier certification for proper functioning and ISO class 5 airflow requirements must be tested every six months and after relocation of the primary engineering control.~~

~~(2) Maintain the air quality of the buffer area and anteroom, if required, at ISO class 7 and ISO class 8, respectively must be tested every six months and after any renovation of the compounding area.~~

~~(3) Where high-risk sterile preparations are being compounded, air sampling via sterile nutrient agar plates or suitable electric air samplers must be performed semiannually at locations judged by compounding personnel to be the most prone to contamination during compounding activities.~~

~~(4) Instructions and verification of air sampling devices must be located with the equipment.~~

~~(5) Passive exposure processes of sterile nutrient agar settling plates can be found in USP standards.~~

7. Poison record book and suitable prescription files.

8. Suitable current reference sources either in book or electronic data form (available in the pharmacy or online) which might include the United States Pharmacopeia and National Formulary, the United States Pharmacopeia Dispensing Information, Facts & Comparisons, Micro Medex, the ASHP Formulary, or other suitable references determined by the board which are pertinent to the practice carried on in the licensed pharmacy.

9. ~~It is acceptable to compound drug products to be used by practitioners in their office for administration to patients. These products cannot be dispensed or sold to others. Sales to other pharmacies, clinics, or hospitals are manufacturing and are not allowed.~~ Compounding for office use.

a. It is acceptable to compound human drug products to be used by North Dakota practitioners in their office for administration to patients if the compound is prepared by a facility licensed as an outsourcing facility in accordance to North Dakota Century Code section 43-15.3-13 or by a resident North Dakota pharmacy.

b. It is acceptable for any licensed pharmacy to compound veterinary drug products to be used by veterinarians in their office for administration to client's animals. These compounded office use products may be dispensed to clients for use in a single treatment episode, not to exceed a one hundred twenty-hour supply.

c. Sales to other pharmacies, veterinarians, clinics, or hospitals are manufacturing and are not allowed. The pharmacy and pharmacist involved in the compounding shall ensure compliance with this section for the products they compound.

10. Hazardous drugs as compounded sterile products (CSPs).

a. Hazardous drugs, when prepared for administration only, shall be prepared under conditions that protect the health care worker and other personnel in the preparation and storage areas. Appropriate personnel protective equipment shall be worn when compounding hazardous drugs.

b. Hazardous drugs shall be stored and prepared separately from other nonhazardous drugs in a manner to prevent contamination and personnel exposure.

c. Hazardous drugs shall be handled with caution at all times using appropriate chemotherapy gloves during receiving, distribution, stocking, inventorying, preparation for administration, and disposal.

d. Hazardous drugs shall be prepared in an ISO class 5 environment with protective engineering controls in place and following aseptic practices specified for the appropriate contamination risk levels specified in this chapter.

e. All hazardous drugs shall be prepared in a biological safety cabinet (BSC) or a compounding aseptic containment isolator (CACI). The BSC or CACI shall be placed in an ISO class 7 area that is physically separated (i.e., a different area from other preparation areas) and with negative pressure to adjacent positive pressure ISO class 7 or better anterooms. If the CACI is used outside of a buffer area, the compounding area shall maintain a minimum negative pressure of ~~0.04~~0.03 inch water column and have a minimum of twelve air ~~challenges~~changes per hour.

~~(1) When closed-system vial transfer devices (CSTDs) are used, they shall be used within the ISO class 5 environment of a BSC or CACI. This may be done in a nonnegative pressure room when this two-tier containment method is used.~~

~~(2) Appropriate personnel protective equipment shall be worn when compounding hazardous drugs.~~

f. All personnel who compound hazardous drugs shall be fully trained in the storage, handling, and disposal of these drugs. This training shall occur prior to preparing or handling hazardous drugs and this training shall be by testing specific hazardous drug-handling techniques. Such training shall be documented for each person at least annually.

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

~~All compounders of sterile and nonsterile products must be in compliance with this rule by January 1, 2015.~~

History: Amended effective August 1, 1983; April 1, 1988; October 1, 1999; December 1, 2003; April 1, 2012; [April 1, 2017](#).

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

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

TITLE 75
DEPARTMENT OF HUMAN SERVICES

APRIL 2017

**ARTICLE 75-04
DEVELOPMENTAL DISABILITIES**

Chapter	
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75-04-02	Purchase of Service for Developmentally Disabled Persons <u>Individuals With Developmental Disabilities</u>
75-04-03	Developmental Disabilities Loan Program <u>[Repealed]</u>
75-04-04	Family Subsidy Program
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**CHAPTER 75-04-01
LICENSING OF PROGRAMS AND SERVICES FOR INDIVIDUALS WITH
DEVELOPMENTAL DISABILITIES**

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75-04-01-01. Definitions.

In this chapter, unless the context or subject matter requires otherwise:

1. "Accreditation" means recognition by a national organization of a licensee's compliance with a set of specified standards.
2. "Applicant" means an entity which has requested licensure from the North Dakota department of human services pursuant to North Dakota Century Code chapter 25-16.
3. "Basic services" means those services required to be provided by an entity in order to obtain and maintain a license.
4. ~~"Case management" means a process of interconnected steps which will assist a client in gaining access to needed services, including medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.~~
5. ~~"Client" means an individual found eligible as determined through the application of North Dakota Administrative Code chapter 75-04-06 for services coordinated through developmental disabilities easeprogram management, on whose behalf services are provided or purchased.~~
5. "Client representative" means a parent, guardian, or relative, to the third degree of kinship, of an individual with developmental disabilities who has maintained significant contacts with the client.
6. "Congregate care" means a specialized program to serve elderly individuals with developmental disabilities whose health and medical conditions are stable and do not require continued nursing and medical care, and are served within a community group-living arrangement.

7. "Consumer" means an individual with developmental disabilities.

~~8.~~ "Day supports habilitation" means a day program to assist individuals in acquiring, retaining, and improving skills necessary to successfully reside in a community setting. Services may include assistance with of scheduled activities, formalized training, and staff supports to promote skill development for the acquisition, retention, or improvement in self-help, socialization, and adaptive skills; provision of social, recreational, and therapeutic activities to maintain physical, recreational, personal care, and community integration skills; and development of non-job task-oriented prevocational skills such as compliance, attendance, task completion, problem solving, and safety. Activities should focus on improving a client's sensory, motor, cognitive, communication, and social interaction skills.

~~8.9.~~ "Department" means the North Dakota department of human services.

~~9.10.~~ "Developmental disability" means a severe, chronic disability of an individual which:

- a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- b. Is manifested before the individual attains age twenty-two;
- c. Is likely to continue indefinitely;
- d. Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (1) Self-care;
 - (2) Receptive and expressive language;
 - (3) Learning;
 - (4) Mobility;
 - (5) Self-direction;
 - (6) Capacity for independent living; and
 - (7) Economic sufficiency; and
- e. Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic careservices, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

~~10.11.~~ "Extended services Employment support" means a federally mandated component designed to provide employment-related, ongoing support for an individual in supported employment upon completion of training; or on or off the job employment-related support for individuals needing intervention to assist them in maintaining employment. This may include job development, replacement in the event of job loss, and, except for those individuals with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite. If offsite monitoring is appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month ongoing supports to assist clients in maintaining paid employment in an integrated setting. Services are designed for clients who need intensive ongoing support to perform in a work setting. Service includes on-the-job or off-the-job employment-related support for clients needing intervention to assist them in maintaining employment, including job development.

Employment support includes individual employment support and small group employment support.

12. "Extended home health care" means a service that provides skilled nursing tasks that cannot be delegated to unlicensed personnel that is available when a client has exceeded the amount of service available under the Medicaid state plan.

13. "Family care option III" means an individual support provided in a setting for adolescents or young adults who are unable to live in a family home setting.

14. "Family member" means relatives of a client to the second degree of kinship.

~~11.~~15. "Family support services" means a family-centered support service contracted ~~for a client~~ based on the client's or primary caregiver's need for support in meeting the health, developmental, and safety needs ~~of the client in order for the client~~ to remain in an appropriate home environment.

16. "Generic service" means a service that is available to any member of the population and is not specific to meeting specialized needs of individuals with intellectual disabilities or developmental disabilities.

~~12.~~17. "Governing body" means the individual or individuals designated in the articles of incorporation of a corporation or constitution of a legal entity as being authorized to act on behalf of the entity.

~~13.~~18. "Group home" means any community residential service facility, licensed by the department pursuant to North Dakota Century Code chapter 25-16, housing more than ~~four~~two individuals with developmental disabilities. "Group home" does not include a community complex with self-contained rental units.

~~14.~~19. "Individualized supported living arrangements" means a residential support services option in which services are contracted for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.

20. "In-home support" means supports for a client residing with their primary caregiver and their family to prevent or delay unwanted out-of-home placement. Services may assist the client in activities of daily living, and help with maintaining health and safety.

~~15.~~21. "Infant development" means a systematic application of an individualized family service plan designed to alleviate or mediate developmental delay of the client from birth through age two.

22. "Intellectual disability" means a diagnosis of the condition of intellectual disability, based on an individually administered standardized intelligence test and standardized measure of adaptive behavior, and made by an appropriately licensed professional.

~~16.~~23. "Intermediate care facility for individuals with intellectual disabilities" means a residential health facility operated pursuant to ~~regulation under~~title 42-CFR, Code of Federal Regulations, parts 442 and 483, et seq.

~~17.~~24. "License" means authorization by the department to provide a service to individuals with developmental disabilities, pursuant to North Dakota Century Code chapter 25-16.

~~18.~~25. "Licensee" means that entity which has received authorization by the department, pursuant to North Dakota Century Code chapter 25-16, to provide a service or services to individuals with developmental disabilities.

- ~~19.~~ ~~"Mental retardation" means a diagnosis of the condition of mental retardation, based on an individually administered standardized intelligence test and standardized measure of adaptive behavior, and made by an appropriately licensed professional.~~
- ~~20-26.~~ "Minimally supervised living arrangements" means either:
- a. A group home with an available client adviser; or
 - b. A community complex that provides self-contained rented units with an available client adviser.
27. "Person-centered service plan" means a plan that describes the individual's assessed needs, dreams, personal outcomes, and goals, and how the authorized services and natural supports provided will assist the individual in achieving their outcomes and live safely and successfully in the community.
28. "Prevocational services" means formalized training, experiences, and staff supports designed to prepare clients for paid employment in integrated community settings. Services are structured to develop general abilities and skills that support employability in a work setting. Services are not directed at teaching job-specific skills, but at specific habilitative goals outlined in the client's person-centered service plan.
29. "Primary caregiver" means a person who has assumed responsibility for supervision and assistance in meeting the needs of the client and who is not employed by or working under contract of a provider agency licensed pursuant to this chapter.
- ~~24-30.~~ "Principal officer" means the presiding member of a governing body, a chairperson, or president of a board of directors.
31. "Program management" means a process of interconnected steps which will assist a client in gaining access to needed services, including medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.
32. "Provider agency" means the organization or individual who has executed a Medicaid agreement with the department to provide services to individuals with developmental disabilities.
- ~~22-33.~~ "Resident" means an individual receiving services provided through any licensed residential facility or service.
34. "Residential services" means services provided in an intermediate care facility for individuals with intellectual disabilities, individualized supported living arrangement, minimally supervised living arrangement, transitional community living facility, supported living arrangement, family care option III, or congregate care.
- ~~23-35.~~ "Standards" means requirements which result in accreditation by the council on quality and leadership in supports for people with disabilities, certification as an intermediate care facility for individuals with intellectual disabilities, or for ~~extended-service~~individual employment supports results in accreditation by the commission on accreditation of rehabilitation facilities.
- ~~24-36.~~ "Supported living arrangement" means a program providing a variety of types of living arrangements that enable individuals with disabilities to have choice and options comparable to those available to the general population. Clients entering this service shall have the effects of any skill deficits subject to mitigation by the provision of individualized training and follow-along services.

~~25-37.~~ "Transitional community living facility" means a residence for clients with individualized programs consisting of social, community integration, and daily living skills development preliminary to entry into less restrictive settings.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; July 1, 2001; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-02. License required.

No individual, association of individuals, partnership, limited liability company, or corporation shall offer or provide a service or own, manage, or operate a facility offering or providing a service to more than ~~four~~two individuals with developmental disabilities without first having obtained a license from the department unless the facility is:

1. Exempted by ~~subsection 1 or 2 of~~ North Dakota Century Code section ~~15-59.3-02~~15.1-34-02; or
2. ~~A health care facility, as defined in North Dakota Century Code section 23-17.2-02, other than an intermediate care facility for individuals with intellectual disabilities; or~~
- ~~3.~~ Operated by a nonprofit corporation that receives no payments from the state or any political subdivision and provides only day supports for six or fewer individuals with developmental disabilities. "Payment" does not include donations of goods and services or discounts on goods and services.

Licensure does not create an obligation for the state to purchase services from the licensed facility.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 2001; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-02

75-04-01-04. License denial, ~~suspension,~~ or revocation.

The department may deny a license to an applicant ~~or suspend~~ or revoke an existing license upon a finding of noncompliance with the rules of the department.

1. If the department denies a license, the applicant may not reapply for a license for a period of six months from the date of denial. After the six-month period has elapsed, the applicant may submit a new application to the department.
2. If the department revokes a license, the licensee may not reapply for a license for a period of one year from the date of the revocation. After the one-year period has elapsed, the licensee may submit a new application to the department.
3. A license denial or revocation may affect all or some of the services and facilities operated by a licensee, as determined by the department.

History: Effective April 1, 1982; amended effective June 1, 1986; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03, 25-16-08

75-04-01-05. Notification ~~of denial, suspension, or revocation~~ of license.

1. The department shall, within sixty days from the date of the receipt of an application for a license, or upon finding a licensee in noncompliance with the rules of the department, notify

the applicant or licensee's principal officer of the department's intent to grant, deny, ~~suspend,~~ or revoke a license.

2. The department shall notify the applicant or licensee in writing. Notification is made upon deposit with the United States postal service. The notice of denial, ~~suspension,~~ or revocation shall identify any rule or standard alleged to have been violated and the factual basis for the allegation, the specific service or facility responsible for the violation, the date after which the denial, ~~suspension,~~ or revocation is final, and the procedure for appealing the action of the department.
3. The applicant or licensee may appeal the denial, ~~suspension,~~ or revocation of a license by written request for an administrative hearing, mailed or delivered to the department within ten days of receipt of the notice of intent to deny, ~~suspend,~~ or revoke. The hearing must be governed by the provisions of chapter 75-01-03.
4. The licensee may continue to provide services until the final appeal decision is rendered. If clients have been removed from the licensed facility because of a health, welfare, or safety issue, they shall remain out of the facility while the appeal is pending.
5. The licensee, upon final revocation notification, shall return the license to the department immediately.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-08

75-04-01-06. Disclosure of criminal record.

1. Each member of the governing body of the applicant, the chief executive officer, and any employees, volunteers, or agents who receive and disburse funds on behalf of the governing body, or who provide any direct service to clients, shall disclose to the department ~~any conviction of~~ that they have been found guilty of, pled guilty to, or pled no contest to a criminal offense.
2. The applicant or licensee shall conduct federal and state criminal background checks on all persons employed who work with clients, including volunteers. If the applicant or licensee is contracting or subcontracting with other entities, there must be an agreement ensuring federal and state criminal background checks have been completed on all persons employed who work with clients, including volunteers.
3. The applicant or licensee shall disclose to the department the names, type of offenses, dates of ~~conviction~~ having been found guilty of, pled guilty to, or pled no contest to a criminal offense, and position and duties within the applicant's organization of employees and volunteers with a criminal record.
4. Such disclosure must not disqualify the applicant from licensure or an individual from employment or volunteering, unless ~~the conviction~~ having been found guilty of, pled guilty to, or pled no contest to, is for a crime having direct bearing on the capacity of the applicant, employee, or volunteer to provide a service under the provision of this chapter ~~and/or~~ the convicted individual applicant, employee, or volunteer is not sufficiently rehabilitated ~~under North Dakota Century Code section 12-1-33-02.1.~~
5. The department shall determine the effect of ~~a conviction of an~~ an applicant, employee, or volunteer having been found guilty of, pled guilty to, or pled no contest to a criminal offense.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03.1

75-04-01-06.1. Criminal conviction - Effect on operation of facility or employment by facility.

1. A facility operator may not be, and a facility may not employ in any capacity that involves or permits contact between the employee or volunteer and any individual cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; ~~12.1-17, assaults—threats—coercion if a class A misdemeanor or a felony; or~~ 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; ~~North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections~~ 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; ~~or~~ 12.1-31-05, child procurement; 14-09-22, abuse of child; or 14-09-22.1, neglect of child; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or
 - b. An offense, other than an offense identified in subdivision a, if the department determines that the individual has not been sufficiently rehabilitated.
2. For purposes of subdivision b of subsection 1, an offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.
3. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of services to individuals with developmental disabilities.
4. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
5. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - a. Common knowledge in the community;
 - b. Acknowledged by the individual; ~~or~~
 - c. Reported to the facility as the result of an employee background check; or

d. Discovered by the department.

History: Effective July 1, 2001; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03, 25-16-03.1

75-04-01-07. Content of license.

A license issued by the department must include the legal name of the licensee, the address or location where services are provided, the occupancy or service limitations of the licensee, the unique services authorized for provision by the licensee, and the expiration date of the license.

History: Effective April 1, 1982; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-05

75-04-01-08. Types of licenses.

1. A license issued pursuant to this chapter must be denominated "license"; or "provisional license"; ~~or "special provisional license".~~
2. A "license" is unrestricted. The department shall issue a license to any applicant who complies with the rules and regulations of the department and North Dakota Century Code section 25-16-03, and who is accredited by the accreditation council for services for individuals with disabilities, or for extended employment services accredited by the rehabilitation accreditation commission (CARF). The license is nontransferable, expires not more than one year from the effective date of the license, and is valid for only those services or facilities identified thereon.
3. A "provisional license" may be issued subject to the provision of section 75-04-01-09.

~~4. A "special provisional license" may be issued subject to the provision of section 75-04-01-10.~~

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-09. Provisional license.

1. A provisional license may be issued to an applicant or licensee with an acceptable plan of correction notwithstanding a finding of noncompliance with the rules of the department and North Dakota Century Code section 25-16-03. A provisional license must not be issued to an applicant whose practices or facilities pose a clear and present danger to the health and safety of individuals with developmental disabilities, including fire safety requirements as evidenced in writing by the fire marshal, negligent or intentional misrepresentations to the department regarding any aspect of the applicant's or licensee's operations, or any violation that places a client's life in danger.
2. A provisional license may be issued for any or all services provided or facilities operated by an applicant or licensee as determined by the department.
3. Upon a finding that the applicant or licensee is not in compliance ~~with the rules,~~ the department ~~may~~shall notify the applicant or licensee, in writing, of its intent to issue a provisional license. The notice must provide the reasons for the action, the specific services that are affected by the provisional license, and ~~must~~ describe the corrective actions required of the applicant, ~~which, if taken, will result in the issuance of an unrestricted license or licensee.~~

~~3.4.~~ The applicant or licensee shall, within ten days of the receipt of notice under subsection ~~23~~, submit to the department, on a form provided, a plan of correction. The plan of correction must include the elements of noncompliance, a description of the corrective action to be undertaken, and a date certain of compliance. The department may accept, modify, or reject the applicant's or licensee's plan of correction and shall notify the licensees of their decision within thirty days. If the plan of correction is rejected, the department shall notify the applicant or licensee that the license has been denied or revoked. The department may conduct periodic inspection of the facilities and operations of the applicant or licensee to evaluate the implementation of a plan of correction.

5. The department will terminate a provisional license and issue an unrestricted license to the applicant or licensee upon successful completion of an accepted plan of correction, as determined by the department.

~~4.6.~~ A provisional license may be issued for any period not exceeding one year. A provisional license may be renewed for an additional six months only upon ~~successful completion of an accepted plan of correction~~ the department's determination that the applicant or licensee has made significant progress toward meeting the standards identified in the plan of correction or that the applicant or licensee has shown good cause for failure to implement the plan of correction. A provisional license is nontransferable and valid only for the facilities or services identified thereon. Notice of the granting of a provisional license, or of a decision to modify or reject a plan of correction, may be appealed in the same manner as a notice of denial or revocation of a license.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-10. Special provisional license.

Repealed effective January 1, 2017.

~~1. A licensee or applicant may submit an application, on a form provided, for a special provisional license, permitting the provision of a new service, the occupancy of a facility, or the vacation of a facility provided that:~~

~~a. The new service is in conformity with the service definitions of these rules or is a service designed by and recognized through policy issued by the developmental disabilities division of the department and, upon completion of the rule promulgation process, will be a service able to be licensed under this chapter; or~~

~~b. The issuance of the special provisional license is required by a natural disaster, calamity, fire, or other dire emergencies.~~

~~2. A special provisional license issued for this purpose must include the dates of issuance and expiration, a description of the service or facility authorized, an identification of the licensee to whom the special provisional license is issued, and any conditions required by the department.~~

~~**History:** Effective April 1, 1982; amended effective December 1, 1995.~~

~~**General Authority:** NDCC 25-16-06, 50-06-16~~

~~**Law Implemented:** NDCC 25-16-03~~

75-04-01-11. License renewal.

The licensee shall submit to the department, on a form or forms provided, an application for a license not later than sixty days prior to the expiration date of a valid license. If the provider agency

continues to meet all standards established by the rules under this chapter, the department shall issue a license renewal annually on the expiration date of the previous year's license.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-12. Display of license.

The licensee shall place any license, ~~provisional license,~~ or ~~special~~-provisional license in an area accessible to the public and where it may be readily seen. Licenses need not be placed on display in residences or residential areas of a facility, but must be available to the public or the department upon request.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-12.1. Provider agreement.

Licensees shall sign a Medicaid provider agreement and required addendums with the department to provide services to individuals with developmental disabilities.

History: Effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-13. Purchase of service or recognition of unlicensed entities.

The department ~~shall~~may not recognize or approve the activities of unlicensed entities in securing public funds from the United States, North Dakota, or any of its political subdivisions, ~~nor shall it.~~ The department may not purchase any service from such entities.

History: Effective April 1, 1982; amended effective June 1, 1986; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03

75-04-01-14. Unlicensed entities - Notification.

Upon a determination that activities subject to licensure are occurring or have occurred, the department shall notify the parties ~~thereto~~ that the activities are subject to licensure. The notice must include a citation of the applicable provisions of these rules, an application for a license, a date ~~certain~~ when by which the application must be submitted, and, if applicable, a request for the parties to explain that the activities identified in the notification are not subject to licensure. The parties shall receive notification within seven days and the entity shall be required to submit a complete application to the department within thirty days of notice.

History: Effective April 1, 1982; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-16-02

75-04-01-15. Standards of the department.

The department herein adopts and makes a part of these rules for all licensees the current standards used for accreditation by the council on quality and leadership in supports for people with disabilities, additionally, for intermediate care facilities for individuals with intellectual disabilities, standards for certification under title 42-CFR, Code of Federal Regulations, parts 442 and 483 et seq.,

or for ~~extended service~~ employment supports, by the rehabilitation accreditation commission (CARF). If a licensee fails to meet an accreditation standard, the department may analyze the licensee's failure using the appropriate ~~1990~~ current standards of the council on quality and leadership in supports for people with disabilities. Infant development licensees who have attained accreditation status by the council on quality and leadership in supports for people with disabilities are not required to maintain accreditation status.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; May 1, 2006; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-17. Identification of basic services subject to licensure.

Services provided to ~~more than four individuals with developmental disabilities in treatment or care centers~~ eligible clients must be identified and licensed by the following titles:

1. ~~Residential services:~~

~~a. Individualized supported living arrangement;~~

~~b. Community intermediate care facility for individuals with intellectual disabilities of fifteen beds or less;~~

~~c. Institutional intermediate care facility for individuals with intellectual disabilities of sixteen or more beds;~~

~~d.~~ 2. Minimally supervised living arrangement;

~~e.~~ 3. Transitional community living facility;

~~f.~~ 4. Supported living arrangement;

~~g. Family support services; or~~

~~h.~~ 5. Congregate care;

6. Family care option III;

~~2.~~ 7. Day services:

~~a. Day supports;~~

~~b. Extended service; or~~

~~c. Infant development.~~ habilitation;

8. Intermediate care facility for individuals with intellectual disabilities;

9. Employment services:

a. Individual employment supports; or

b. Small group employment supports;

10. Prevocational services;

11. Family support services;

a. Parenting supports;

b. In-home supports;

c. Extended home health care; or

d. Family care option; or

12. Infant development services.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 1996; July 1, 2001; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06

75-04-01-20. Applicant guarantees and assurances.

1. Applicants shall submit, in a manner prescribed by the department, evidence that policies and procedures approved by the governing body are written and implemented in a manner which:
 - a. Guarantees each client ~~an individual program~~ a person-centered service plan pursuant to the provisions of North Dakota Century Code section 25-01.2-14;
 - b. Guarantees that each client, parent, guardian, or advocate receives written notice of the client's rights in the manner provided by North Dakota Century Code section 25-01.2-16;
 - c. Guarantees that each client admission is subject to a multidisciplinary determination that placement is appropriate pursuant to North Dakota Century Code section 25-01.2-02;
 - d. Guarantees the client the right to receive the services and supports included in his or her person-centered service plan in a timely manner to fully participate in the benefits of community living, the opportunity to vote, to worship, to interact socially, to freely communicate and receive guests, to own and use personal property, to unrestricted access to legal counsel, and guarantees that all rules regarding such conduct are posted or made available pursuant to North Dakota Century Code sections 25-01.2-03, 25-01.2-04, and 25-01.2-05;
 - e. Guarantees that such restrictions as may be imposed upon a client relate solely to capability and are imposed pursuant to the provisions of ~~an individual program~~ a person-centered service plan;
 - f. Guarantees the confidentiality of all client records;
 - g. Guarantees that the client receives adequate remuneration for compensable labor, that subminimum wages are paid only pursuant to title 29-CFR, Code of Federal Regulations, part 525, et seq., that the client has the right to seek employment in integrated settings, that restrictions upon client access to money are subject to the provisions of ~~an individual program~~ a person-centered service plan, that assets managed by the applicant on behalf of the client inure solely to the benefit of that client, that each client has a money management plan or documented evidence of the client's capacity to manage money, and that, in the event the applicant is a representative payee of a client, the informed consent of the client is obtained and documented;
 - h. Guarantees the client access to appropriate and timely medical and dental care and adequate protection from infectious and communicable diseases, and guarantees effective control and administration of medication, as well as prevention of drug use as a substitute for programming;

- i. Guarantees the client freedom from corporal punishment, ~~guarantees the client freedom from~~ imposition of isolation, seclusion, chemical, physical, or mechanical restraint, except as prescribed by North Dakota Century Code section 25-01.2-10 or these rules, and guarantees the client freedom from psychosurgery, sterilization, medical behavioral research, pharmacological research, and electroconvulsive therapy, except as prescribed by North Dakota Century Code sections 25-01.2-09 and 25-01.2-11;
- j. Guarantees, where applicable, that a nutritious diet, approved by a qualified dietitian, will be provided in sufficient quantities to meet the client's dietary needs;
- k. Guarantees the client the right to choose and refuse services, who provides the services, the right of the client and the client's representatives to be informed of the possible consequences of the refusal, alternative services available, and specifically, the extent to which such refusal may harm the client or others;
- l. Assures the client safe and sanitary living and working arrangements and provides for emergencies or disasters and first-aid training for staff;
- m. Assures the existence and operation of both behavior management and human rights committees;
- n. Assures that residential services will coordinate with the developmental and remedial services outside the residential setting in which a client lives;
- o. Assures that adaptive equipment, where appropriate for toilet training, toileting, mobility, communication, or eating is provided in the service facility for use by individuals with ~~multiple~~ disabilities consistent with the person-centered service plan;
- p. Assures that all service staff demonstrate basic professional competencies as required by their job descriptions and complies with all required trainings, credentialing, and professional development activities;
- q. Assures that annual evaluations that measure program outcomes against previously stated goals and objectives are conducted;
- r. Assures that all vehicles transporting clients are subject to routine inspection and maintenance, licensed by the department of transportation, equipped with a first-aid kit and a fire extinguisher, carry no more individuals than the manufacturer's recommended maximum capacity, handicapped accessible, where appropriate, and are driven by individuals who hold a valid state driver's license;
- s. Assures that an annual inspection with a written report of safety program and practices is conducted in facilities providing day services;
- t. Guarantees that incidents of alleged abuse and neglect are thoroughly investigated and reported to the governing body, chief executive officer, parent, guardian or advocate, the protection and advocacy project, and the department with written records of these proceedings being retained for three years; guarantees that all incidents of restraint utilized to control or modify a client's behavior are recorded and reported to the governing body; guarantees that any incident resulting in injury to the client or agency staff that requires medical attention or hospitalization must be recorded and reported to the governing body immediately, and as soon thereafter as possible to the parent, guardian, or advocate; and guarantees that incidents resulting in injury to the client or agency staff that requires extended hospitalization, endangers life, or results in permanent disability must also be reported to the department immediately; and guarantees that corrective action plans are implemented;

- u. Guarantees that a grievance procedure, reviewed and approved by the department, affords the client or the client's parent or parents, guardian, or advocate the right to a fair hearing of any complaint; and guarantees that records of such hearings are maintained and must note therein the complaint, the names of the individuals complaining, and the resolution of the grievance;
- v. Assures that policies and procedures regarding admission to their services and termination of services are in conformance with the rules of the department;
- w. Assures that all documentation, data reporting requirements, rules, regulations, and policies are conducted as required by the department; and
- x. Assures that all applicable federal and state laws and regulations are being abided by.

2. Accredited applicants shall submit evidence, satisfactory to the department, of accreditation.
3. The department shall determine the degree to which the unaccredited applicant's policies and procedures are in compliance with the standards ~~must be determined by the department.~~

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-20.2. Recording and reporting abuse, neglect, and use of restraint.

1. Licensees shall implement policies and procedures to assure that incidents of alleged abuse ~~and~~ neglect, and restraints:
 - a. Are reported to the governing ~~board, administrator~~ body, chief executive officer or designee of the provider agency, parent, guardian, advocate, and the protection and advocacy project;
 - b. Are thoroughly investigated, the findings reported to the governing ~~board~~ body, chief executive officer or designee of the provider agency, parent, guardian, advocate, and the protection and advocacy project and that the report and the action taken are recorded in writing and retained for three years; and
 - c. Are immediately reported to the department.

2. ~~Licensees shall record and report to the governing board any and all incidents of restraint utilized to control or modify the behavior of individuals with developmental disabilities.~~

- ~~3.~~ Incidents resulting in injury to the staff of the licensee or an individual with developmental disabilities, requiring medical attention ~~or~~ hospitalization, endangering life, or result in a permanent disability must be recorded and reported to the ~~chairman of the governing board~~ body, chief executive officer or designee of the provider agency and to the department immediately, and as soon thereafter as possible to the parent, guardian, or advocate.

- ~~4.~~ Incidents resulting in injury to the staff of the licensee or an individual with developmental disabilities, which require extended hospitalization, endanger life, or result in a permanent disability, ~~must also be immediately reported to the department.~~

History: Effective December 1, 1995; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06, 50-25.1-02

75-04-01-21. Legal status of applicant.

The applicant shall submit, in a form or manner prescribed by the department, the following items:

1. A correct and current statement of their articles of incorporation, bylaws, license issued by a local unit of government, partnership agreement, or any other evidence of legal registration of the entity;
2. A correct and current statement of tax exempt or taxable status under the laws of North Dakota or the United States;
3. A current list of partners or members of the governing body and any advisory board with their address, telephone number, principal occupation, term of office, and status as a consumer or ~~consumer~~client representative and any changes in this list since last submission;
4. A statement disclosing the owner of record of any buildings, facilities, or equipment used by the applicant, the relationship of the owner to the applicant, and the cost, if any, of such use to the applicant and the identity of the entity responsible for the maintenance and upkeep of the property;
5. A statement disclosing any financial benefit which may accrue to the applicant or applicants to be diverted to personal use, including director's fees or expenses, dividends, return on investment, rent or lease proceeds, salaries, pensions or annuities, or any other payments or gratuities; and
6. The amount of any payments made to any member or members of the governing board of the applicant or board of a related organization, exclusive of reimbursement for actual and reasonable personal expenses.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-22. Applicant's buildings.

Applicants occupying buildings, whether owned or leased, ~~must~~shall provide the department with a license or registration certificate properly issued pursuant to North Dakota Century Code chapter ~~15-59.3~~15.1-34 or 50-11 or with:

1. The written report of an authorized fire inspector, following an initial or subsequent annual inspection of a building pursuant to section 75-04-01-23, which states:
 - a. Rated occupancy and approval of the building for occupancy; or
 - b. Existing hazards and recommendations for correction which, if followed, would result in approval of the building for occupancy;
2. A statement prepared by a sanitarian or authorized public health officer, following an initial or subsequent annual inspection that the building's plumbing, water supply, sewer disposal, and food storage and handling meet acceptable standards to assure a healthy environment;
3. A written statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances; and
4. For existing buildings, floor plans drawn to scale showing the use of each room or area and a site plan showing the source of utilities and waste disposal; or

5. Plans and specifications of buildings and site plans for facilities, proposed for use, but not yet constructed, showing the proposed use of each room or area and the source of utilities and waste disposal.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06

75-04-01-24. Entry and inspection.

1. The applicant shall affirm the right of ~~duly authorized representatives of~~ the department, or designee, to enter any of the applicant's buildings or facilities and access to its records to determine the extent to which the applicant is in compliance with the rules of the department, to facilitate verification of the information submitted with an application for licensure, and to investigate complaints. Inspections must be scheduled for the mutual convenience of the department and the provider agency unless the effectiveness of the inspection would be substantially diminished by prearrangement.
2. The provider agency shall authorize the department, or designee, entry to its facilities and access to its records in the event the provider agency declares bankruptcy, transfers ownership, ceases operations, evicts residents of its facilities, or the contract with the department is terminated by either of the parties. The department's entry is for the purpose of facilitating the orderly transfer of clients to an alternative service or the maintenance of appropriate service until an orderly transfer can be made.

History: Effective April 1, 1982; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-26. Denial of access to facilities and records.

Any applicant or licensee which denies the department, or designee, access, ~~by the authorized representative of the department, to a facility or records, for the purpose of determining the applicant's state of compliance with the rules of the department~~ to a facility or its records, shall have its license revoked or its application denied.

History: Effective April 1, 1982; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-29. Group home bedrooms.

1. Bedrooms in group home facilities must accommodate no more than two individuals.
2. Bedrooms in group home facilities must provide at least eighty square feet [7.43 square meters] per individual in a single occupancy bedroom, and at least sixty square feet [5.57 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space. Bedrooms in newly constructed homes or existing homes converted to group home facilities completed after July 1, 1985, must provide at least one hundred square feet [9.29 square meters] per individual in a single occupancy bedroom, and at least eighty square feet [7.43 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space.
3. Bedrooms in group home facilities must be located on outside walls and separated from other rooms and spaces by walls extending from floor to ceiling and be at or above grade level.

4. Bedrooms in group home facilities must not have doors with vision panels and must ~~not~~ be capable of being locked from the inside of the bedroom, except where individuals may lock their own rooms as consistent with their programs when justified by a specific assessed need and documented in the person-centered service plan.
5. Bedrooms in group home facilities must provide furnishings which are appropriate to the psychological, emotional, and developmental needs of each individual. Each individual ~~shall~~must be provided a separate bed of proper size and height, a clean comfortable mattress, bedding appropriate to the climate, and a place for personal belongings. Individual furniture, such as a chest of drawers, table, or desk, and an individual closet with clothes racks and shelves must be provided. A mirror must be available to mobile individuals and a tilted mirror must be available to nonambulatory individuals.
6. Bedrooms in group home facilities must provide storage space for clothing in the bedroom which is accessible to all, including nonambulatory individuals.
7. Group home facilities shall provide space outside the bedrooms to be equipped for out-of-bed activities for all individuals not yet mobile, except for those who have a short-term illness or those for whom out-of-bed activity is a threat to life.

History: Effective June 1, 1986; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-40. Documentation and data reporting requirements.

1. Licensee shall submit and retain all requisite documentation to demonstrate the right to receive payment for all services and supports and comply with all federal and state laws, regulations, and policies necessary to disclose the nature and extent of services provided and all information to support claims submitted by, or on behalf of, the provider agency.
2. The department may require a licensee to submit a statement of policies and procedures, and evidence of the implementation of the statement. In order to facilitate a determination that the licensee is in compliance with the rules of the department and with North Dakota Century Code section 25-01-01.
3. Licensee shall maintain program records, fiscal records, and supporting documentation, including:
 - a. Authorization from the department for each client for whom service is billed;
 - b. Attendance sheets and other records documenting the days and times that the clients received the billed services from the licensee; and
 - c. Records of all bills submitted to the department for payment.
4. Licensee shall report the results of designated quality and performance indicators, as requested by the department.
5. Licensee shall retain a copy of the records required for six years from the date of the bill unless an audit in process requires a longer retention.
6. The department maintains the right to withhold a payment for services or suspend or terminate Medicaid enrollment if the licensee has failed to abide by terms of the Medicaid contract, federal and state laws, regulations, and policies regarding documentation or data reporting.

History: Effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

CHAPTER 75-04-02

PURCHASE OF SERVICE FOR ~~DEVELOPMENTALLY DISABLED PERSONS~~ INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

Section

75-04-02-01	Purchase of Service
75-04-02-02	Fiscal Requirement
75-04-02-03	Insurance and Bond Requirements [Repealed]
75-04-02-04	Disclosure of Ownership and Interest [Repealed]
75-04-02-05	Payments to Members of Governing Boards Restricted [Repealed]
75-04-02-06	Payments to Related Organizations Restricted
75-04-02-07	Articles and Bylaws of Provider <u>Agency</u>
75-04-02-08	Providers <u>Provider Agencies</u> Policies and Procedures
75-04-02-09	Recording and Reporting Abuse, Neglect, and Use of Restraint [Repealed]
75-04-02-10	Wages of Developmentally Disabled Persons [Repealed]
75-04-02-11	Access to Provider <u>Agency</u> Premises and Records
75-04-02-12	Lobbying and Political Activity
75-04-02-13	Indemnification
75-04-02-14	Grievance Procedure
75-04-02-15	Property Management and Inventory
75-04-02-16	Accounting for Funds
75-04-02-17	Rate of Reimbursement
75-04-02-18	Case <u>Program</u> Management

75-04-02-01. Purchase of service.

The department may purchase services only from licensed ~~providers~~ provider agencies in compliance with the requirements of this chapter.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-02. Fiscal requirement.

~~Providers~~ Provider agencies shall submit, no less than annually, a full financial disclosure including, but not limited to:

1. A statement of assets and liabilities-;
2. An operations statement-;
3. A statement disclosing contract income and client wages-;
4. A statement of client fees or payments and their distribution-, including private pay clients;
5. A statement showing the distribution of historical costs and a forecast of future costs-;
6. A statement of the assets and liabilities of any related organizations-;
7. Except for state-owned facilities and provider agencies that do not have an independent audit completed annually, a copy of an audited report of the provider agency's financial records from an independent certified public accountant. The audit must be conducted in accordance with generally accepted auditing standards. The information must be reconciled to each provider agency's statement of costs;

8. A statement of ownership for the provider agency, including the name, address, and proportion of ownership of each owner:

a. If a privately held or closely held corporation or partnership has an ownership interest in the provider agency, the provider agency shall report the name, address, and proportion of ownership of all owners of the corporation or partnership who have an ownership interest of five percent or more, except that any owner whose compensation or portion of compensation is claimed in the provider agency's statement of costs must be identified regardless of the proportion of ownership interest; or

b. If a publicly held corporation has an ownership interest of fifteen percent or more in the provider agency, the provider agency shall report the name, address, and proportion of ownership of all owners of the publicly held corporation who have an ownership interest of fifteen percent or more;

9. Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the provider agency's facilities or a certification that the content of the document remains unchanged since the most recent statement given pursuant to this subsection;

10. Supplemental information reconciling the costs on the financial statements with costs on the statement of costs; and

11. The following information upon request by the department:

a. Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services claimed as allowable costs;

b. Audited financial statements for any home or corporate office organization, excluding individual developmental disabilities provider agencies of a chain organization owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconciles costs on the financial statements to costs for the report year; and

c. Audited financial statements for every organization that the facility conducts business and is owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconciles costs on the financial statements to costs for the report year.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-06. Payments to related organizations restricted.

1. Payments, to related organizations, by the provider agency shall be limited to the actual and reasonable cost of the service received or the product purchased.

2. Financial transactions between the provider agency and the related organization shall be documented by the provider agency. The terms of such transactions shall be those which would be obtained by a prudent buyer negotiating at arms length with a willing and knowledgeable seller.

History: Effective April 1, 1982; amended effective June 1, 1985; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-07. Articles and bylaws of provider agency.

1. The articles, bylaws, or constitution of the provider agency shall identify ~~developmentally disabled persons~~individuals with developmental disabilities as eligible recipients of the ~~provider's~~provider agency's services and the provisions of those services as a purpose of the organization.
2. The articles, bylaws, or constitution of the provider agency shall authorize the governing board to enter into contracts, agreements, or any other arrangement to secure funds to provide services consistent with the ~~provider's~~provider agency's purpose.
3. The ~~provider's~~provider agency's dissolution provisions shall provide that the assets of the organization, which have been purchased, in whole or in part, with funds loaned or granted by the state or with the state's necessary approval, shall inure to the benefit of ~~developmentally disabled persons~~individuals with developmental disabilities and shall further provide that such assets shall be transferred subject to the approval of the department.

History: Effective April 1, 1982; amended effective August 1, 1984; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-08. ~~Providers~~Provider agencies policies and procedures.

The department may require a provider agency to submit a statement of policies and procedures, and evidence of the implementation of the statement, in order to facilitate a determination that the provider agency is in compliance with the rules of the department and with North Dakota Century Code section 25-01-01.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-11. Access to provider agency premises and records.

The provider agency shall authorize the department's entry to its facilities and access to its records, in the event the provider agency declares bankruptcy, transfers ownership, ceases operations, evicts residents of its facilities, or the contract with the department is terminated by either of the parties, for the purpose of facilitating the orderly transfer of clients to an alternative service or the maintenance of appropriate service until an orderly transfer can be made.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-03, 25-16-10

75-04-02-12. Lobbying and political activity.

~~Providers~~Provider agencies shall not utilize funds provided by or through the department to support lobbying, political candidates, or political activity.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-13. Indemnification.

Contracting ~~providers~~provider agencies may be required to indemnify and reimburse the department for any federal funds, the expenditure of which is disallowed as a consequence of the

~~provider's~~ provider agency's failure to establish and maintain adequate records or the ~~provider's~~ provider agency's failure to otherwise comply with written standards, rules and regulations, or statutes.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-14. Grievance procedure.

1. ~~Providers~~ Provider agencies shall submit to the department, for review and approval, a copy of a grievance procedure, approved by the governing board, which affords the ~~developmentally disabled person~~ individual with developmental disabilities, or that person's parents, guardian, or advocate, a fair hearing of any complaint.
2. The provider agency shall maintain a record of all hearings provided pursuant to its grievance procedure, and shall note therein the complaint, persons complaining, and the resolution of the grievance.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-10

75-04-02-15. Property management and inventory.

1. The provider agency shall establish and maintain policies and procedures for the management and maintenance of property and equipment purchased or depreciated with state funds.
2. An inventory of property and equipment meeting the description of subsection 1 shall be separately maintained and identified by serial number and descriptions.
3. The provider agency shall make the records, and items identified in them, available for inspection by the department upon request to facilitate a determination of the adequacy with which the applicant is managing property and equipment.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-16. Accounting for funds.

The provider agency shall establish and maintain financial records consistent with generally accepted accounting principles and the financial reporting requirements of the department.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-17. Rate of reimbursement.

1. The provider agency shall be reimbursed for services to ~~a developmentally disabled person~~ an individual with developmental disabilities on the basis of reasonable cost.
2. The rate of reimbursement shall be established pursuant to the applicable provisions of the manual for provider agency reimbursement of the department.
3. The applicant shall be subject to a financial audit pursuant to the provisions of the manual for provider agency reimbursement of the department.

4. The denial of access to financial records for audit purposes shall constitute a breach of a contract with the department.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-18. CaseProgram management.

Providers Provider agencies shall establish policies and procedures regarding admission to their services and termination of services in conformance with the North Dakota caseprogram management system.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-10

**CHAPTER 75-04-03
DEVELOPMENTAL DISABILITIES LOAN PROGRAM**

[Repealed effective January 1, 2017]

Section

- ~~75-04-03-01 — Definitions~~
- ~~75-04-03-02 — State and Federal Requirements~~
- ~~75-04-03-03 — Applicant Eligibility~~
- ~~75-04-03-04 — Location of Residential Facility~~
- ~~75-04-03-05 — Hazardous Areas [Repealed]~~
- ~~75-04-03-06 — Fire Protection [Repealed]~~
- ~~75-04-03-07 — Water Supply [Repealed]~~
- ~~75-04-03-08 — Sewage Disposal [Repealed]~~
- ~~75-04-03-09 — Residential Physical Plant~~
- ~~75-04-03-10 — Day Service Facilities~~
- ~~75-04-03-11 — Variance~~
- ~~75-04-03-12 — Financing~~
- ~~75-04-03-13 — Zoning~~
- ~~75-04-03-14 — Tax Exemption~~
- ~~75-04-03-15 — Facilities for the Chronically Mentally Ill~~
- ~~75-04-03-16 — Facilities for the Physically Handicapped~~
- ~~75-04-03-17 — Transfer and Assignment~~
- ~~75-04-03-18 — Reapplications~~

CHAPTER 75-04-05
REIMBURSEMENT FOR PROVIDERS PROVIDER AGENCIES OF SERVICES TO
INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

Section	
75-04-05-01	Definitions
75-04-05-02	Eligibility for Reimbursement
75-04-05-03	Startup Costs [Repealed]
75-04-05-04	Application for Advancement of Startup Costs [Repealed]
75-04-05-05	Allowable Startup Costs [Repealed]
75-04-05-06	Reimbursement Requirements - Startup Costs [Repealed]
75-04-05-07	Grants-in-Aid [Repealed]
75-04-05-08	Financial Reporting Requirements
75-04-05-09	Rate Payments
75-04-05-10	Reimbursement
75-04-05-11	Cost Report
75-04-05-12	Adjustment to Cost and Cost Limitation
75-04-05-13	Nonallowable Costs
75-04-05-13.1	Allowable Bad Debt Expense
75-04-05-14	Profit-Motivated Entities - Return on Investment
75-04-05-15	Depreciation
75-04-05-16	Interest Expense
75-04-05-17	Related Organization
75-04-05-18	Rental Expense Paid to a Related Organization
75-04-05-19	Taxes
75-04-05-20	Personal Incidental Funds
75-04-05-21	Transfer, Discharge, and Expulsion of Clients
75-04-05-22	Staff-to-Client Ratios
75-04-05-23	Staff Hours
75-04-05-24	Application

75-04-05-01. Definitions.

In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of **expenses****costs** in the period when incurred, regardless of when they are paid.
2. "Allowable cost" means the program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations.
3. "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable which were created or acquired in providing covered services that are eligible for reimbursement through medicaid federal financial participation.
4. "Basic services" means all of the services that provider agencies deliver to clients, including nondevelopmental disabilities services.
5. "Board" means all food and dietary supply costs.
6. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used for client care.

- ~~5-7.~~ "Client~~Client"~~ means eligible individuals with an individual found eligible as determined through the application of chapter 75-04-06 for services coordinated through developmental disabilities program management, on whose behalf services are provided or purchased.
- ~~6.~~ "Consumer" means an individual with developmental disabilities.
- ~~7.~~ "Consumer representative" means a parent, guardian, or relative, to the third degree of kinship, of an individual with developmental disabilities.
8. "Community contribution" means a contribution to a civic organization or sponsorship of community activities. Community contribution does not include a donation to a charity.
- ~~9.~~ "Consumer" means an individual with developmental disabilities.
- ~~10.~~ "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 providership are divided for purposes of cost assignment and allocations.
- ~~9-11.~~ "Day supports~~habilitation"~~ means a day program to assist individuals acquiring, retaining, and improving skills necessary to successfully reside in a community setting. Services may include assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills; provision of social, recreational, and therapeutic activities to maintain physical, recreational, personal care, and community integration skills; development of non-job task oriented prevocational skills such as compliance, attendance, task completion, problem-solving, and safety; and supervision for health and safety of scheduled activities, formalized training, and staff supports to promote skill development for the acquisition, retention, or improvement in self-help, socialization, and adaptive skills. Activities should focus on improving a client's sensory, motor, cognitive, communication, and social interaction skills.
- ~~10-12.~~ "Department" means the North Dakota department of human services.
- ~~13.~~ "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
- ~~14.~~ "Depreciable asset" means a capital asset or other asset for which the cost must be capitalized for statement of costs purposes.
- ~~15.~~ "Depreciation guidelines" means the American hospital association's guidelines as published by American hospital publishing, inc., in the most recently published "Estimated Useful Lives of Depreciable Hospital Assets".
- ~~14-16.~~ "Documentation" means the furnishing of written records including original invoices, contracts, timecards, and workpapers prepared to complete reports or for filing with the department.
- ~~12.~~ "Extended services" means a federally mandated component designed to provide employment-related, ongoing support for an individual in supported employment upon completion of training, or on or off the job employment-related support for individuals needing intervention to assist them in maintaining employment. This may include job development, replacement in the event of job loss and, except for those individuals with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite. If offsite monitoring is appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month.
- ~~17.~~ "Employment support" means ongoing supports to assist clients in maintaining paid employment in an integrated setting. Services are designed for clients who need intensive ongoing support to perform in a work setting. Service includes on-the-job or off-the-job

employment-related support for clients needing intervention to assist them in maintaining employment, including job development. Employment support includes individual employment support and small group employment support.

~~13-18.~~ "Facility-based" means a ~~workshop~~facility for individuals with developmental disabilities licensed by the department to provide day services. This definition is not to be construed to include areas of the building determined by the department to exist primarily for nontraining or for production purposes.

~~14-19.~~ "Fair market value" means value at which an asset could be sold in the open market in an arm's-length transaction between unrelated parties.

~~15-20.~~ "Family support services" means a family-centered support service authorized for a client based on the primary caregiver's need for support in meeting the health, developmental, and safety needs of the client in order for the client to remain in an appropriate home environment.

21. "Fixed equipment" means equipment used for client care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.

~~16-22.~~ "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.

23. "Group home" means any community residential service facility, licensed by the department pursuant to North Dakota Century Code chapter 25-16, housing more than two individuals with developmental disabilities. "Group home" does not include a community complex with self-contained rental units.

~~17-24.~~ "Historical cost" means those costs incurred and recorded on the facility's accounting records as a result of an arm's-length transaction between unrelated parties.

~~18-25.~~ "Individual service plan" means an individual plan that identifies service needs of the eligible client and the services to be provided, and which is developed by the developmental disabilities case manager and the client or that client's legal representative, or both, considering all relevant input.

~~19-26.~~ "Individualized supported living arrangements" means a residential support services option in which services are authorized for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.

~~20-27.~~ "Interest" means the cost incurred with the use of borrowed funds.

28. "Intermediate care facility for individuals with intellectual disabilities" means a residential health facility operated pursuant to title 42, Code of Federal Regulations, parts 442 and 483, et seq.

29. "Land improvements" means any improvement to the land surrounding the facility used for client care and identified as such in the depreciation guidelines.

~~21-30.~~ "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the ~~American hospital association~~ depreciation guidelines.

~~22-31.~~ "Net investment in fixed assets" means the cost, less accumulated depreciation and the balance of notes and mortgages payable.

32. "Nonfacility based" means a community-based service for individuals with developmental disabilities licensed by the department to provide day services.
33. "Other asset" means any asset that has a life of more than one year and has a cost of five thousand dollars or greater.
34. "Person-centered service plan" means a plan that describes the individual's assessed needs, dreams, personal outcomes, and goals, and how the authorized services and natural supports provided will assist the individual in achieving their outcomes and live safely and successfully in the community.
35. "Prevocational services" means formalized training, experiences, and staff supports designed to prepare clients for paid employment in integrated community settings. Services are structured to develop general abilities and skills that support employability in a work setting. Services are not directed at teaching job-specific skills, but at specific habilitative goals outlined in the client's person-centered service plan.
36. "Provider agency" means the organization or individual who has executed a Medicaid agreement with the department to provide services to individuals with developmental disabilities.
- ~~23.~~37. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.
- ~~24.~~38. "Related organization" means an organization which a provider agency 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 agency. Control exists when an individual or an organization has the power, directly or indirectly, significantly to influence or direct the action or policies of an organization or institution.
39. "Residential services" means services provided in an intermediate care facility for individuals with intellectual disabilities, individualized supported living arrangement, minimally supervised living arrangement, transitional community living facility, supported living arrangement, family care option III, or congregate care.
- ~~25.~~40. "Room" means the cost associated with the provision of shelter, housekeeping staff or purchased housekeeping services and the maintenance thereof, including depreciation and interest or lease payments of a vehicle used for transportation of clients.
- ~~26.~~41. "Service" means the provision of living arrangements and programs of daily activities subject to licensure by the department.
- ~~27.~~42. "Staff training" means an organized program to improve staff performance.
43. "Top management personnel" means owners; board members; corporate officers; general, regional, and district managers; administrators; and any other person performing functions ordinarily performed by such personnel.
- ~~28.~~44. "Units of service" for billing purposes means:
- a. (1) In residential ~~settings~~services, one ~~individual~~client served for one 24-hour day;
 - (2) In day ~~service~~settingshabilitation, prevocational services, employment services, one ~~individual~~client served for ~~one hour; and~~fifteen minutes; or

(3) ~~In extended services, one individual served for one hour of job coach intervention~~In in-home support settings, one client served for one hour.

- b. The day of admission and the day of death, but not the day of discharge, are treated as a day served for residential services.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; May 1, 2006; July 1, 2010; January 1, 2013; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-02. Eligibility for reimbursement.

~~Providers~~Provider agencies of service are eligible for reimbursement for the costs of rendered services contingent upon the following:

1. The provider agency, other than a state-owned or state-operated provider agency, ~~holds, and is required to hold;~~ a current valid license; issued pursuant to the provisions of chapter 75-04-01 authorizing the delivery of the service, the cost of which is subject to reimbursement.
2. The ~~provider's~~provider agency's clients have on file with the department a current individual service plan.
3. The provider agency has a current valid purchase of service agreement with the department authorizing the reimbursement.
4. The provider agency adopts and uses a system of accounting prescribed by the department.
5. The provider agency participates in the program audit and utilization review process established by the department.
6. The provider agency is in compliance with ~~chapter~~all documentation requirements in chapters 75-04-01 and 75-04-02.
7. ~~Providers~~Provider agencies, as a condition of eligibility for reimbursement for ~~the cost of services~~ provided to individuals with developmental disabilities, ~~must~~shall accept, as payment in full, sums paid in accordance with the final rate of reimbursement.
8. ~~Providers~~Provider agencies must obtain approval from the department for addition of square footage if the cost of the additional space is to be reimbursed by the department.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-08. Financial reporting requirements.

1. Records.

- a. The provider agency shall maintain on the premises the required census records and financial information sufficient to provide for a proper state and federal audit or review. For any cost being claimed on the cost report, sufficient data must be available as of the audit date to fully support the report item.
- b. If several programs are associated with a group and their accounting and reports are centrally prepared, additional fiscal information ~~shall~~must be submitted for costs, undocumented at the reporting facility, with the cost report or provided prior to the audit

or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost.

- c. Each provider agency shall maintain, for a period of not less than ~~five~~six years following the date of submission of the cost report to the department, financial and statistical records of the period covered by such cost report which are accurate and in sufficient detail to substantiate the cost data reported. If an audit has begun, but has not been finally resolved, the financial and statutory records relating to the audit ~~shall~~must be retained until final resolution. Each provider agency shall make such records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives thereof.

2. Census records. Adequate census records for all consumers, regardless of payer source, must be prepared and maintained on a daily basis by the provider agency to allow for proper audit of the census data. The daily census records must include:

a. Identification of the consumer;

b. Entries for all days that services are offered, including the duration of service, and not just by exception; and

c. Identification of type of day, i.e., hospital or in-house consumer day.

3. Accounting and reporting requirements.

- a. The accounting system must be double entry.
- b. The basis of accounting for reporting purposes must be accrual in accordance with generally accepted accounting principles. Ratesetting procedures will prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles.
- c. To properly facilitate auditing, the accounting system must be maintained in a manner that will allow cost accounts to be grouped by cost center and readily traceable to the cost report.
- d. The forms for annual reporting for reimbursement purposes must be the report forms designated by the department. The department will send a letter to a provider agency containing budget instructions one hundred twenty days prior to the start of the ~~provider's~~provider agency's fiscal year. The provider agency shall submit the statement of budgeted costs to the department within sixty days of the date of the letter consistent with the budget guidelines for establishing an interim rate in the subsequent year. The department shall issue the ~~provider's~~provider agency's interim rate within sixty days of the receipt of a ~~provider's~~provider agency's budget. ~~Providers~~Provider agencies must submit requests for information and responses to the department in writing. In computing any period of time prescribed or allowed in this subdivision, the day of the act, event, or default from which the designated period of time begins to run may not be included. The last day of the period so computed must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. In determining whether the deadline described in this subsection is met, the department shall not count any day in which sufficient information has not been timely provided by a provider agency when the provider agency has shown good cause for its inability to provide the required information within the time periods prescribed in this subdivision.
- e. A cost report must contain the actual costs, adjustments for nonallowable costs, and units of service for establishing the final rate. The mailing of a cost report by registered mail, return receipt requested, will ensure documentation of the filing date.

- f. Adjustments made by the audit unit, to determine allowable cost, though not meeting the criteria of fraud or abuse on their initial identification, ~~could~~ may, if repeated on future cost filings, be considered as possible fraud or abuse. The audit unit will forward all such items identified to the appropriate investigative unit.

3.4. Auditing. In order to properly validate the accuracy and reasonableness of cost information reported by the provider agency, the department shall provide for audits as necessary.

- a. A provider agency shall submit its cost report ninety days from the last day of the ~~provider's~~ provider agency's fiscal year.
- b. A provider agency may request, and the department may grant, one thirty-day extension of the due date of the cost report for good cause. If an extension is granted, no penalty will apply during the extension period. The grant of a thirty-day extension does not extend the implementation of the penalty as described in subdivision a of subsection 4.5 if the cost report is not received by the extended due date.
- c. The preliminary audit report shall be submitted to the provider agency no later than twelve months after the department receives the ~~provider's~~ provider agency's cost report.
- d. The provider ~~shall~~ agency may submit a preliminary response to the preliminary audit report to the department within forty-five days of receipt of the preliminary audit report.
- e. The final audit report shall be submitted to the provider agency within ninety days of the department's receipt of the preliminary response.
- f. ~~Providers must~~ Provider agencies shall submit requests for information and responses to the department in writing. In computing any period of time prescribed or allowed in this ~~subdivision~~ subsection, the day of the act, event, or default from which the designated period of time begins to run may not be included. The last day of the period so computed must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. In determining whether the deadlines described in subdivision c, d, or e have been met, the department ~~shall~~ may not count any day ~~in which~~ that sufficient information has not been timely provided by a provider agency when the provider agency has shown good cause for its inability to provide the required information within the time periods prescribed in any one of those subdivisions.

4.5. Penalties.

- a. If a provider agency fails to file its cost report on or before the due date, the department shall assess against the provider agency a nonrefundable penalty of one percent of one-twelfth of final allowable costs for each month in which the cost report was not timely filed. Final allowable costs means a program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations for the cost report year being reported.
- b. At the time of audit and final computation for settlement, the department may invoke a penalty of five percent of a ~~provider's~~ provider agency's administrative costs for the period of deficiency if:
 - (1) Poor or no daily census records are available to document client units. Poor census records exist if those records are insufficient for audit verification of client units against submitted claims for reimbursement.
 - (2) After identification and notification through a previous audit, a provider agency continues to list items exempted in audit as allowable costs on the cost report.

- c. Penalties may be separately imposed for each violation.
- d. No penalty may be waived by the department except those described in subdivision b and only then upon a showing of good cause.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; August 1, 1997; July 1, 2001; May 1, 2006; [January 1, 2017](#).

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~[25-18-03](#), 50-24.1-01

75-04-05-09. Rate payments.

1. Except for intermediate care facilities for individuals with intellectual disabilities, payment rates will be established for training, room, and board.
2. Interim rates based on factors including budgeted data, as approved, will be used for payment of services during the year.
3. Room and board charges to clients may not exceed the maximum supplemental security income payment less ~~twenty-five~~[one hundred](#) dollars for the personal incidental ~~expenses~~[costs](#) of the client, plus the average dollar value of food stamps to the eligible clientele in the facility. If the interim room and board rate exceeds the final room and board rate, the provider [agency](#) shall reimburse clients in a manner approved by the department.
4. In residential facilities where rental assistance is available to individual clients or the facility, the rate for room costs chargeable to individual clients ~~will be~~[are](#) established by the governmental unit providing the subsidy.
5. In residential facilities where energy assistance program benefits are available to individual clients or the facility, room and board rates ~~will be~~[are](#) reduced to reflect the average annual dollar value of the energy assistance program benefits.
6. Income from client production must be applied to client wages and the cost of production. The department will not participate in the gains or losses associated with client production conducted pursuant to the applicable provision of [title 29-GFR, Code of Federal Regulations, part 525](#).
7. The final rate established is payment of all allowable, reasonable, and actual costs for all elements necessary to the delivery of a basic service to eligible clients subject to limitations and cost offsets of this chapter.
8. A provider [agency](#) may not solicit or receive a payment from a client or any other individual to supplement the final rate of reimbursement.
9. The rate of reimbursement established must be no greater than the rate charged to a private payor for the same or similar service.
10. The department will determine interim and final rates of reimbursement for continuing contract ~~providers~~[provider agencies](#) based upon cost data from the:
 - a. Submission requirements of section 75-04-05-02; and
 - b. Field and desk audits.
11. The department shall base rates of continuing service ~~providers~~[provider agencies](#), except for those identified in subdivision f of subsection 3 of section 75-04-05-10, on the following:

- a. For rates for continuing contract ~~providers~~provider agencies, who have had no increase in the number of clients the provider agency is licensed to serve: ninety-five percent of the rated occupancy established by the department, or actual occupancy, whichever is greater.
 - b. For rates for continuing service ~~providers~~provider agencies who have an increase in the number of clients the provider agency is licensed to serve in an existing service:
 - (1) Subdivision a of subsection 11 of section 75-04-05-09 for the period until the increase takes effect; and
 - (2) Ninety-five percent of the projected units of service for the remaining period of the fiscal year based upon an approved plan of integration or actual occupancy, whichever is greater.
 - c. When establishing the final rates, the department may grant nonenforcement of subdivisions a and b of subsection 11 of section 75-04-05-09 when it determines the ~~provider implemented~~provider agency implemented cost-containment measures consistent with the decrease in units, or when it determines that the ~~provider's~~provider agency's implementation of cost-containment measures consistent with the decrease in units would have imposed a detriment to the well-being of its clients.
 - (1) Acceptable cost-containment measures include a decrease in actual salary and fringe benefit costs from the approved salary and fringe benefit costs for the day service or group home proportionate to the decrease in units.
 - (2) Detriment to the well-being of clients includes a forced movement from one group home to another or obstructing the day service movement of a client in order to maintain the ninety-five percent rated occupancy requirement.
12. Adjustments and appeal procedures are as follows:
- a. A rate adjustment may be made to correct an error.
 - b. A final adjustment will be made for a facility that has terminated participation in the program.
 - c. A provider agency may submit a request for reconsideration of the rate in writing to the ~~disability services~~developmental disabilities division within fifteen ~~calendar~~ days of the date of the final rate notification. A request for reconsideration must provide new evidence indicating why a new determination should be made or explain how the department has incorrectly interpreted the law. The department shall respond to a properly submitted request for reconsideration within ninety ~~calendar~~ days of receipt of the request. The department may redetermine a rate on its own motion.
 - d. ~~If a provider is dissatisfied with the decision resulting from the request for reconsideration, the~~A provider agency may appeal the decision within thirty days after the department mails the written notice of the decision ~~resulting from the~~on a request for reconsideration of the final rate.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 1995; April 1, 1996; August 1, 1997; July 1, 2001; May 1, 2006; July 1, 2012; January 1, 2013; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-10. Reimbursement.

Reported allowable costs will be included in determining the interim and final rate. The method of finalizing the reimbursement rate per unit will be through the use of the retrospective ratesetting system.

1. Retrospective ratesetting requires that an interim rate be established prior to the year in which it will be effective. **Providers**Provider agencies are required to submit a statement of budgeted costs to the department no less than annually so an interim rate may be determined. The determination of a final rate for all services begins with the reported cost of the **provider's**provider agency's operations for that fiscal year. Once it has been determined that reported costs are allowable, reasonable, and client-related, those costs are compared to the reimbursements received through the interim rate.
2.
 - a. Settlements will be made through a recoupment or refund to the department for an overpayment or an additional payment to the provider agency for an underpayment.
 - b. Interprovider settlements between intermediate care facilities for individuals with intellectual disabilities and day services will be made through a recoupment or refund to the department from the day service provider agency to correct an overpayment; or a payout to the intermediate care facilities for individuals with intellectual disabilities, for the day service provider agency, to correct an underpayment.
3. Limitations.
 - a. The department shall accumulate and analyze statistics on costs incurred by **providers**provider agencies. Statistics may be used to establish reasonable ceiling limitations for needed services. Limitations may be established on the basis of cost of comparable facilities and services, or audited costs, and may be applied as ceilings on the overall costs, on the costs of providing services, or on the costs of specific areas of operations. The department may implement ceilings at any time, based upon the statistics available, or as required by guidelines, regulations, rules, or statutes.
 - b. **Providers**Provider agencies, to maintain reasonable rates of reimbursement, must deliver units of service at or near their rated capacity. Upon a finding by the department that an excess idle capacity exists and has existed, the cost of which is borne by the department, the provider agency shall be notified of the department's intention to reduce the level of state financial participation or invoke the cancellation provisions of the provider agency agreement. The provider agency, within ten days of such notification, must demonstrate to the satisfaction of the department that the department should not invoke its authority under this provision, or must accept the department's finding.
 - c. **Providers**Provider agencies shall not be reimbursed for services, rendered to clients, which exceed the rated occupancy of any facility as established by a fire prevention authority.
 - d. **Providers**Provider agencies of residential services must offer services to each client three hundred sixty-five days per year, except for leap years in which three hundred sixty-six days must be offered. Costs and budget data must be reported on this basis and rates of reimbursement will be established on the same basis. **Providers**Provider agencies may not be reimbursed for those days in which services are not offered to clients.
 - e. **Providers**Provider agencies of day services must offer services to each client eight hours per day two hundred sixty days per year less any state-recognized holidays, except for leap years in which two hundred sixty-one days must be offered. The budgeted units of

service for a full-time client will be equivalent to two hundred thirty days per year at eight hours per day.

- f. Services exempted from the application of subdivisions d and e are:
 - (1) Emergency services.
 - (2) Family subsidy.
 - (3) Supported living.
- g. (1) Days of services in facilities subject to the application of subdivision d must be provided for a minimum of three hundred thirty-five days per year per client. A reduction of payment to the provider agency in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability program administrator determines that a failure to meet the minimum was justified.
- (2) For purposes of this subdivision, the fiscal year of the facility will be used, and all days before the admission, or after the discharge of the client, will be counted toward meeting the minimum.
- h. Salary and fringe benefit cost limits, governing the level of state financial participation, may be established by the department by calculating:
 - (1) Comparable salaries and benefits for comparable positions, by program size and numbers served, and programs in and out of state;
 - (2) Comparable salaries and benefits for comparable positions in state government;
 - (3) Comparable salaries and benefits for comparable positions in the community served by the provider agency; or
 - (4) Data from paragraphs 1, 2, and 3, taken in combination.

By using private funds, ~~providers~~provider agencies may establish higher salaries and benefit levels than those established by the department.
- i. Management fees and costs may not exceed the lesser of two percent of administrative costs or the price of comparable services, facilities, or supplies purchased elsewhere, primarily in the local market.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 1995; April 1, 1996; July 1, 2001; July 1, 2010; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-11. Cost report.

- 1. The cost report provides for the identification of the allowable expenditures and basic services subject to reimbursement by the department. When costs are incurred solely for a basic service, the costs must be assigned directly to that basic service. When costs are incurred jointly for two or more basic services, and not able to be directly assigned, the costs ~~will~~must be allocated as follows:
 - a. Personnel. The total cost of all staff identified in payroll records must be listed by position title and distributed to basic services subject to the approval of staff-to-client ratios by the department. Time studies may be performed for one week at least quarterly for

allocation. When no time studies exist, the applicable units must be used for allocation. When there is no definition of a unit of service, the department ~~will~~must use the unit of service for billing purposes for residential settings.

- b. Fringe benefits. The cost of fringe benefits must be allocated to basic services based on the ratio of the basic service personnel costs to total personnel costs. Personnel costs on which no fringe benefits are paid ~~will be~~are excluded.
 - c. Equipment. The total cost of all equipment, whether rented, leased, purchased, or depreciated, must be distributed to basic ~~services~~services based on usage or applicable units.
 - d. Real property ~~expense~~cost. The total of all property costs, whether rented, leased, purchased, or depreciated, must be allocated based on direct square footage. When multiple usage of direct use area occurs, the allocation ~~will~~is first ~~be~~ done by square footage and then by applicable units.
 - e. Travel. The total of all unassigned travel costs must be included in administrative costs.
 - f. Supplies. The total of all unassigned supply costs must be included with administrative costs.
 - g. Food services. The total of all food costs ~~should~~must be allocated based on meals served. When the number of meals served has not been identified, applicable units must be used.
 - h. Insurance and bonds. The total of all such costs, except insurance costs representing real property ~~expense~~costs or vehicle insurance costs applicable to vehicles used for one or more basic services, must be included as administrative costs.
 - i. Contractual services. The total of all contractual costs must be allocated based upon applicable units or, if appropriate, included as part of the administrative costs.
 - j. General client costs. Total general client expenses must be allocated to service categories, exclusive of production, room, and board, supported living arrangements, family support services, and extended services based on actual units of service. When determining the day support ratio of general client costs, total day support units will be divided by eight and rounded to the nearest whole number.
 - k. Administrative costs. Total administrative expenses may be allocated to all service categories, on time studies done in compliance with subdivision a. If time studies are not available, total administrative expenses must be allocated to all service categories, exclusive of room, board, and production, based upon the ratio of the basic service cost to total cost excluding administrative and production costs. The percentage calculated for residential services must be based on total costs for training, room, and board for the specific residential service with the allocation made only to training.
2. Identification of the means of financing is to be as follows:
- a. Budget reports require the disclosure of all revenues currently used to finance costs and those estimated to finance future costs, inclusive of the ~~provider's~~provider agency's estimate of state financial participation.
 - b. Revenues must be distributed on the appropriate budget report by program. When private contributions are used to supplement or enrich services, the sum may be distributed accordingly. When contributions are held in reserve for special purposes, it may be described by narrative.

- c. The disclosure of contract income and production costs is required to establish a rate of reimbursement supplemental to, and not duplicative of, these revenues and costs.
- d. State financial participation in the habilitative costs associated with day supports shall not include production costs.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; May 1, 2006; [January 1, 2017](#).

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~[25-18-03](#), 50-24.1-01

75-04-05-12. Adjustment to cost and cost limitation.

1. ~~Providers~~[Provider agencies](#) under contract with the department to provide services to individuals with developmental disabilities must submit to the department, no less than annually, a statement of actual costs on the cost report.
2. ~~Providers must~~[Provider agencies shall](#) disclose all costs and all revenues.
3. ~~Providers must~~[Provider agencies shall](#) identify income to offset costs when applicable in order that state financial participation not supplant or duplicate other funding sources. Income must be offset up to the total of appropriate allowable costs. If actual costs are not identifiable, income must be offset up to the total of costs described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each cost category. These sources, and the cost to be offset, must include the following:
 - a. Fees, the cost of the service or time for which the fee was imposed excluding those fees based on cost as established by the department.
 - b. Insurance recoveries income, costs reported in the current year to the extent of costs allowed in the prior or current year for that loss.
 - c. Rental income, cost of space in facilities or for equipment included in the rate of reimbursement.
 - d. Telephone and ~~telegraph~~[internet](#) income from ~~clients~~[consumers](#), staff, or guests, cost of the service.
 - e. Rental assistance or subsidy when not reported as third-party income, total costs.
 - f. Interest or investment income, interest expense.
 - g. Medical payments, cost of medical services included in the rate of reimbursement as appropriate.
 - h. Respite care income when received for a reserved bed, room, board, and staff costs.
 - i. Other income to the provider [agency](#) from local, state, or federal units of government may be determined by the department to be an offset to cost.
4. Payments to a provider [agency](#) by its vendor ~~will be~~[are](#) considered as discounts, refunds, or rebates in determining allowable costs under the program even though these payments may be treated as "contributions" or "unrestricted grants" by the provider [agency](#) and the vendor. However, such payments may represent a true donation or grant, and as such may not be offset against costs. Examples include when:

- a. Payments are made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited.
 - b. Payments are in addition to discounts, refunds, or rebates, which have been customarily allowed under arrangements between the provider agency and the vendor.
 - c. The volume or value of purchases is so nominal that no relationship to the contribution can be inferred.
 - d. The contributor is not engaged in business with the provider agency or a facility related to the provider agency.
5. If an owner or other official of a provider agency directly receives from a vendor monetary payments or goods or services for the owner's or official's own personal use as a result of the ~~provider's~~ provider agency's purchases from the vendor, the value of such payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the ~~provider's~~ provider agency's costs for goods or services purchased from the vendor.
 6. If the purchasing function for a provider agency is performed by a central unit or organization, all discounts, allowances, refunds, and rebates ~~should~~ must be credited to the costs of the provider agency in accordance with the instructions above. These ~~should~~ may not be treated as income of the central purchasing function or used to reduce the administrative costs of that function. Such administrative costs are, however, properly allocable to the facilities serviced by the central purchasing function.
 7. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased. They ~~should~~ must be used to reduce the specific costs to which they apply. If possible, they ~~should~~ must accrue to the period to which they apply. If not, they will reduce expenses in the period in which they are received. The reduction to expense for supplies or services must be used to reduce the total cost of the goods or services for all clients without regard to whether the goods or supplies are designated for all clients or a specific group.
 - a. "Purchase discounts" include cash discounts, trade, and quantity discounts. "Cash discount" is for prepaying or paying within a certain time of receipt of invoice. "Trade discount" is a reduction of cost granted certain customers. "Quantity discounts" are reductions of price because of the size of the order.
 - b. Allowances are reductions granted or accepted by the creditor for damage, delay, shortage, imperfection, or other cause, excluding discounts and refunds.
 - c. Refunds are amounts paid back by the vendor generally in recognition of damaged shipments, overpayments, or return purchases.
 - d. Rebates represent refunds of a part of the cost of goods or services. Rebates differ from quantity discounts in that they are based on the dollar value of purchases, not the quantity of purchases.
 - e. "Other cost-related income" includes amounts generated through the sale of a previously expensed item, e.g., supplies or equipment.

History: Effective July 1, 1984; amended effective June 1, 1995; July 1, 2001; May 1, 2006; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

75-04-05-13. Nonallowable costs.

Nonallowable costs include:

1. Advertising designed to encourage potential consumers to select a particular provider agency.
2. Amortization of noncompetitive agreements.
3. Bad debt expense except as provided in section 75-04-05-13.1.
4. Barber and beautician services.
5. Basic research.
6. Fees paid to a member of a board of directors for meetings attended to the extent that the fees exceed the compensation paid per day to a member of the legislative council pursuant to North Dakota Century Code section 54-35-10.
7. Concession and vending machine costs.
8. Contributions or charitable donations.
9. Corporate costs, such as organization costs, reorganization costs, and other costs not related to client services.
10. Costs for which payment is available from another primary third-party payor or for which the department determines that payment may lawfully be demanded from any source.
11. Costs of functions performed by clients in a residential setting which are typical of functions of any individual living in the individual's own home, such as keeping the home sanitary, performing ordinary chores, lawn mowing, laundry, cooking, and dishwashing. These activities shall be an integral element of an individual program a person-centered service plan consistent with the client's level of function.
12. Costs of donations or memberships in sports, health, fraternal, or social clubs or organizations, such as Elks, YMCA, or country clubs.
13. Costs, including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to the vendor.
14. Costs incurred by the ~~provider's~~ provider agency's subcontractors, or by the lessor of property which the provider agency leases, and which becomes an element in the subcontractor's or lessor's charge to the provider agency, if such costs would not have been allowable under this section had they been incurred by a provider agency directly furnishing the subcontracted services, or owning the leased property.
15. Costs exceeding the approved budget unless the written prior approval of the department has been received.
16. Depreciation on assets acquired with federal or state grants.
17. Education costs incurred for the provision of services to clients who are, could be, or could have been, included in a student census. Education costs do not include costs incurred for a client, defined as a "child student with disabilities" by ~~subsection 2 of~~ North Dakota Century Code ~~section 15-59-01~~ chapter 15.1-32, who is enrolled in a school district pursuant to an interdepartmental plan of transition.

18. Employee benefits not offered to all full-time employees.
19. Entertainment costs, including activities.
20. Equipment costs for any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates to the satisfaction of the department that any particular use of the equipment was related to client services. Equipment used for client services, other than developmental disabilities contract services, will be allocated by time studies, mileage, client census, percentage of total operational costs, or otherwise as determined appropriate by the department.
21. Expense or liabilities established through or under threat of litigation against the state of North Dakota or any of its agencies; provided, that reasonable insurance expense ~~shall~~may not be limited by this subsection.
22. Community contributions, employer sponsorship of sports teams, and dues to civic and business organizations, such as Lions, chamber of commerce, Kiwanis, in excess of one thousand five hundred dollars per cost reporting period.
23. Fringe benefits exclusive of Federal Insurance Contributions Act, unemployment insurance, medical insurance, workers' compensation, retirement, disability, long-term care insurance, dental, vision, life, education costs as described in subsection 33, and the cost of a ~~provider's~~provider agency's unrecovered cost of medical services rendered to an employee. The provider agency must receive written prior approval of the department before including any other benefits.
24. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose.
25. Funeral and cemetery expenses.
26. Goodwill.
27. Home office costs when unallowable if incurred by facilities in a chain organization.
28. Travel not directly related to industry conferences, state or federally sponsored activities, or client services.
29. Interest cost related to money borrowed for funding depreciation.
30. Items or services, such as telephone, television, and radio, located in a client's room and furnished primarily for the convenience of the clients.
31. ~~Key man~~Top management personnel insurance.
32. Laboratory salaries and supplies.
33. The cost of education unless:
 - a. The education was provided by an accredited academic or technical educational facility;
 - b. The expenses were for materials, books, or tuition;
 - c. The employee was enrolled in a course of study intended to prepare the employee for a position at the facility and is in ~~the~~a position; and
 - d. The facility claims the cost of the education at a rate that does not exceed one dollar and twenty-five cents per hour of work performed by the employee in the position for which

the employee received education at the ~~provider's expense~~ provider agency's cost provided the amount claimed per employee may not exceed two thousand five hundred dollars per year or an aggregate of ten thousand dollars per employee and in any event may not exceed the cost to the facility of the employee's education.

34. Meals and food service in day service programs.
35. Membership fees or dues for professional organizations exceeding three thousand dollars in any fiscal year.
36. Miscellaneous expenses not related to client services.
37.
 - a. Except as provided in subdivisions b, c, and d, payments to a member of the governing board of the provider agency, a member of the governing board of a related organization, or a family member of a member of those governing boards, including a spouse and an individual in the following relationship to a member or to a spouse of a member: parent, stepparent, child, stepchild, grandparent, step-grandparent, grandchild, step-grandchild, brother, sister, ~~half brother, half sister~~ half-brother, half-sister, stepbrother, and stepsister.
 - b. Payments made to a member of the governing board of the provider agency to reimburse that member for allowable expenses incurred by that member in the conduct of the ~~provider's~~ provider agency's business may be allowed.
 - c. Payments for a service or product unavailable from another source at a lower cost may be allowed.
 - d. Wages allowed are limited to those wages paid to a family member of a member of the board and the amount must be consistent with wages paid to anyone else who would hold the same or similar position and the position is such that if the family member were not to hold the position, the provider agency would hire someone else to do the job.
38. Penalties, fines, and related interest and bank charges other than regular service charges.
39. Personal purchases.
40. Pharmacy salaries.
41. Physician and dentist salaries.
42.
 - a. For facility-based day ~~supports~~ habilitation programs, production costs, such as client salaries and benefits, supplies, and materials representing unfinished or finished goods or products that are assembled, altered, or modified.
 - b. For non-facility-based day ~~supports~~ habilitation programs, production costs, such as client salaries and benefits, supplies, and materials representing unfinished or finished goods or products that are assembled, altered, or modified, square footage, and equipment.
 - c. For ~~extended services~~ employment supports, in addition to subdivisions a and b, costs of employing clients, including preproduction and postproduction costs for supplies, materials, property, and equipment, and property costs other than an office, office supplies, and equipment for the supervisor, job coach, and support staff.
 - d. Total production-related legal fees in excess of five thousand dollars in any fiscal period.
43. Religious salaries, space, and supplies.
44. Room and board costs in residential services other than an intermediate care facility for individuals with intellectual disabilities.

45. Salary costs of employees determined by the department to be inadequately trained to assume assigned responsibilities, but when an election has been made to not participate in appropriate training approved by the department.
46. Salary costs of employees who fail to meet the functional competency standards established or approved by the department.
47. Travel of clients visiting relatives or acquaintances in or out of state.
48. Mileage reimbursement in excess of the standard mileage rate established by the state of North Dakota and meal reimbursement in excess of rates established by the general services administration for the destination city.
49. Undocumented expenditures.
50. Value of donated goods or services.
51. Vehicle and aircraft costs not directly related to provider agency business or client services.
52. X-ray salaries and supplies.
53. Alcohol and tobacco products.
54. Political contributions.
55. Salaries or costs of a lobbyist.

History: Effective July 1, 1984; amended effective June 1, 1985; January 1, 1989; August 1, 1992; June 1, 1995; July 1, 1995; April 1, 1996; August 1, 1997; July 1, 2001; May 1, 2006; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-13.1. Allowable bad debt expense.

1. Bad debts for charges incurred in or after July 1, 2005, and fees paid for the collections of those bad debts are allowable only as provided in this section.
2. A bad debt expense must result from nonpayment of the payment rate for an individual who is no longer receiving services from the provider agency claiming the bad debt expense.
3. The provider agency must provide documentation to the department which verifies that the provider agency made reasonable collection efforts, the debt could not be collected, and there is no likelihood of future recovery. Reasonable collection efforts include maintaining written documentation that, in making those collection efforts, the provider agency received the assistance of an attorney licensed to practice law.
4. In no circumstance may the allowable expense for the collection fee exceed the amount of the bad debt.
5. A bad debt expense shall not be allowed when it resulted from the ~~provider's~~provider agency's failure to comply with any applicable laws or regulations.
6. Before any bad debt expense may be allowed, the provider agency must have a written policy that limits the potential for bad debts and the provider agency must provide written documentation that shows it has taken action to limit bad debts for individuals who refuse to or cannot make payments.

7. Allowable bad debt expense may not exceed debt associated with one hundred twenty days of services provided for any one individual.
8. Payments on outstanding accounts receivable shall be applied to the oldest invoices for covered services first, and then all subsequent charges until the balance is paid in full.
9. Allowable finance charges on bad debts described in this section are allowable only if the finance charges have been offset as interest income.

History: Effective May 1, 2006; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-16-10, 50-24.1-01

75-04-05-15. Depreciation.

1. The principles of reimbursement for provider agency costs require that payment for services include depreciation on depreciable assets that are used to provide allowable services to clients. This includes assets that may have been fully or partially depreciated on the books of the provider agency, but are in use at the time the provider agency enters the program. The useful lives of these assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. Depreciation is recognized as an allocation of the cost of an asset over its estimated useful life. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report. The facility shall use the sale price in computing the gain or loss on the disposition of assets.
2. Special assessments in excess of one thousand dollars paid in a lump sum must be capitalized and depreciated. Special assessments not paid in a lump sum may be expensed as billed by the taxing authority.
3. Depreciation methods:
 - a. A provider agency shall use the straight-line method of depreciation. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used. A provider agency shall apply the method and procedure for computing depreciation on a basis consistent from year to year and shall maintain detailed schedules of individual assets. If the books of account reflect depreciation different than that submitted on the cost report, a provider agency shall prepare a reconciliation.
 - b. For all assets obtained prior to August 1, 1997, a provider agency shall compute depreciation using a useful life of ten years for all items except vehicles, which must be depreciated over four years, and buildings, which must be depreciated over twenty-five years or more. For assets other than vehicles and buildings obtained after August 1, 1997, a provider agency may use the ~~American hospital association depreciation guidelines as published by the American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 2008 edition,~~ to determine the useful life or the composite useful life of ten years. ~~A provider may not use an option other than the useful life methodology the provider initially chooses to use without the department's prior written approval.~~ A provider agency shall use a useful life of ten years for all equipment not identified in the ~~American hospital association~~ depreciation guidelines.
 - c. A provider agency acquiring assets as an ongoing operation shall use as a basis for determining depreciation:

- (1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and
 - (2) (a) A composite remaining useful life for movable equipment, determined from the seller's records; or
 - (b) The remaining useful life for movable equipment, determined from the seller's records.
4. Acquisitions are treated as follows:
- a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least five thousand dollars, its cost must be capitalized and depreciated in accordance with subdivision b of subsection 3. A provider agency shall capitalize as part of the cost of the asset, costs incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest.
 - b. A provider agency shall capitalize major repair and maintenance costs on equipment or buildings if they exceed five thousand dollars per project and will be depreciated in accordance with subdivision b of subsection 3.
5. A provider agency shall maintain records that provide accountability for the fixed capital assets and other assets and also provide adequate means by which depreciation can be computed and established as an allowable client-related cost.
6. The basis for depreciation is the lower of the purchase price or fair market value at the time of purchase.

If the ~~provider's~~provider agency's cash payment for a purchase is reduced by a trade-in, fair market value will consist of the sum of the book value of the trade-in plus the cash paid.

7. For depreciation and reimbursement purposes, a provider agency may record and depreciate donated depreciable assets based on the asset's fair market value. If the ~~provider's~~provider agency's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal must be made. An appraisal made by a recognized appraisal expert will be accepted for depreciation.
8. Provision for increased costs due to the sale of a facility may not be made.

~~9. If a provider finances a facility pursuant to North Dakota Century Code chapter 6-09.6, the provider, subject to the approval of the department, may elect to be reimbursed based upon the mortgage principal payments rather than depreciation. Once an election is made by the provider, it may not be changed without department approval.~~

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; August 1, 1997; July 1, 2001; May 1, 2004; May 1, 2006; January 1, 2013; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10, 25-16-15~~25-18-03, 50-24.1-01

75-04-05-16. Interest expense.

1. In general:
 - a. To be allowable under the program, interest must be:
 - (1) Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required;

- (2) Identifiable in the ~~provider's~~ provider agency's accounting records;
 - (3) Related to the reporting period in which the costs are incurred;
 - (4) Necessary and proper for the operation, maintenance, or acquisition of the ~~provider's~~ provider agency's facilities used therein;
 - (5) Unrelated to funds borrowed to purchase assets in excess of cost or fair market value; and
 - (6) When borrowed for the purpose of making capital expenditures for assets that were owned by any other facility or service provider agency on or after July 18, 1984, limited to that amount of interest cost which such facility or service provider agency may have reported, for ratesetting purposes, had the asset undergone neither refinancing nor a change of ownership.
- b. In cases when it was necessary to issue bonds for financing, any bond premium or discount ~~shall~~ must be accounted for and written off over the life of the bond issue.
2. Interest paid by the provider agency to partners, stockholders, or related organizations of the provider agency is not allowable as a cost ~~except when interest expense is incurred subject to North Dakota Century Code chapter 6-09.6.~~
 3. A provider agency may combine or "pool" various funds in order to maximize the return on investment. If funds are pooled, proper records must be maintained to preserve the identity of each fund in order to permit the earned income to be related to its source. Income earned on gifts and grants does not reduce allowable interest expense.
 4. Funded depreciation requirements are as follows:
 - a. Funding of depreciation is the practice of setting aside cash or other liquid assets to be used for replacement of the assets depreciated or for other capital purposes. This provision is recommended as a means of conserving funds for the replacement of depreciable assets. It is expected that the funds will be invested to earn revenues. The revenues generated by this investment will not be considered as a reduction of allowable interest expense provided such revenues remain in the fund.
 - b. The deposits are, in effect, made from the cash generated by the noncash expense depreciation and do not include interest income. Deposits to the funded depreciation account are generally in an amount equal to the depreciation expense charged to costs each year. In order to qualify for all provisions of funding depreciation, the minimum deposits to the account must be fifty percent of the depreciation expensed that year. Deposits in excess of accumulated depreciation are allowable; however, the interest income generated by the "extra" deposits will be considered as a reduction of allowable interest expense.
 - c. Monthly or annual deposits representing depreciation must be in the funded depreciation account for six months or more to be considered as valid funding transactions. Deposits of less than six months are not eligible for the benefits of a funded depreciation account. However, if deposits invested before the six-month period remain in the account after the six-month period, the investment income for the entire period will not reduce the allowable interest expensed in that period. Total funded depreciation in excess of accumulated depreciation on client-related assets will be considered as ordinary investments and the income therefrom will be used to offset interest expense.
 - d. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on these assets and for other capital expenditures are on a first-in, first-out basis.

- e. The provider agency may not use the funds in the funded depreciation account for purposes other than the improvement, replacement, or expansion of facilities or equipment replacement or acquisition related to client services.
- f. Existing funded depreciation accounts must be used for all capital outlays in excess of five thousand dollars except with regard to those assets purchased exclusively with donated funds or from the operating fund, provided no amount was borrowed to complete the purchase. Should funds be borrowed, or other provisions not be met, the entire interest for the funded depreciation income account will be offset up to the entire interest expense paid by the facility for the year in question.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; January 1, 2013; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-17. Related organization.

1. Costs applicable to services, facilities, and supplies furnished to a provider agency by a related organization shall not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. ~~Providers~~Provider agencies must identify such related organizations and costs in the cost report. An appropriate statement of cost and allocations must be submitted with the cost report. For cost reporting purposes, management fees ~~will be~~are considered administrative costs.
2. A chain organization consists of a group of two or more service ~~providers~~provider agencies which are owned, leased, or through any other device, controlled by one business entity.
3. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their member facilities. Although the home office of a chain is normally not a provider agency in itself, it may furnish to the individual provider agency, central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual cost of providing such services is includable in the ~~provider's~~provider agency's allowable costs under the program. Any services provided by the home office which are included in cost as payments to an outside provider agency will be considered a duplication of costs and not be allowed.
4. If the home office makes a loan to or borrows money from one of the components of a chain organization, the interest paid is not an allowable cost and interest income is not used to offset interest expense.
5. Payments to related organizations by the provider agency are limited to the actual and reasonable cost of the service received or the product purchased.
6. Provider agency shall document financial transactions between the provider agency and the related organization. The terms of such transactions must be similar as those obtained by a prudent buyer negotiating at arm's length with a willing and knowledgeable seller.

History: Effective July 1, 1984; amended effective June 1, 1985; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-18. Rental expense paid to a related organization.

1. A provider agency may lease a facility from a related organization within the meaning of the principles of reimbursement. In such a case, the rent paid to the lessor by the provider agency

is not allowable as a cost, ~~except for providers subject to chapter 75-04-03, whose~~ Provider agency's rent payments shall not exceed the actual cost of mortgage payments of principal and interest. The cost of ownership of the facility would, however, be an allowable cost to the provider agency. Generally, these would be costs such as depreciation, interest on the mortgage, real estate taxes, and other property expenses attributable to the leased facility. The effect is to treat the facility as though it were owned by the provider agency. Therefore, the owner's equity in the leased assets is includable in the equity capital of the provider agency.

2. In order to be considered an allowable cost, the home office cost must be directly related to those services performed for individual ~~providers~~ provider agencies and relate to client services. An appropriate share of indirect costs will also be considered. Documentation as to the time spent, the services provided, the hourly valuation of services and the allocation method used must be available to substantiate the reasonableness of the cost.

History: Effective July 1, 1984; amended effective June 1, 1985; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

75-04-05-19. Taxes.

1. **General.** Taxes assessed against the provider agency, in accordance with the levying enactments of the several states and lower levels of government and for which the provider agency is liable for payment, are allowable costs. Tax expense may not include fines, penalties, or those taxes listed in subsection 2.
2. **Taxes not allowable as costs.** The following taxes are not allowable as costs:
 - a. Federal income and excess profit taxes, including any interest or penalties paid thereon.
 - b. State or local income and excess profit taxes.
 - c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes in the issuance of bonds, property transfers, issuance or transfers of stocks, etc. Generally, these costs are either amortized over the life of the securities or depreciated over the life of the asset. They are not, however, recognized as tax expense.
 - d. Taxes from which exemptions are available to the provider agency.
 - e. Taxes on property which is not used in the provision of covered services.
 - f. Taxes, including sales taxes levied against residents and collected and remitted by the provider agency.
 - g. Self-employment (FICA) taxes applicable to persons, including individual proprietors, partners, or members of a joint venture.

History: Effective July 1, 1984; amended effective July 1, 2001; May 1, 2006; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

75-04-05-20. Personal incidental funds.

1. Each client is allowed to retain a specific monthly amount of income for personal needs. These personal needs include such items as clothes, tobacco, or other day-to-day incidentals. This monthly allowance is not to be applied toward the client's cost of care. Generally, the

source of income for personal needs is from social security, veterans' benefits, private income, economic assistance, or supplemental security income.

2. ~~Providers~~Provider agencies managing client funds must maintain a current client account record in a form and manner prescribed by the department. Copies of the client account record must be provided to the client without charge.
3. The department may conduct audits of client account records in conjunction with regular field audits.
4. Adult client funds may be disbursed with the client's permission in the absence of a guardian or declaration of incompetency.
5. The department uses the amount of a client's income to determine:
 - a. Eligibility for medical assistance benefits.
 - b. Amount of income and other resources which must be applied toward the client's care.
 - c. Amount of income and other resources which can be retained by the client.
6. The following personal incidental items, supplies, or services furnished as needed or at the request of the client may be paid for by the client from the client's personal incidental allowance or by outside sources, such as relatives and friends:
 - a. Outside barber and beautician services, if requested by the client for regular shaves, haircuts, etc.
 - b. Personal supplies, such as toothbrushes, toothpaste or powder, mouthwashes, dental floss, denture cleaners, shaving soap, cosmetic and shaving lotions, dusting powder, cosmetics, personal deodorants, hair combs and brushes, and sanitary pads and belts for menstrual periods.
 - c. Drycleaning of personal clothing.
 - d. Recliner chairs, standard easy chairs, radios, television sets, etc., that the client desires for the client's personal use.
 - e. Special type wheelchairs, e.g., motorized, permanent leg support, hand-controlled, if needed by client, recommended by the client's attending physician, and if no other payment resource is available.
 - f. Personal clothing, including robes, pajamas, and nightgowns, except for clothing at distinct parts of the state institution for individuals with developmental disabilities certified as intermediate care facilities for individuals with intellectual disabilities, when the ownership of the clothing is retained by the facility or the clothing is included as a part of the individual's plan of care.
 - g. Miscellaneous items, such as tobacco products and accessories, beverages and snacks served at other than mealtime except for supplemental nourishment, television rental for individual use, stationery supplies, postage, pens and pencils, newspapers and periodicals, cable television, internet, and long-distance telephone services. Nonprescription vitamins or combinations of vitamins with minerals may be paid when ordered by the attending physician and the client, ~~parent, or~~ guardian, ~~or responsible relative~~ approves such use of the client's funds.
7. Charges by the program for items or services furnished clients will be allowed as a charge against the client or outside sources, only if separate charges are also recorded by the facility

for all clients receiving these items or services directly from the program. All such charges must be for direct, identifiable services or supplies furnished individual clients. A periodic "flat" charge for routine items, such as beverages, cigarettes, etc., will not be allowed. Charges may be made only after services are performed or items are delivered, and charges are not to exceed charges to all classes of clients for similar services.

8. A client's private property must be clearly marked by name. The facility must keep a record of private property. If items are lost, the circumstances of disappearance must be documented in the facility's records.
9. If client funds are deposited in a bank, they must be deposited in an account separate and apart from any other bank accounts of the facility. Any interest earned on this account will be credited to the applicable client's accounts.
10. A client's funds on deposit with the facility must be available to a client on the client's request. No funds may be withdrawn from accounts of a client capable of managing the client's own funds without the client's permission.
11. Should a disagreement exist as to whether a client is capable of managing the client's own funds, a joint determination will be made by the ~~individual~~ person-centered service plan team; ~~parent, and guardian, or responsible relative~~ in settling this dispute. The decision must be documented in the ~~provider's~~ provider agency's records.
12. On discharge, the facility must provide the client with a final accounting of personal funds and remit any balance on deposit with the facility.
13. Upon death, the balance of a client's personal incidental funds along with the name and case number, ~~will~~ must be maintained in an interest-bearing account for disposition by the client's estate. Personal property, such as television sets, radios, wheelchairs, and other property of more than nominal value, ~~will~~ must be maintained for disposition by the client's estate.
14. Upon sale or other transfer of ownership interest of a facility, both transferor and transferee must transfer the client's personal incidental funds, moneys, and records in an orderly manner.
15. Failure to properly record the receipt and disposition of personal incidental funds may constitute grounds for suspension of provider agency payments.
16. Client personal incidental funds must not be expended by the provider agency for the purchases of meals served in licensed day service programs nor may the purchase of such meals be a condition for admission to such programs.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

75-04-05-21. Transfer, discharge, and expulsion of clients.

1. Movement of clients between levels of service by a provider agency or between ~~providers~~ provider agencies must be pursuant to a determination by ~~an individual~~ the person-centered service plan team. Reimbursement for the cost of a new service ~~must be~~ is contingent upon the timely submission to the department of an individual service plan.
2. Movement of clients ~~must be~~ are subject to the policies and procedures of the North Dakota ~~case~~ program management system and the approval of the department.

3. Any emergency movement may be initiated by the provider agency only with immediate notification of the department, parent, client, and guardian, ~~and advocate~~. The movement ~~will be~~ is subject to ~~the~~ subsequent review by the department which will determine if:
 - a. An emergency existed;
 - b. The rights of the client were protected and preserved;
 - c. Documentation exists in support of the ~~provider's~~ provider agency's action;
 - d. A prognosis of the client's potential for returning has been made; and
 - e. Services required to maintain the client in a habilitative setting are least restrictive ~~of liberty and~~ have been provided prior to movement.
4. The department will determine whether a payment should be stopped as a consequence of the vacancy caused by movement of a client.
5. Upon a finding, by the department, that movement of a client constituted a violation of any right secured to the client by North Dakota Century Code chapter 25-01.2, the department may withhold payment for services provided during the period of time that the violation existed.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

75-04-05-22. Staff-to-client ratios.

The ~~following~~ overall direct contact staff-to-client ratios shall form the basis for the determination of the rate of reimbursement for ~~providers~~ provider agencies of service to individuals with intellectual or developmental disabilities. Additional staff may be necessary to meet the needs of the clients and may be added subject to the approval of the department.

1. Intermediate care facilities for ~~the mentally retarded shall be~~ individuals with intellectual disabilities are subject to the direct contact staffing requirements of title 42-CFR 483.430, Code of Federal Regulations, part 483, section 430.
2. Transitional community living facility shall maintain a one to eight direct contact staff-to-client ratio during those periods when the clients are awake and on the premises, and one direct contact staff when clients are asleep.
3. Minimally supervised living arrangements and ~~providers~~ provider agencies of congregate care for the aged shall maintain one direct contact staff onsite when clients are present when required by the department.
4. In minimally supervised apartment living arrangements, one direct contact staff shall be onsite when clients are present when required by the department.
5. Supported living arrangements shall maintain a direct contact staff-to-client ratio of one to twenty.
6. Day supports shall maintain a direct contact staff-to-client ratio of one to five.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; July 1, 2010; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

75-04-05-23. Staff hours.

1. A calculation of the total number of employees necessary to meet staff-to-client ratios is made on the basis of a full-time equivalent employee. Assuming that a full-time employee has fifty-two working weeks of five days each, twelve holidays, ten vacation days, and ten sick days per year, the actual number of days worked is two hundred twenty-eight per year. ~~Providers~~Provider agencies who grant fewer paid absences must use a full-time equivalent calculation which reflects a higher number of working days.
2. Assuming a two hundred twenty-eight day work year:
 - a. Staffing for the three hundred sixty-five day service provided by a residential service provider agency each year requires 1.6 full-time equivalent staff members for each shift slot to be filled at all times (two hundred twenty-eight times 1.6 equals three hundred sixty-five).
 - b. Staffing for the two hundred sixty days of service provided by a day service provider agency each year requires 1.14 full-time equivalent staff members for each staff required by the ratio (two hundred twenty-eight times 1.14 equals two hundred sixty).
3. To calculate the number of duty hours in a week, eight hours per day for five days (day services) and eight hours per night for seven nights (sleep time) are subtracted from the total hours of the week for residential service ~~providers~~provider agencies.

History: Effective July 1, 1984; amended effective July 1, 2001; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01

75-04-05-24. Application.

1. This chapter will be applied to ~~providers of~~provider agencies for services to individuals with developmental disabilities, except distinct parts of state institutions for individuals with developmental disabilities which are certified as intermediate care facilities for individuals with intellectual disabilities, starting the first day of a facility's first fiscal year which begins on or after July 1, 1985; provided, however, that neither this section, nor the effective date, shall preclude the application and implementation of some or all of the provisions of this chapter through contract or through official statements of department policy. Specific sections of this chapter will be applied to services provided in distinct parts of state institutions for individuals with developmental disabilities which are certified as intermediate care facilities for individuals with intellectual disabilities. The sections of this chapter that apply are section 75-04-05-01; subsections 1, 4, 5, 6, and 7 of section 75-04-05-02; subsections 1, 2, ~~and 3, and 4~~ of section 75-04-05-08; ~~sections~~subsections 5 through 12 of section 75-04-05-09, ~~75-04-05-10, 75-04-05-11, and 75-04-05-12~~; subsections 1 through 10, 12 through ~~20~~19, 22 through ~~27~~30, 29 through 32, 34, 35, 37 through ~~40~~39, 43, and 45 ~~42 through 44, 47 through 51, 53~~ through ~~52~~55 of section 75-04-05-13; sections 75-04-05-13.1, 75-04-05-14, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, 75-04-05-19, 75-04-05-20, 75-04-05-21, 75-04-05-22, and 75-04-05-23; and subsection 1 of section 75-04-05-24.
2. This chapter will be applied to ~~providers~~provider agencies of supported employment extended services to individuals with developmental disabilities, mental illness, traumatic brain injury, and other severe disabilities, except as operated through the human service centers; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, subsections 1 through ~~3~~4, 6, 8, 10 through ~~14~~22, 16~~24, 25, 27, 29~~ through ~~18, 20, 22~~38, and 41 through ~~24, 27, and 28~~44 of section 75-04-05-01; section 75-04-05-02; section 75-04-05-08; subsections 2, 6

through 10, and 12 of section 75-04-05-09; subsection 1, subsection 2, and subdivisions a, h, and i of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and k of subsection 1, and subdivisions a through c of subsection 2 of section 75-04-05-11; subsections 1 and 2, subdivisions a through d, f, and i of subsection 3, and subsections 4 through 7 of section 75-04-05-12; subsections 2 through 10, 12 through ~~53~~55 of section 75-04-05-13; sections 75-04-05-13.1, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; ~~and~~ subsections 1, 2, and 5 of section 75-04-05-21; and subsection 2 of section 75-04-05-24 of this chapter will be applied to supported employment extended services.

3. This chapter will be applied to ~~providers~~provider agencies of individualized supported living arrangements services; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, the following sections apply to the ~~providers~~provider agencies of individualized supported living arrangements services: sections 75-04-05-01, 75-04-05-02, and 75-04-05-08; subdivisions a and h of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and k of subsection 1 and subdivisions a and b of subsection 2 of section 75-04-05-11; section 75-04-05-12; subsections 1 through 10, 12 through 14, and 16 through ~~53~~55 of section 75-04-05-13; sections 75-04-05-13.1, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; subsections 1 through 7 and 9 through 16 of section 75-04-05-20; and sections 75-04-05-21, 75-04-05-23, and 75-04-05-24. The following additions apply only to the ~~providers~~provider agencies of individualized supported living arrangements services:
 - a. Each provider agency of individualized supported living arrangements shall maintain separate revenue records for direct service reimbursements and for administrative reimbursement. Records must distinguish revenues from the department from all other revenue sources. Direct service revenues are:
 - (1) Direct service reimbursements from the department;
 - (2) Copayment responsibility of an individual receiving individualized supported living arrangements services; and
 - (3) Intended to cover direct service costs.
 - b. Each provider agency of individualized supported living arrangements shall maintain cost records distinguishing costs attributable to the department from other cost sources. Private pay client revenues and cost records are to be separately maintained from revenue and cost records whose payment source is the department.
 - c. When direct service reimbursements from the department exceed direct service costs attributable to the department by the margin established by department policy, payback to the department is required. In these situations, the entire overpayment must be refunded.
 - d. A provider agency may appeal the department's determination of direct costs and reimbursements by requesting a hearing within thirty days after the departmental mailing of the payback notification.
4. This chapter will be applied to ~~providers~~provider agency of family support services and family care option III; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, the following sections apply to ~~providers~~provider agencies of family support services: sections 75-04-05-01, 75-04-05-02, and 75-04-05-08; subdivisions a and h of subsection 3 of section

75-04-05-10; subdivisions a through f, h, i, and k of subsection 1 and subdivisions a and b of subsection 2 of section 75-04-05-11; section 75-04-05-12; subsections 1 through 10, 12 through 14, and 16 through ~~5355~~ of section 75-04-05-13; sections 75-04-05-13.1, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; subsections 1 through 7 and 9 through 16 of section 75-04-05-20; and sections 75-04-05-21, 75-04-05-23, and 75-04-05-24. The following additions apply only to the ~~providers~~provider agencies of family support services and family care option III:

- a. Each provider agency of family support services and family care option III shall maintain separate revenue records for direct service reimbursements and for administrative reimbursements. These cost records must distinguish revenues from the department from all other revenue sources. Direct service revenues are:
 - (1) Direct service reimbursements from the department; and
 - (2) Parental copayment responsibility as documented on the family support service authorization.
- b. Each provider agency of family support services and family care option III shall maintain cost records distinguishing costs attributable to the department from other cost sources. Private pay client cost records are to be separately maintained from cost records for clients whose payment source is the department.
- c. Payback in the form of a refund is required when direct service revenues from the department exceed direct service costs attributable to the department.
- d. A provider agency may appeal the department's determination of direct costs and reimbursements by requesting a hearing within thirty days after the departmental mailing of the payback notification.

History: Effective July 1, 1984; amended effective July 1, 1984; June 1, 1985; June 1, 1995; August 1, 1997; July 1, 2001; May 1, 2006; July 1, 2012; January 1, 2013; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01; 34 CFR 363

CHAPTER 75-04-06
ELIGIBILITY FOR INTELLECTUAL DISABILITIES-DEVELOPMENTAL DISABILITIES
CASEPROGRAM MANAGEMENT SERVICES

Section

75-04-06-01	Principles of Eligibility
75-04-06-02	Criteria for Service Eligibility - Class Member [Repealed]
75-04-06-02.1	Criteria for Service Eligibility
75-04-06-03	Criteria for Service Eligibility - Applicants Who Are Not Members of the Plaintiff Class [Repealed]
75-04-06-04	Criteria for Service Eligibility - Children Birth Through Age Two
75-04-06-05	Service Availability
75-04-06-06	Developmental Disabilities Program Management Eligibility for Three-Year-Old and Four-Year-Old Children [Repealed]

75-04-06-01. Principles of eligibility.

1. The process of determining an individual's eligibility to receive intellectual disabilities-developmental disabilities easeprogram management services involves the recognition of several criteria and an understanding of expected outcomes as each criterion is applied. Professional judgment is applied to determine the applicability of the provision of intellectual disabilities-developmental disability easeprogram management services in accordance with chapter ~~75-05-06~~75-05-04.
2. The following criteria must be used as the frame of reference for a team of at least three professionals in the human service center, led by the developmental disabilities program administrator or the administrator's designee, for the determination of an individual's eligibility for intellectual disabilities-developmental disabilities case management services.

History: Effective July 1, 1991; amended effective January 1, 1997; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, 50-06-05.3

75-04-06-02.1. Criteria for service eligibility.

1. An individual is eligible for intellectual disabilities-developmental disabilities easeprogram management services if the individual has a diagnosis of ~~mental-retardation~~intellectual disability which is severe enough to constitute a developmental disability.
 - a. A diagnosis of the condition of ~~mental-retardation~~intellectual disability must be made by an appropriately licensed professional using diagnostic criteria accepted by the American psychiatric association.
 - b. Determination of whether the manifestation of the condition is severe enough to constitute a developmental disability must be done in accordance with the definition of developmental disability in North Dakota Century Code section 25-01.2-01.
2. An individual is eligible for intellectual disabilities-developmental disabilities easeprogram management services if the individual has a condition of ~~mental-retardation~~intellectual disability, diagnosed by an appropriately licensed professional using diagnostic criteria accepted by the American psychiatric association, which is not severe enough to constitute a developmental disability, and the individual must be able to benefit from treatment and services purchased through the developmental disability division on behalf of an individual who meets the criteria of subsection 1.

3. An individual is eligible for intellectual disabilities-developmental disabilities [easeprogram](#) management services if the individual has a condition, other than mental illness, severe enough to constitute a developmental disability, which results in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with the condition of ~~mental-retardation~~[intellectual disability](#), and the individual must be able to benefit from services and intervention techniques which are so closely related to those applied to an individual with the condition of ~~mental-retardation~~[intellectual disability](#) that provision is appropriate. Determination of eligibility for individuals described in this subsection requires the application of professional judgment in a two-step process:
 - a. The team must first determine whether the condition is severe enough to constitute a developmental disability. North Dakota Century Code section 25-01.2-01 must be applied in order to determine if a developmental disability is present. The presence of a developmental disability does not establish eligibility for services through the intellectual disabilities-developmental disabilities [easeprogram](#) management services system, but does require the team to consider all assessment data and apply professional judgment in the second step.
 - b. The team must then determine whether services can be provided to an individual determined to have a condition, other than mental illness, severe enough to constitute a developmental disability. The team must have a thorough knowledge of the condition and service needs of the applicant, as well as a thorough knowledge of services that would be appropriate through the developmental disabilities system. When considering if intellectual disabilities-developmental disabilities [easeprogram](#) management is appropriate, the team must consider factors, including:
 - (1) Whether the individual would meet criteria appropriately used to determine the need for services in an intermediate care facility for individuals with intellectual disabilities.
 - (2) Whether appropriate services are available in the existing developmental disabilities service delivery system.
 - (3) Whether a service, which uses intervention techniques designed to apply to an individual with intellectual disabilities, delivered by staff trained specifically in the field of intellectual disabilities, would benefit the individual.
 - (4) Whether a service, designed for an individual with the condition of ~~mental-retardation~~[intellectual disability](#), could be furnished to the individual without any significant detriment to the individual or others receiving the service.
 - c. If the team concludes, through the application of professional judgment, that an individual's needs can be met through specific services purchased by the department for individuals who meet the criteria of subsection 1, [aan](#) intellectual disabilities-developmental disabilities [easeprogram](#) manager may be assigned. Services may be provided, subject to the limits of legislative appropriation. New services need not be developed on behalf of the individual.

History: Effective January 1, 1997; [amended effective July 1, 2012; January 1, 2017.](#)

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, 50-06-05.3

75-04-06-04. Criteria for service eligibility - Children birth through age two.

1. Service eligibility for children from birth through age two is based on distinct and separate criteria designed to enable preventive services to be delivered. Young children may have conditions which could result in substantial functional limitations if early and appropriate

intervention is not provided. The collective professional judgment of the team must be exercised to determine whether the child is high risk or developmentally delayed, and if the child may need early intervention services. If a child, from birth through age two, is either high risk or developmentally delayed, the child may be included on the caseload of [an](#) intellectual disabilities-developmental disabilities [easeprogram](#) manager and considered for those services designed to meet specific needs. Eligibility for continued service inclusion through intellectual disabilities-developmental disabilities [easeprogram](#) management must be redetermined by age three using criteria specified in section 75-04-06-02.1.

2. For purposes of this section:

a. "Developmentally delayed" means a child, from birth through age two:

(1) Who is performing twenty-five percent below age norms in two or more of the following areas:

- (a) Cognitive development;
- (b) Gross motor development;
- (c) Fine motor development;
- (d) Sensory processing (hearing, vision, haptic);
- (e) Communication development (expressive or receptive);
- (f) Social or emotional development; or
- (g) Adaptive development; or

(2) Who is performing at fifty percent below age norms in one or more of the following areas:

- (a) Cognitive development;
- (b) Physical development, including vision and hearing;
- (c) Communication development (expressive and receptive);
- (d) Social or emotional development; or
- (e) Adaptive development.

b. "High risk" means a child, from birth through age two:

(1) Who, based on a diagnosed physical or mental condition, has a high probability of becoming developmentally delayed; or

(2) Who, based on informed clinical opinion which is documented by qualitative and quantitative evaluation information, has a high probability of becoming developmentally delayed.

History: Effective July 1, 1991; amended effective July 1, 1993; January 1, 1997; July 1, 2012; [January 1, 2017](#).

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, 50-06-05.3

75-04-06-05. Service availability.

The extent to which appropriate services other than easeprogram management services are available to eligible clients is dependent upon legislative appropriations and resources. Eligibility for easeprogram management services does not create an entitlement to services other than easeprogram management services if resources are not available.

History: Effective August 1, 1997; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, ~~50-06-05.3~~

CHAPTER 75-04-07
INDIVIDUALIZED SUPPORTED LIVING ARRANGEMENTS FOR PERSONS WITH
INTELLECTUAL DISABILITIES - DEVELOPMENTAL DISABILITIES

Section

75-04-07-01	Definitions
75-04-07-02	Conditions of Client Participation
75-04-07-03	Conditions of Provider <u>Agency</u> Participation
75-04-07-04	Discontinuation, Termination, and Nonrenewal of Individualized Supported Living Arrangements Contracts or Services
75-04-07-05	Services Available in the Individualized Supported Living Arrangements Program
75-04-07-06	Appeals

75-04-07-01. Definitions.

In this chapter, unless the context or subject matter requires otherwise:

1. "Administrative reimbursement" means a flat fee intended for reimbursement toward administrative costs and management incentive.
2. "Ancillary services" means consultative services from a psychologist, physical therapist, nurse, audiologist, dietician, speech pathologist, or orthotic and prosthetic specialist. Consultative services must be necessary to provide training to staff for completion of behavioral or service objectives for a particular client, or necessary to maintain or restore functioning level for a client. This subsection may not be construed to allow the purchase of durable medical equipment. This definition of "ancillary services" applies only to the individualized supported living arrangements program.
3. "Clients" means eligible persons with developmental disabilities on whose behalf services are provided or purchased.
4. "Cost-effective" means a daily rate for residential support which is equal to or less than that of a residential program the client was in prior to being referred to an individualized supported living arrangements program. An assessment of cost effectiveness of a prospective contract may include environmental considerations for others that are affected by the client's current or proposed placement in the individualized supported living arrangements program.
5. "Department" means the department of human services.
6. "Division" means the developmental disabilities division of the department.
7. ~~"Failure to cooperate" means refusal of a client in individualized supported living arrangements to participate in support, training, or therapeutic services designed to increase the client's capacity for independent functioning or perform self-care or activities of daily living which the client has been found to have the skills or adaptive methods to competently perform. A determination of the skills or adaptive methods to competently perform may be made based on assessments made by the individual plan program team.~~
- ~~8.~~ "Family member" means relatives or a client to the second degree of kinship.
- 9.8. "Generic service" means services that are available to any member of the population and are not specific to meeting specialized needs of individuals with intellectual disabilities-developmental disabilities.
- ~~10.~~ ~~"Individual program plan team" means a multiagency, interdisciplinary team consisting of the client, significant others, advocates, direct contact workers, and others necessary to design a written plan of specific program intervention and action to meet the client's needs as identified~~

~~in the client's individual service plan. The individual program plan team must be developed in accord with the accreditation council standards pursuant to chapter 75-04-01.~~

- ~~41.9.~~ "Individual service plan" means an individual plan which identifies services required by the eligible client and the services to be provided. The individual service plan is developed by the intellectual disabilities-developmental disabilities case manager and the client or that client's legal representative, or both, considering all relevant input.
- ~~42.10.~~ "Individualized supported living arrangements" means residential support services options in which services are contracted for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.
- ~~43.11.~~ "Intellectual disability-development disability related condition" means a condition that results in the person being eligible pursuant to chapter 75-04-06.
- ~~44.12.~~ "Less intrusive" means a residential situation for a client allowing levels of direct supervision or intervention lower than other residential service program arrangements, yet meets the client's basic needs.
- ~~45.13.~~ "Less restrictive" means a residential situation allowing less control over a client's personal choices, movement, and activities, yet meets the person's basic needs.
14. "Person-centered service plan" means a plan that describes the individual's assessed needs, dreams, personal outcomes, and goals, and how the authorized services and natural supports provided will assist the individual in achieving their outcomes and live safely and successfully in the community.
- ~~46.15.~~ "Personal independence development" means intervention strategies, supports, and adaptations which have the effect of reducing a client's dependence on external support and assistance to meet basic needs.
- ~~47.16.~~ "Primary caregiver" means a person who has assumed responsibility for supervision and assistance in meeting the needs of the client and who is not employed by or working under contract of a provider agency licensed pursuant to chapter 75-04-01.
17. "Provider agency" means the organization or individual who has executed a Medicaid agreement with the department to provide services to individuals with developmental disabilities.
18. "Related organization" means an organization that a provider agency is, to a significant extent, controlled by, associated with, affiliated with, or able to control, and which furnishes services, facilities, or supplies to the provider agency. Control exists when an individual or an organization has the power, directly or indirectly, to significantly influence or direct the action or policies of an organization or institution.
- ~~19. "Similar benefits" means services, supports, or benefits a client may be eligible for through services other than a developmental disabilities division purchased service.~~
- ~~20.~~ "Twenty-four-hour staffing" means continuous and ongoing direct staff supervision by paid staff for all hours of a day which may be inclusive of a day service or employment program.

History: Effective June 1, 1995; amended effective July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-02. Conditions of client participation.

A client may be eligible to receive services in an individualized supported living arrangements setting if:

1. The client has been determined eligible for intellectual disabilities-developmental disabilities case management pursuant to chapter 75-04-06;
2. The client has been recommended for individualized supported living arrangements by an individual service plan;
3. The client's need for residential support is primarily the result of ~~mental retardation~~ intellectual disability or a closely related condition;
4. The client's needs cannot be more appropriately met by a generic service or service including hospitals, clinics, human service centers, nursing facilities, or correctional facilities;
5. The client's needs can be expected to be met by the supports and services provided for in this chapter;
6. Service through the individualized supported living arrangements program is cost effective in meeting the client's needs;
7. An individualized supported living arrangements program is expected to be a less intrusive and less restrictive residential living alternative;
8. The client is at least twenty-one years of age or the client has completed all educational programming to which the client is entitled under state and federal laws and will reach the age of twenty-one years by the next September first, unless the client is participating during the last semester of education and the participation is part of a formal transition plan;
9. The client is living in the client's own residence, independent of a primary caregiver, or lives in a residence meeting the licensing requirements pursuant to chapter 75-03-21;
10. A licensed qualified provider agency is willing to provide necessary services;
11. The client has an individualized supported living arrangements contract with terms approved by the provider agency, the regional developmental disabilities program administrator, and the division, and which terms may:
 - a. Reflect individual service plans and ~~individual program~~ person-centered service plan assessments of need and their respective recommendations;
 - b. Reflect the considerations of the client's legal rights and responsibilities; and
 - c. Reflect the efficient use of public resources.
12. The client's service needs remain compatible with the available services listed in section 75-04-07-05; and
13. When the client receives services in the home of a family, the home is licensed pursuant to chapter 75-03-21.

History: Effective June 1, 1995; amended effective July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-03. Conditions of provider agency participation.

1. Individualized supported living arrangement services shall be purchased by the department through the developmental disabilities division by individual contract from ~~providers~~provider agencies licensed pursuant to chapter 75-04-01.
2. As a condition of participation in the program, a licensed service provider agency shall include its individualized supported living arrangements program in the accreditation council on services for people with disabilities survey process.
3. In the event of discontinuation, termination, or nonrenewal of a contract or service, the provider agency shall cooperate in the referral and transition of the client to alternative services.
4. The provider agency shall make copies of all client records available to the department upon request.
5. For audit purposes, ~~providers~~provider agencies participating in the program shall maintain records of revenue and cost pursuant to chapter 75-04-05.
6. At the client's request, the department may negotiate contracts between ~~providers~~provider agencies of services and clients who pay the entire cost of the contract from their own financial resources. After negotiations are completed, the department shall have no further participation in the costs or payment of the contract provisions.
7. Each provider agency shall compile written job descriptions for their employees that include provisions for participation in ongoing training and requirements for education, experience, and skills. Provision must also be made for at least one performance evaluation per year.

History: Effective June 1, 1995; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-04. Discontinuation, termination, and nonrenewal of individualized supported living arrangements contracts or services.

1. Individualized supported living arrangement services to a client must be discontinued at the expiration of an executed contract when:
 - a. A client with legal capacity fails to cooperate with the delivery of services;
 - b. Based on the assessment of available material, the continued provision of services to the client presents a threat to the health and safety of the client or others; or
 - c. Based on the assessment of available material, it is determined that the needs of the client are no longer being met by the individualized supported living arrangements program or that continued services will not bring satisfactory results.
2. Nonrenewal of a service contract with a provider agency for a client must be considered by the department for reasons that include:
 - a. The client exhibits a lack of progress, assessed by the developmental disabilities case management utilization review process, in development of independent functioning consistent with the client's potential, unless barriers to development of independent functioning exist that cannot reasonably be expected to be controlled or ameliorated through available services;

- b. The provider agency fails to deliver the levels and types of services specified in the contract, to provide qualified staff, or to provide resources necessary to meet the individual's needs which have not decreased during the term of the contract;
 - c. The provider agency, regional developmental disabilities office, and the division fail to agree on contract renewal terms;
 - d. The provider agency fails to develop and activate ~~an individual program~~ person-centered service plan within thirty days of admission or annual program plan development;
 - e. Misrepresentation of the client's needs;
 - f. The provider agency fails to give the client a reasonable opportunity to participate in selection of ancillary service ~~providers~~ provider agencies and direct service staff; or
 - g. The housing occupied by the client is owned or controlled by the provider agency of service and service to the client is contingent upon the client remaining in that housing or lease or rental agreement, which is less favorable to the renter than that normally used in the local real estate market.
3. Immediate termination of a current contract for a client with a specific provider agency, or termination of services through the individualized supported living arrangements program, must be considered by the department based on available information and assessments through its developmental disabilities division for reasons that include:
- a. An individual service plan has been completed, which would terminate individualized supported living arrangements services or authorize an alternative residential service;
 - b. Substantiated abuse, neglect, or exploitation of the client by an employee or agent of the provider agency;
 - c. Institutionalization, incarceration, or alternative placement of the client, except as provided in subdivision g of subsection 1 of section 75-04-07-05;
 - d. Death of the client with the contract terminating on the date of death;
 - e. The client establishes a residence out of state;
 - f. The client refuses to cooperate in the provision of services; or
 - g. Continued service to the client presents an immediate threat to the health or safety of the client or others.

History: Effective June 1, 1995; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-05. Services available in the individualized supported living arrangements program.

- 1. Services and supports available for reimbursement in individualized supported living arrangements contracts:
 - a. Temporary room and board subsidies;
 - b. Ancillary services as defined in subsection 2 of section 75-04-07-01;

- c. Service coordination and ~~individual program~~person-centered service plan development and monitoring, including:
 - (1) Qualified ~~mental retardation or mental health~~developmental disabilities professional allowance; and
 - (2) Internal case management allowance;
 - d. Direct contact staff time for personal supports, including:
 - (1) Safety and health monitoring and maintenance;
 - (2) Personal hygiene and grooming;
 - (3) Management of personal affairs related to daily living needs;
 - (4) Food preparation and storage;
 - (5) Housekeeping and home maintenance;
 - (6) Clothing care and maintenance; and
 - (7) General supervision for health and safety;
 - e. Direct contact staff time for personal independence development strategies, including:
 - (1) Development of natural supports;
 - (2) Activities and strategies to promote community inclusion;
 - (3) Support and adaptive strategies to enhance client control and independence over the individual's environment, resources, activities, self-care, and self-control; and
 - (4) Training:
 - (a) Modeling;
 - (b) Demonstration;
 - (c) Experiential activities;
 - (d) Reinforcement; and
 - (e) Structured learning;
 - f. Administrative reimbursement;
 - g. Only an administrative reimbursement and service coordination allowance are available for the time a client is absent from the service setting and out of the ~~provider's~~provider agency's sphere of direct service responsibility for a time period that exceeds thirty consecutive days;
 - h. Relief staff time;
 - i. Direct contact staff training time; and
 - j. Fringe benefits for subdivisions c, d, e, and h of subsection 1 of section 75-04-07-05.
2. Services not available for reimbursement in individualized supported living arrangements contracts include:

- a. Room and board subsidies when:
 - (1) The housing occupied by the client does not meet local codes for occupancy;
 - (2) The housing occupied by the client is owned or controlled by the provider [agency](#) or a related organization, except when no other lessor is willing to rent to the client at a comparable rate due to credit, behavioral, or other factors attributable to the client;
 - (3) The client resides in a residential unit that has more than one bedroom per resident, except where the department determines standby, overnight staffing is a necessity for the protection of others;
 - (4) The client fails to apply for or accept maintenance benefits when eligible;
 - (5) The client resides in a building where more than twenty-five percent of the total bedrooms are occupied by individuals currently eligible for developmental disabilities-intellectual disabilities [case program](#) management services; or
 - (6) The client's income exceeds basic need expenses by more than the personal spending allowance level for a resident of an intermediate care facility for individuals with intellectual disabilities;
- b. Financial assistance to purchase real property or motor vehicles;
- c. Direct supervision in excess of what is necessary for health and safety with determination based on available assessments;
- d. Personal support and assistance to complete daily living tasks a client is unwilling to perform, but capable of performing, unless assistance is necessary to avert threats to the client's safety with determination based on available assessments;
- e. Personal support for maintenance of housing that does not meet local dwelling codes;
- f. Support staffing for the care of pets or livestock;
- g. Assistance for maintenance of property other than the client's immediate residence and personal property;
- h. Services available to the client under entitlement programs or generic services;
- i. Supports or services to address personal preferences unless accommodation is cost neutral or is instrumental in developing the client's personal independence and will result in decreased need for paid support;
- j. Services provided to a client by a family member or in the home of a family member;
- k. Services provided to a client prior to execution of a contract;
- l. Direct support for travel for a client outside the client's community of residence unless support needs would be the same during the time of travel as at home or the travel is necessary for medical needs, emergency, or obtaining basic necessities not available in the client's home community;
- m. Purchase of real property or maintenance of income-producing property;
- n. Fees for guardianship, conservatorship, legal services, or financial management of investments, trusts, or estates;

- o. Replacement of institutional-based services when the client's needs are predominantly due to a condition not related to intellectual disabilities or a developmental disabilities ~~case~~program management eligible condition;
 - p. Material or financial reinforcers for behavior management plans; and
 - q. Continuous or twenty-four-hour supervision by paid staff on a one-to-one basis within the individualized supported living arrangements program for a client unless a shared staffing arrangement would create a safety threat to the client or others.
3. Excluding the qualifying intellectual disability-developmental disability, individualized supported living arrangements support or treatment is not available for any condition whose general medical protocol or generally accepted medical practices for treatment for the general population requires institutional care. Individualized supported living arrangements allow support services for management of medical conditions that are not attributable to the qualifying intellectual disability-developmental disability, if the qualifying intellectual disability-developmental disability causes the client to be unable to perform self-care that is normally expected by the general population medical protocol and generally accepted medical practices.
 4. Services authorized by contract may include those in this section, but cost ceilings may be established by the department for rates of reimbursement for those services.

History: Effective June 1, 1995; amended effective July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

75-04-07-06. Appeals.

A client may perfect an appeal if the client has been denied services or has had services discontinued based on subsections 3, 4, 5, 6, 7, 9, and 12 of section ~~75-04-07-03~~75-04-07-02, subdivisions a, b, and c of subsection 1, and subdivisions f and g of subsection 3 of section 75-04-07-04. An appeal under this section is timely perfected only if made in writing on forms developed and provided by the department. The complaining subject must submit the written request for an appeal and formal hearing to:

Appeals Supervisor
 North Dakota Department of Human Services
 State Capitol - Judicial Wing
 600 East Boulevard Avenue
 Bismarck, North Dakota 58505-0250

History: Effective June 1, 1995; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10