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Administrative Rules Committee**

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TITLE 17
CHIROPRACTIC EXAMINERS, BOARD OF

JANUARY 2021

CHAPTER 17-01-01

17-01-01-01. Organization and functions of the board of chiropractic examiners.

1. **History.** The board of chiropractic examiners was first established in 1915 under laws now codified as North Dakota Century Code chapter 43-06. North Dakota was the first state in the United States to issue a license to practice chiropractic.
2. **Functions.** One function of the board is to examine, or designate a testing agency to examine, candidates coming into the state to see if they are qualified to practice chiropractic in North Dakota. It is also the function of the board to prevent those who are unqualified from practicing chiropractic in the state.
3. **Board membership.** The board consists of ~~five~~seven members appointed by the governor. ~~Each member is a doctor of chiropractic. The members are five doctors of chiropractic, one certified chiropractic clinical assistant, and one consumer.~~ Members of the board serve five-year terms, ~~and one term expires each year.~~ Board members annually elect from board membership the president, vice president, and secretary-treasurer of the board.
4. **Secretary-treasurer.** The secretary-treasurer of the board is elected by the board and is responsible for overseeing the board's activities as stated in section 17-01-03-02.
5. **Executive director.** The board may hire an executive director to oversee the administrative duties of the board, and who will answer to the board ~~president.~~
- ~~6. **Inquiries.** Any questions or suggestions concerning these rules should be sent to the executive director.~~

History: Amended effective December 1, 1981; March 1, 1986; April 1, 1988; July 1, 1990; April 1, 2001; July 1, 2008; January 1, 2016; January 1, 2017; January 1, 2021.

General Authority: NDCC 43-06-04.1

Law Implemented: NDCC 28-32-02.1, 43-06-04, 43-06-04.1

17-01-01-02. Fees.

The board charges the following fees:

1. For an application for initial licensure, three hundred dollars.
2. For renewal of a license, ~~three~~four hundred dollars for active status or one hundred dollars for inactive status.

3. To change from inactive to active status, ~~two~~three hundred dollars.

4. For a duplicate license, twenty-five dollars.

5. The additional administrative fee for late renewals is ~~two~~three hundred dollars.

Fees for a provisional license or temporary permit for a military spouse shall be waived.

History: Effective April 1, 2001; amended effective July 1, 2008; April 1, 2014; January 1, 2021.

General Authority: NDCC 43-06-04.1

Law Implemented: NDCC 43-06-08, 43-06-13

CHAPTER 17-01-02

17-01-02-02. Procedural rules.

All proceedings of the board ~~shall~~ may be ~~governed by~~ conducted consistent with Robert's Rules of Order. Newly Revised.

History: Amended effective January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-05

CHAPTER 17-01-03

17-01-03-02. Duties of secretary-treasurer.

The secretary-treasurer will review and sign minutes of all meetings as prepared by the executive director. Authorization by the ~~secretary-treasurer~~secretary-treasurer is required for any checks that exceed five hundred dollars. The secretary-treasurer will review the bank statements each month. The secretary-treasurer will assume the duties of the executive director if the position is unfilled. In the absence of the secretary-treasurer, the president shall preside and perform the duties of the secretary-treasurer.

History: Amended effective April 1, 2001; January 1, 2021.

General Authority: NDCC43-06-04.1

Law Implemented: NDCC 43-06-05

17-01-03-02.1. Duties of executive director.

~~The executive director is the filing, recording, and corresponding officer of the board. The executive director shall keep on file a register showing names and addresses and complete registration of all chiropractors who have been licensed by the board. The executive director shall be custodian of the seal and affix the same to documents when necessary. The executive director shall collect and receipt for all money received, keep an accurate account of the same and deposit all such money after each regular or special meeting of the board with the bank selected by the board. The executive director shall keep an accurate record of all money received and disbursed and report the condition of the finances to the board after each board meeting or whenever required to do so. The executive director shall take the minutes of each board meeting and make a complete record of the minutes, to be signed by the secretary-treasurer, which shall be kept in a book provided for that purpose. The executive director will keep the board compliant with the state's open meetings laws~~is responsible for such administrative, financial, licensure, disciplinary, and other responsibilities as specified by the board. The executive director is responsible for ensuring compliance with North Dakota Century Code chapter 44-04.

History: Effective April 1, 2001; amended effective January 1, 2021.

General Authority: NDCC 43-06-04.1

Law Implemented: NDCC 43-06-04.1, 43-06-05, 43-06-07

**CHAPTER 17-02-01
ADMISSION TO PRACTICE CHIROPRACTIC**

Section

17-02-01-01	Educational Requirements [Repealed]
17-02-01-01.1	Approved Schools [Repealed]
17-02-01-01.2	Definitions
17-02-01-02	Applications for Licensure
17-02-01-02.1	Reciprocity <u>or Endorsement</u>
17-02-01-03	Fee for Examination [Repealed]
17-02-01-04	Photo <u>Photograph</u>
17-02-01-05	Examination Number [Repealed]
17-02-01-06	Examination Requirements [Repealed]
17-02-01-07	Conduct of Examination [Repealed]
17-02-01-08	Examination Subjects and Requirements
17-02-01-09	Declaration [Repealed]
17-02-01-10	License Issued
17-02-01-10.1	License Displayed
17-02-01-11	Second Examination [Repealed]
17-02-01-12	Licenses Recorded [Repealed]
17-02-01-13	License Renewal and Fees
17-02-01-14	License Renewal - Special Purposes Examination for Chiropractic [Repealed]
17-02-01-15	Lapsed Licenses
17-02-01-16	Reactivation of an Inactive License

17-02-01-01.2. Definitions.

1. Unless specifically stated otherwise, all definitions found in North Dakota Century Code section 43-06-01 are applicable to this title.
2. "Actual consultation" as used in North Dakota Century Code section 43-06-02 means seeking or giving professional advice, opinions, or assistance in conjunction with a licensed chiropractor in this state with regard to a specific patient for the purpose of providing chiropractic treatment to the patient.
3. In this title, unless the context or subject matter otherwise requires:
 - a. "Direct supervision" means a licensed chiropractor must be on the same premises as the intern when the intern is performing any patient care procedure and be readily available to the intern and patient.
 - b. "Ethics and boundaries examination" or "E&B" means the ethics and boundaries examination offered by the Ethics and Boundaries Assessment Services, LLC (EBAS).
 - c. "Graduate intern" means an unlicensed graduate of a chiropractic college qualified to participate in the graduate intern program and approved by a college of chiropractic and the board. A graduate intern has the abilities to observe a sponsoring licensed chiropractor caring for patients; have supervised participation in patient care, such as adjusting patients, performing examinations, and taking x-rays; participate in and performance of patient education and health care classes; and participate in administrative responsibilities.
 - d. "Intern" means an unlicensed chiropractic student qualified to participate in the preceptorship program and approved by a college of chiropractic and the board. An intern has the abilities to observe a sponsoring licensed chiropractor caring for patients; have supervised participation in patient care, such as adjusting patients, performing

examinations, and taking x-rays; participate in and performance of patient education and health care classes; and participate in administrative responsibilities, such as office procedures, filing, recordkeeping, billing, and staff meetings.

e. "National board" means the national board of chiropractic examiners or its successor or equivalent as determined by the board.

b.f. "Preceptorship" means a short-term structured clinical education experience in an off-campus clinic under the direct supervision of a sponsoring licensed doctor of chiropractic for qualified chiropractic students.

g. "Special purposes examination for chiropractic" or "SPEC" means the special purposes examination for chiropractic offered by the national board.

~~c. "Ethics and boundaries examination" or "E&B" means the ethics and boundaries examination offered by the Ethics and Boundaries Assessment Services, LLC (EBAS).~~

History: Effective May 1, 1993; amended effective April 1, 2001; July 1, 2008; January 1, 2016; January 1, 2017; January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1

Law Implemented: NDCC 43-06-02, 43-06-10, 43-06-10.1

17-02-01-02. Application for licensure.

Application shall be made on the official form issued by the board. The forms may be secured ~~upon application to the executive director. Additionally, the applicant must complete the jurisprudence requirement under subsection 5 of section 17-02-01-02.1~~from the board's office or the board's website.

History: Amended effective February 1, 1990; April 1, 2001; January 1, 2017; January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-08

17-02-01-02.1. Reciprocity or endorsement.

An applicant for reciprocal licensure will be considered by the board if the following conditions are met:

1. The applicant has a license and is in good standing to practice chiropractic in another state or jurisdiction;
2. The applicant has been licensed to practice chiropractic for at least the preceding two years in the other state or jurisdiction;
3. The applicant has successfully passed the ~~appropriate parts of the~~ national board on an earlier occasion;
4. The applicant successfully passes the special purposes examination for chiropractic or part IV of the national board examination, ~~or qualifies for the license transfer application,~~ unless waived by the board for good cause; ~~and~~
5. The applicant successfully passes the jurisprudence examination and provides an affidavit acknowledging that the applicant has read and understands North Dakota statutes and administrative rules governing the practice of chiropractic.;
6. The applicant successfully has completed the criminal history record information background check as required by North Dakota Century Code section 43-06-11.1; and

7. The applicant applies for a temporary license ~~under the "travel to treat" program as authorized~~ under North Dakota Century Code chapter 43-51.

History: Effective May 1, 1993; amended effective April 1, 2001; July 1, 2008; January 1, 2016; January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-10.1

Law Implemented: NDCC 43-06-10, 43-06-10.1

17-02-01-04. ~~Photo~~Photograph.

~~An unmounted~~A photograph ~~of the applicant, three and one-half inches [8.89 centimeters] by five and one-half inches [13.97 centimeters], shall~~ must be ~~pasted in the space~~ provided on the application before filing with the board. The photograph ~~shall~~ must have been taken within ~~one year~~ six months of the date of application.

History: Amended effective January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-08

17-02-01-08. Examination subjects and requirements.

Examinations will be provided by the national board, or its successor, except for jurisprudence, which will be administered by the board. An applicant must satisfy the following criteria:

1. The applicant must hold a diploma from a chiropractic college fully accredited by the council on chiropractic education or its successor or equivalent as determined by the board.
2. If the applicant graduated before 1966, the applicant must have been in active practice and have passed five examinations (x-ray, orthopedics, jurisprudence, nutrition, and neurology) and also five practicals (x-ray, spinal biomechanics, extremity adjusting, first aid, and case management).
3. If the applicant graduated between 1966 and 1988, the applicant must have passed parts I and II of the national board examination. ~~In addition, the applicant must have passed part IV or the SPEC.~~
4. If the applicant graduated between July 1988 and January 1997, the applicant must have passed parts I, II, and III of the national board examination. ~~In addition, the applicant must have passed part IV or the SPEC.~~
5. If the applicant graduated after January 1997, the applicant must have passed parts I, II, III, and IV of the national board examination.
6. Passing grades for part IV of the national board examination are effective for seven years after which time the applicant may be required to take and pass the SPEC.
7. Graduates after January 1, 2001, must reflect a passing score on the national board's physiotherapy examination.

8. All applicants must have passed the jurisprudence examination and provide an affidavit acknowledging the applicant has read and understands North Dakota statutes and administrative rules governing the practice of chiropractic.

History: Amended effective February 1, 1990; April 1, 2001; July 1, 2008; January 1, 2016; January 1, 2017; January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-10, 43-06-10.1

17-02-01-10. License issued.

When it shall have been determined by the board that any candidate has successfully passed the examination and made satisfactory demonstration of the clinical art, ~~and is a person of good moral character~~ and has no other barriers to licensure under North Dakota Century Code section 43-06-15 or chapter 17-03, there shall be issued to such candidate a license to practice chiropractic, which must be signed by all members of the board.

History: Amended effective February 1, 1990; January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-08

17-02-01-10.1. License displayed.

If a licensed chiropractor moves from the chiropractor's primary location or opens a branch office, the office of the executive director must be notified of the change of location of the chiropractor within fourteen days. A current certificate or duplicate certificate issued by the board must at all times be displayed in each office of the chiropractor. In case of loss by fire or other destruction, a duplicate certificate may be issued by the board at a regular meeting upon receipt of satisfactory evidence of the destruction.

History: Effective February 1, 1990; amended effective April 1, 2001; January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-04.1

17-02-01-13. License renewal and fees.

1. Every chiropractor who has been licensed by the board shall renew the license by remitting a renewal fee on or before eleven fifty-nine p.m. central standard time September first of each year ~~and~~, completing the questionnaire provided ~~by~~ on the board's website, and reporting the appropriate number of continuing education credits. For applicants who receive an initial license after July first, the license will be deemed to be automatically renewed on September first for an additional year without payment of an additional renewal fee.
2. Subject to subsection 3, a license which has not been renewed as a result of nonpayment of the annual registration fee may be reinstated upon payment to the board of past renewal fees plus an additional administrative fee set by the board. Proof of appropriate continuing education hours must be presented.
3. If a license has not been renewed during a continuous two-year period, ~~no renewal of the license may be issued unless the applicant passes the special purposes examination for chiropractic or part IV of the national board examination, or has passed part IV within the seven years immediately preceding the date of application for renewal; an applicant must reapply~~ unless waived by the board for good cause. ~~Further, the applicant must complete the jurisprudence requirement under subsection 5 of section 17-02-01-02.1.~~

History: Amended effective April 1, 1984; February 1, 1990; May 1, 1993; April 1, 2001; July 1, 2008; January 1, 2016; January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-04.1, 43-06-13

17-02-01-15. Lapsed licenses.

Notwithstanding the provisions in this chapter regarding renewal of lapsed licenses, once a license has lapsed, the person who held the lapsed license may not practice chiropractic or use a title reserved under state law for individuals who are licensed by the board until the individual's license is renewed or until a new license is issued. A person whose license has lapsed but who continues to practice

chiropractic or use a restricted title violates state law ~~and this chapter~~. Such a violation is grounds for denying an application by the former licensee for renewal of the lapsed license or for a new license.

History: Effective April 1, 2001; amended effective January 1, 2021.

General Authority: NDCC 43-06-04.1

Law Implemented: NDCC 43-06-04.1

17-02-01-16. Reactivation of an inactive license.

An applicant for reactivation of an inactive license will be considered if the following conditions are met:

1. The applicant must provide a letter from all states in which that chiropractor has practiced since their North Dakota license became inactive indicating that they are in good standing to practice chiropractic in that other state or states.
2. The applicant must appear before the board if the applicant cannot show proof of active practice in some state or jurisdiction for at least six months of the last three years.
3. The applicant must take and pass the special purposes examination for chiropractic test if it has been three or more years since the chiropractor was in active practice in any state. The board may select to have any holder of an inactive license applying for reactivation take the special purposes examination ~~for chiropractic test~~ or any other evaluation at its discretion.
4. The applicant must have successfully passed the jurisprudence examination in the past twelve months.
5. The applicant agrees to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by North Dakota Century Code section 12-60-24. All costs associated with obtaining a criminal history record check are the responsibility of the applicant.

History: Effective January 1, 2017; amended effective January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-08

Law Implemented: NDCC 43-06-11.1, 43-06-13

CHAPTER 17-02-02.1

17-02-02.1-02. License suspension.

During a period of suspension the suspended chiropractor shall not provide or assist in any type of patient care or patient communications, unless specified otherwise in the order or settlement agreement.

History: Effective July 1, 2008; amended effective January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-04.1, 43-06-13

CHAPTER 17-02-03

17-02-03-01. Filing addresses.

Every chiropractor shall file with the executive director of the board of examiners ~~a~~:

1. A valid email address and the chiropractor's mailing address in the city and location of the place where the chiropractor conducts practice; and ~~shall~~

2. ~~Shall~~ report the name of any other city and place wherein the chiropractor maintains a branch office for the purpose of practice.

History: Amended effective April 1, 2001; January 1, 2017; January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-13

17-02-03-02. Reporting contagious or infectious diseases.

To comply with the state law regarding contagious or infectious diseases, the chiropractor shall immediately notify the health officer of the ~~community~~ region of the existence of such diseases in accordance with the state department of health list of contagious or infectious diseases.

History: Amended effective February 1, 1990; January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-16

CHAPTER 17-02-04

17-02-04-02. Signing death certificates.

In case of the death of any ~~patient~~individual, the chiropractor shall be required to fill out and sign such certificate of death as is required by statute.

History: Amended effective January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-16

17-02-04-03. Advertising.

Chiropractors will be privileged to advertise their practice in any legitimate manner ~~set forth in the American chiropractic association code of ethics adopted by this state,~~ except as limited or prohibited in section 17-03-01-01.

History: Amended effective February 1, 1990; April 1, 2001; January 1, 2021.

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

Law Implemented: NDCC 43-06-15

17-02-04-06. Needle acupuncture.

1. "Needle acupuncture" means a system of diagnosis and treatment for the purpose of restoring the body back to health which includes the utilization of needles which may be manipulated or stimulated by hand as well as by electric, magnetic, light, heat, or ultrasound. "Needle acupuncture" does not include electric point stimulation, the use of pressure adjunctive techniques for muscle, ligamentous, or neurologic stimulation or inhibition, or the drawing of blood for the purpose of clinical diagnostic laboratory evaluation.
2. A chiropractor may only practice needle acupuncture if the chiropractor is certified to practice needle acupuncture by the board.
3. A minimum of one hundred hours of training in needle acupuncture sponsored by a council of chiropractic education accredited college of chiropractic is required before a chiropractor may be certified to practice needle acupuncture.
4. The one hundred hours of training in acupuncture must be certified by the sponsoring college and registered by the sponsoring college with the executive director of the board.
5. When the required hours of training are registered by the sponsoring college, the board will issue the chiropractor a letter certifying that the chiropractor is authorized to practice needle acupuncture.
6. Any person who is authorized by the board to practice needle acupuncture shall complete, as a part of the licensed chiropractors' annual requirement, two hours of continuing education in acupuncture or acupuncture-related subjects.
7. If a licenseholder fails to complete the continuing education requirement in subsection 6, the licenseholder shall pay an administrative fee of one hundred dollars and provide proof of required continuing education hours in order to reinstate their ability to perform needle acupuncture.
8. If a licenseholder fails to complete the continuing education requirement in subsection 6 for more than one year, but less than three years, the licenseholder shall pay the administrative fee of one hundred dollars, plus provide proof of completion of an approved twelve-hour recertification seminar.

9. If a licenseholder fails to complete the continuing education requirement in subsection 6 for three or more years, the licenseholder must successfully pass the national board of chiropractic examiners acupuncture examination, or equivalent.

10. If a licenseholder is practicing needle acupuncture in conjunction with a chiropractic practice, the licenseholder is not required to be licensed by the board of integrative health care.

History: Effective May 1, 1993; amended effective April 1, 2001; January 1, 2017; January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1

Law Implemented: NDCC 43-06-04.1

17-02-04-07. Dry needling.

1. Dry needling is a method of treatment and rehabilitation for neuromusculoskeletal conditions. Dry needling is based on western medical concepts, including the art of examination, diagnosis, and case management.

2. A chiropractor may only practice dry needling if the chiropractor is certified by the board.

3. A minimum of fifty hours of face-to-face course study, which must include dry needling safety, is required before a chiropractor may be fully certified to practice dry needling. Online study is not considered appropriate training.

4. A temporary limited-scope certification is available for approved courses that divide the minimum training into successive independent modules. The board must be provided verification of completion prior to the temporary limited-scope certification being issued. The temporary limited-scope certification expires after eighteen months.

5. The face-to-face course of study must be sponsored by an institution accredited by the council of chiropractic or its equivalent or another course of study deemed appropriate by the board.

6. When the verification of required hours of training is provided to the board, the board shall issue the chiropractor a letter ~~confirming~~certifying that the chiropractor is authorized to practice dry needling.

7. Any person who is certified by the board to practice dry needling shall complete, as a part of the licensed chiropractors' annual requirement, two hours of continuing education in dry needling or dry needling-related subjects.

8. If a licenseholder fails to complete the continuing education requirement in subsection 6, the licenseholder shall pay an administrative fee of one hundred dollars and provide proof of required continuing education hours in order to reinstate their ability to perform dry needling.

9. If a licenseholder fails to complete the continuing education requirement in subsection 6 for more than one year, but less than three years, the licenseholder shall pay the administrative fee of one hundred dollars, plus provide proof of completion of a ten-hour, face-to-face dry needling seminar.

10. If a licenseholder fails to complete the continuing education requirement in subsection 6 for three or more years, the licenseholder must show proof of current certification by an institution accredited by the council of chiropractic or its equivalent or another course of study deemed appropriate by the board.

History: Effective January 1, 2017; amended effective January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1

Law Implemented: NDCC 43-06-04.1

CHAPTER 17-03-01 UNPROFESSIONAL CONDUCT

Section

17-03-01-01	Unprofessional Conduct
17-02-01-02	Marketing
17-03-01-03	Use of Special Purposes Examination for Chiropractic or the Ethics and Boundary Examination for Disciplinary Purposes
17-03-01-04	Code of Ethics <u>[Repealed]</u>
17-03-01-05	Prepaid Care Plans

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 or with reckless disregard harassing, abusing, or intimidating a patient, coworker, or individual who files a report against a licensee, 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~~seven years.
4. ~~The willful or grossly negligent failure~~Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violations of, or conspiring to violate or failing 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~~sexual misconduct, 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~~ sexual misconduct, infliction of physical harm or bodily injury to another individual, corruption, 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.~~ 12. ~~Participation~~ Willful participation in any act of fraud or misrepresentation.
- ~~14.~~ 13. 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.~~ 14. 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.~~ 15. Practicing or offering to practice beyond the scope of work permitted by law, ~~or accepting.~~
- ~~16.~~ 16. Accepting and performing professional responsibilities which a licensee knows or has reason to know that the licensee is not competent to perform, ~~or performing.~~
- ~~17.~~ 17. 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.~~ 18. 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.~~ 19. Chiropractor is responsible for all patient care provided by them, or patient care directly delegated by said chiropractor to their agent or employee. For the purposes of this subsection, "patient care" includes the practice of chiropractic, patient recordkeeping, patient billing, insurance billing, and communication with insurance companies.
- ~~19.~~ 20. 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. The term "specialist" in advertising may be utilized only by licenseholders who hold a current diploma or certification in a specialty area from the international chiropractic association, American chiropractic association, the Carrick institute, or other accredited certifying body as approved by the board upon request.
 - 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.~~

~~19.21.~~ Violation of any term of suspension or probation imposed by the board.

~~20.22.~~ 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 or significant other.

History: Effective February 1, 1990; amended effective April 1, 2001; July 1, 2008; January 1, 2016; January 1, 2017; January 1, 2021.

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

Law Implemented: NDCC 43-06-15

17-03-01-02. Marketing.

1. Chiropractors who use marketing, either personally or through a professional company, are responsible for any representations made or statements given.
2. All marketing must comply with the rules pertaining to advertising adopted by the board.
3. Chiropractors who use ~~telemarketing~~marketing are required to keep records regarding the ~~telemarketing~~marketing for a period of two years. The records must include the script used, the name of the individual or company conducting the ~~telemarketing~~marketing, and the dates the ~~telemarketing~~marketing was conducted.
4. Chiropractors must make available to the board a copy of their marketing records upon the board's request.

History: Effective May 1, 1993; amended effective January 1, 2016; January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1

Law Implemented: NDCC 43-06-04.1, 43-06-15

17-03-01-04. Code of ethics.

Repealed effective January 1, 2021.

~~—The board adopts the 2007 edition of the American chiropractic association code of ethics as the code of ethical conduct governing the practice of chiropractic in the state of North Dakota.~~

~~**History:** Effective April 1, 2001; amended effective July 1, 2008; January 1, 2016.~~

~~**General Authority:** NDCC 43-06-04.1~~

~~**Law Implemented:** NDCC 43-06-04.1~~

CHAPTER 17-03-02

17-03-02-01. Professional education.

1. All licensees shall complete a minimum of twenty hours of approved continuing chiropractic education per year. ~~Only hours~~Hours earned atthrough a provider of approved continuing education or board-approved continuing chiropractic education programs will be acceptable. In order to receive board approval, a continuing chiropractic education program must meet one of the following:
 - a. A program sponsored by the board;
 - b. ~~A program approved by providers of approved continuing education (PACE);~~
 - ~~c.~~ A program sponsored or cosponsored by a college of chiropractic accredited by the council on chiropractic education or its successor or equivalent;
 - ~~d.~~c. A health-related seminar sponsored by an equally accredited college or university;or
 - ~~e.~~ ~~A medical seminar qualifying for continuing education credits; or~~
 - ~~f.~~d. ~~An~~A health-related educational program or seminar arranged by ~~the North Dakota~~medical or chiropractic association and approved by the board.
2. In order to have a program approved, the sponsor shall submit to the board the following information in addition to any other information requested by the board:
 - a. A detailed course outline or syllabus including such items as the method of instruction and the testing materials.
 - b. The qualifications and subjects taught by each instructor appearing in the program.
 - c. The procedure to be used for recording attendance of those attendees seeking to apply for continuing chiropractic education credit.
 - d. The instructor is approved by the board of chiropractic examiners.
3. The board must be the sole determinant of whether the courses are approved for continuing chiropractic education credit. The board shall make that determination based on the information submitted to it. In making its decision, the board shall determine whether or not the course submitted for credit meets the basic objectives and goals of continuing chiropractic education. Those basic goals include the growth of knowledge, the cultivation of skills and greater understanding, the continual striving for excellence in chiropractic care, and the improvement of health and welfare of the public.
4. On or before September first of each year, licensees may elect to renew their licenses as inactive. The inactive status is at a reduced fee for those licensees who do not practice, consult, or provide any service relative to the chiropractic profession in the state. The inactive licensee does not have to provide proof of continuing educational hours. Any inactive licensee may activate the license at any time by paying an additional fee and showing proof of twenty hours of continuing education in the last twelve months.
5. All licensees must have ~~four~~three hours of professional boundary study every three years prior to renewal of their licenses. These ~~four~~three hours will be included in the annual twenty-hour requirement in the year taken.

~~6. During the first calendar year a new license is issued to practice chiropractic in North Dakota, the licensee will be required to attend a seminar put on by the board. The seminar will be provided twice a year without charge.~~

History: Effective February 1, 1990; amended effective April 1, 2001; July 1, 2008; January 1, 2016; January 1, 2021.

General Authority: NDCC 43-06-13, 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-13

17-03-02-02. Peer review.

1. Peer review must be performed by a committee of three individuals appointed by the ~~president of the~~ board. Membership on the committee shall consist of three licensed chiropractors, none of whom may be in a direct or indirect business or personal relationship with the provider, insurer, or patient whose care is being reviewed.
2. The peer review committee shall investigate any complaint referred by the board concerning whether a licensed chiropractor may have violated any standard of practice.

History: Effective February 1, 1990; amended effective July 1, 2008; January 1, 2016; January 1, 2021.

General Authority: NDCC 43-06-14.1

Law Implemented: NDCC 43-06-14.1

17-03-02-03. Report of disciplinary actions.

The board, or a reporting agent utilized by the board, will report all final disciplinary actions to ~~CIN-BAD, the internet database of the federation of chiropractic licensing boards~~the chiropractic information network board action data bank (CIN-BAD). In addition, by law, the board will report all final disciplinary actions to the ~~federal health care integrity and protection database~~national practitioner data bank. The board will also publish all final disciplinary actions ~~in its newsletter, distributed to all licenseholders and to select state newspapers~~on the board's website.

History: Effective April 1, 2001; amended effective July 1, 2008; January 1, 2021.

General Authority: NDCC 43-06-04.1, 43-06-05

Law Implemented: NDCC 43-06-15

ARTICLE 17-04
CERTIFIED CHIROPRACTIC CLINICAL ASSISTANT

Chapter
17-04-01 Certification

CHAPTER 17-04-01
CERTIFICATION

Section
17-04-01-01 Lapsed Certifications
17-04-01-02 Reactivation of an Inactive Certification

17-04-01-01. Lapsed certifications.

Notwithstanding the provisions in this chapter regarding renewal of lapsed certifications, once a certification has lapsed, the individual who held the lapsed certification may not practice as a certified chiropractic clinical assistant or use a title reserved under state law for individuals who are certified by the board until the individual's certification is renewed or until a new certification is issued. An individual whose certification has lapsed but who continues to practice as a certified chiropractic clinical assistant or use a restricted title violates state law. Such a violation is grounds for denying an application by the former certification holder for renewal of the lapsed certification or for a new certification.

History: Effective January 1, 2021.
General Authority: NDCC 43-06-04.1
Law Implemented: NDCC 43-06-16.1

17-04-01-02. Reactivation of an inactive certification.

An applicant for reactivation of a lapsed certification will be considered if the following conditions are met:

1. The applicant must provide a letter from all states in which that certified chiropractic clinical assistant has practiced since their North Dakota certification became inactive indicating that they are in good standing to practice as a certified chiropractic clinical assistant in that other state or states.
2. The applicant must appear before the board if the applicant cannot show proof of active practice in some state or jurisdiction for at least six months of the last three years.
3. The applicant must have filed with the board proof of successful completion of the certified chiropractic clinical assistant program and examination by the federation of chiropractic licensing boards.
4. The applicant agrees to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by North Dakota Century Code section 12-60-24. All costs associated with obtaining a criminal history record check are the responsibility of the applicant.

History: Effective January 1, 2021.
General Authority: NDCC 43-06-04.1
Law Implemented: NDCC 43-06-16.1

TITLE 37
DEPARTMENT OF TRANSPORTATION

JANUARY 2021

CHAPTER 37-12-02

37-12-02-01. General considerations.

1. **Scope.** Vehicles constructed, reconstructed, or modified shall comply with all provisions of North Dakota Century Code chapter 39-21 and any other applicable provision of North Dakota Century Code title 39, unless specifically excepted. The requirements of this chapter shall not supersede the original and unaltered design, construction, or equipment standards of motor vehicles manufactured by a recognized manufacturer.
2. **Definitions.** The terms used throughout this chapter have the same meaning as in North Dakota Century Code title 39, except:
 - a. "Recognized manufacturer" means a manufacturer of motor vehicles intended for use on the public roadways and for distribution and sale in interstate commerce.
 - b. "Recognized manufacturer or assembler" means every fabricator of a special vehicle assembled in its entirety as a complete product for use on the public roadways.
 - c. "Special motor vehicles" means ~~those passenger~~any vehicles ~~and trucks with an unladen weight of six thousand pounds [2721.55 kilograms] or less~~ equipped with two or more axles having at least two wheels per axle, and which are intended for use on public highways. The term "special motor vehicle" includes the following types:
 - (1) Type I - Those vehicles which are restored to or retain their original configuration but which may contain changed steering, brake, power train, or suspension systems.
 - (2) Type II - Those vehicles changed from the recognized vehicle manufacturer's original body configuration but which retain the general appearance, ~~including changes to the body chassis or engine~~ of the original vehicle. This type may ~~also~~ include changes and modifications to engine, chassis, brake system, power train, steering, and suspension systems.
 - (3) Type III - Other than type I and type II special vehicles, those vehicles custom built with fabricated parts, or parts taken from existing vehicles.
3. **Manufacturer's certification.** The manufacturer or assembler of a special vehicle (type I, II, or III) shall provide a certification of fact that the vehicle is designed and manufactured for use on the public roadway and complies with the performance and equipment requirements of this chapter. Nothing contained in this chapter shall preclude the motor vehicle division director from requiring a certificate of inspection to ensure compliance with the standard.

History: Effective July 1, 2008; amended effective January 1, 2021.

General Authority: NDCC 39-02-03

Law Implemented: NDCC 39-02-03

37-12-02-02. Body requirements.

1. **Door latches.** Every special motor vehicle that is equipped with doors leading directly into a compartment that contains one or more seating accommodations shall be equipped with mechanically actuated door latches which firmly and automatically secure the door when pushed closed and which allow each door to be opened from the inside by the actuation of a convenient lever, handle, or other suitable device.
2. **Floor pan.** Every special vehicle shall be equipped with a floor pan under the entire passenger-carrying compartment. The floor pan shall support the weight of the number of occupants that the vehicle is designed to carry. The floor pan shall be so constructed that it prevents the entry of exhaust fumes.
3. **Hood latches.** A front-opening hood shall be equipped with a primary and secondary latching system to hold the hood in a closed position.
4. **Instrumentation and controls.** Every special vehicle shall be equipped with a circular steering wheel with an outside diameter of not less than thirteen inches [33.02 centimeters].
5. **Rearview mirror.** Every special vehicle shall be equipped with ~~two~~a rearview ~~mirrors~~mirror having substantially unit magnification. ~~One~~It shall be mounted ~~on the inside of the vehicle~~ in such a position that it affords the driver a clear view of a straight level road surface at least two hundred feet [60.96 meters] to the rear. ~~The other shall be mounted on the outside of the vehicle on the driver's side in such a position that it affords the driver a clear view to the rear.~~ ~~When~~If an inside mirror does not give a clear view to the rear, ~~the right-hand~~a driver's side outside ~~mirrors~~mirror shall be required in lieu thereof. The mirror mounting shall provide for mirror adjustment by tilting in both horizontal and vertical directions. Each mirror shall have a minimum of ten square inches [64.52 square centimeters] of reflective surface.

History: Effective July 1, 2008; amended effective January 1, 2021.

General Authority: NDCC 39-02-03

Law Implemented: NDCC 39-02-03

CHAPTER 37-12-04

37-12-04-01. Procedure.

If a North Dakota resident owns a vehicle for which the resident is unable to obtain a proper certificate of title, the motor vehicle division will use the following forms and procedures to determine ownership of a vehicle and issue a certificate of title:

1. A check of the records of the motor vehicle division, as well as the records of other appropriate states, will be conducted to determine if a certificate of title has previously been issued. The applicant must provide the results of a department-approved vehicle title history check.
2. If no record of a previous certificate of title is found, the motor vehicle division will issue a North Dakota certificate of title to the applicant upon receipt of:
 - a. A notarized bill of sale.
 - b. A photograph of the vehicle identification number plate.
 - c. Current photographs of the front, side, and rear of the vehicle.
 - d. Copy of North Dakota driver's license or North Dakota state-issued identification.
 - e. SFN 60689 statement of fact is required if the vehicle will not be registered.
 - f. A vehicle statement of ownership from the applicant (form SFN 2903).

e.g. An inspection of the vehicle by a business that is registered with the secretary of state, is in good standing, and offers vehicle repair to the public. The business completing the certificate of inspection may not be the business that reconstructed the vehicle and must state the vehicle is in compliance with the requirements of North Dakota Century Code chapter 39-21 (form SFN 2486).

d.h. Appropriate title fee, license fees, and motor vehicle excise tax.
3. When there is no record of a previous title, the motor vehicle division will check the national crime information center computer to determine that the vehicle is not listed as a stolen vehicle.
4. If a record of a previous certificate of title is found, the motor vehicle division will advise the applicant of the name and address of the last owner of the vehicle but will take no further action to issue a certificate of title. The applicant must obtain the certificate of title from the last owner or obtain an order of the court awarding ownership to the applicant.

History: Effective July 1, 2008; amended effective April 1, 2014; January 1, 2021.

General Authority: NDCC 39-05-20(1)

Law Implemented: NDCC 39-05-20(1)

CHAPTER 37-12-05

37-12-05-01. Procedure.

A business that is registered with the secretary of state, is in good standing, and offers motor vehicle repair to the public, when inspecting a salvage vehicle under the provisions of North Dakota Century Code section 39-05-20.2, must physically inspect the following equipment to determine it is in compliance with the provisions of North Dakota Century Code chapter 39-21 and North Dakota Administrative Code article ~~52-04~~37-12: headlights, turn signals, windshield, mirrors, horn, brakes, exhaust system, taillights, stoplights, license plate lights, clearance lights and reflectors, bumper heights, tires, fenders, steering wheel, steering and suspension, hood latches, door latches, floor pan, and fuel system. In addition to physically inspecting the listed equipment, a business qualified to perform inspections may require an additional statement from the rebuilder of the salvage vehicle prior to the completion of the certificate of inspection. The additional signed statement, as a part of form SFN 2486, shall require the rebuilder to certify the following:

1. The frame of the salvage vehicle was not in need of repair or has been repaired in such a manner that the repairs will not detract from the overall performance of the vehicle and the frame is now in a condition that would be comparable to the frame of a similar vehicle which had not been damaged in an accident.
2. The wheel alignment is within the tolerances allowed for vehicles of the same make, year model, and style. A business qualified to perform inspections may require this additional certification when they determine the salvage vehicle may have suffered damage to frame, chassis, or wheel alignment as a result of an accident.

History: Effective July 1, 2008; amended effective April 1, 2014; January 1, 2021.

General Authority: NDCC 28-32-02, 39-02-03

Law Implemented: NDCC 39-05-20.2

CHAPTER 37-12-06

37-12-06-01. Motor vehicle branch office fees.

Maximum fees for the following motor vehicle branch office ~~transactions~~services are listed below.

Motor Vehicle Transaction	Maximum Fee
Motor vehicle/New title*	\$10.00
Motor vehicle/Title transfer*	10.00
Motor vehicle/Duplicate title	8.00 <u>10.00</u>
Motor vehicle/Registration	10.00
Motor vehicle/Duplicate registration	8.00 <u>10.00</u>
Motor vehicle/New registration*	5.00 <u>2.00</u>
Motor vehicle/Registration change	10.00
Motor vehicle/Renewal	5.00 <u>10.00</u>
Motor vehicle/Title correction	10.00
Other/New mobility-impaired	10.00
Other/Duplicate mobility-impaired	10.00
Other/Renewal mobility-impaired	10.00
Other/New personal inventory	10.00
Other/Duplicate personal inventory	8.00 <u>10.00</u>
Other/Renewal personal inventory	7.00 <u>10.00</u>
Other/Standard permit	10.00
Motor vehicle/New title branch admin	2.00
Motor vehicle/Title transfer branch admin	2.00
Motor vehicle/ Duplicate <u>Revised</u> title branch admin	2.00
Motor vehicle/Title correction branch admin	2.00

*The maximum fee for combined services, such as new title and registration and ~~for combined~~ title transfer and registration is \$12.00 per vehicle.

Each fee to be charged by the motor vehicle branch office must be set forth in an agreement between the branch office and the director. The director must approve the fees for each branch office.

History: Effective April 1, 2014; amended effective January 1, 2021.

General Authority: NDCC 39-02-03

Law Implemented: NDCC 39-02-03

TITLE 69
PUBLIC SERVICE COMMISSION

JANUARY 2021

CHAPTER 69-09-03

69-09-03-02. Adoption of regulations.

The following parts of title 49, Code of Federal Regulations in effect as of ~~July 31, 2019~~August 20, 2020, are adopted by reference:

1. Part 190 - Pipeline Safety Programs and Rulemaking Procedures.
2. Part 191 - Transportation of Natural Gas and Other Gas by Pipeline, Annual Reports, Incident Reports, and Safety-Related Condition Reports.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.
4. Part 193 - Liquefied Natural Gas Facilities: Federal Safety Standards
5. Part 194 - Response Plans for Onshore Oil Pipelines
6. Part 195 - Transportation of Hazardous Liquids by Pipeline.
7. Part 199 - Drug and Alcohol Testing.

Copies of these regulations may be obtained from:

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

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012; April 1, 2015; October 1, 2016; July 1, 2018; July 1, 2020; January 1, 2021.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

CHAPTER 69-10-01
WEIGHTS AND MEASURES - GENERAL

Section

69-10-01-01	Definitions
69-10-01-02	Installation by Other Than a Registered Service Person
69-10-01-02.1	Certification
69-10-01-02.2	Repair and Calibration
69-10-01-02.3	<u>Device</u> Recertification
69-10-01-03	<u>Certifying and</u> Sealing
69-10-01-03.1	Registration of a New or Moved Commercial Device <u>[Repealed]</u>
69-10-01-03.2	Equipment Repair Notice - Applicable Usage
69-10-01-04	Registration of New Devices - Moving Existing Devices [Repealed]
69-10-01-04.1	Variance Permit Requests
69-10-01-04.2	Split-Weigh Variance Permit Requests
69-10-01-05	Rejected Devices
69-10-01-05.1	Inactive Weighing or Measuring Devices
69-10-01-06	Liquefied Petroleum Gas Meters [Repealed]
69-10-01-06.1	Liquefied Petroleum Gas Meters - Temperature Compensation
69-10-01-07	Sale of Liquid Fuels on Other Than Gross Volume Basis Prohibited [Repealed]
69-10-01-08	Assisting Inspector
69-10-01-09	Bulk Liquid Fuel Meters [Repealed]
69-10-01-09.1	Bulk Liquid Fuel Meters - Retail Sales
69-10-01-09.2	Bulk Liquid Fuel Meters - Marking
69-10-01-09.3	Bulk Liquid Fuel Meters - Design Use
69-10-01-10	Examination of Records
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69-10-01-11	Device Adjustments
69-10-01-12	Sale of Anhydrous Ammonia
69-10-01-13	Enforcement
69-10-01-14	Inspection and Testing Accessibility
69-10-01-15	Devices Taken Out of <u>Removed from</u> Service
69-10-01-16	Service Contracts
69-10-01-17	Manufacturer Design Deviations and Limitations

69-10-01-01. Definitions.

As used in article 69-10:

1. "Audit trail" means an electronic count or information record of the changes to the values of the calibration or configuration parameters of a device.
2. "Automatic bulk weighing system" means a weighing system ~~which weighs grain~~adapted to the automatic weighing of bulk commodities in successive drafts ~~or predetermined amounts,~~ automatically ~~records~~recording the no-load and loaded weight values, and ~~accumulates~~accumulating the net weight of each draft.
- ~~2.3.~~ "Batching scale" means a noncommercial weighing or measuring device used to determine, in part, the amount of an ingredient in a finished, manufactured commodity.
- ~~3.4.~~ "Certify" means to seal, if upon testing and inspection, a weighing or measuring device is within the permitted tolerance and properly installed.
- ~~4.5.~~ "Commerce" means the distribution or consumption of quantities, things, produce, commodities, or articles which may be offered or submitted by any person for sale or hire.

- 5-6. "Commercial weighing and measuring device" includes:
- a. A weighing or measuring device commercially used or employed in establishing size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchased, offered, or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure; and
 - b. An accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects the accuracy of the device.
7. "Equipment repair notice tag" means a tag that allows a device to be operated for sixty days from its inspection date pending correction of cited defects relating to the device or any of its required peripheral equipment. ~~The tag defaults to a rejection tag if the device is not in compliance within sixty days.~~
- 6-8. "Liquid or LPGliquefied petroleum gas computing pump" means a device that provides fuel or LPGliquefied petroleum gas to a consumer.
- 7-9. "Medical marijuana" means medical marijuana as regulated by the state department of health.
10. "NCWM" means the national conference on weights and measures.
11. "NIST" means the United States department of commerce, national institute of standards and technology.
- 8-12. "~~Not sealed~~Noncommercial device" means a stickertag or seal applied to a device which has not been inspected and tested, does not meet applicable design or tolerance requirements, or is no longer being used commercially. ~~A device that is not sealed shall not be used in commerce.~~
- 9-13. "NTEP" means the national conference on weights and measures, national type evaluation program.
14. "Quality assurance inspected" means a tag applied to a device which either passed a quality assurance test or passed a test in response to a consumer complaint.
15. "Random testing" means the random retesting and recertification by a weights and measures inspector of any weighing or measuring device being tested ~~under the self-certification rules.~~
- 10-16. "Registered service person" means ~~a person or agency authorized by the commission to remove an official rejection seal placed on a weighing or measuring device or to repair and certify weighing and measuring devices described in North Dakota Century Code section 64-02-13~~an individual who for hire, award, commission, or payment of any kind installs, services, repairs, or reconditions a commercial weighing or measuring device, and who registers with the commission.
- 11-17. "Rejected for repair" means a ~~sticker or~~ seal applied to a device which has been inspected and tested and does not meet applicable design or tolerance requirements. ~~A device that is rejected for repair shall be modified or repaired by a registered service person within thirty days of the date it was rejected and may not be used in commerce until placed into service.~~
- 12-18. "Retail fuel device" means a commercial, indicating fuel ~~pump used to deliver fuel to individual highway vehicles in quantities of one hundred gallons [378.54 liters] or less per transaction~~or fuel additive device used to deliver fuel or fuel additive used in internal-combustion engines.

- ~~13.19.~~ "Seal" means marking a weighing or measuring device to show certification or rejection.
- ~~14.20.~~ "Security seal" means either a crimpable lead and wire ~~pressure-sensitive~~ seal, a plastic and wire pressure-sensitive seal, or a pressure-sensitive adhesive sealing sticker, permanently attached to a weighing or measuring device to prevent or indicate unauthorized access to the tolerance-adjusting mechanisms of that device.
- ~~15.21.~~ "Single draft weighing" means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.
- ~~16.22.~~ "Split-weighing" means determining the weight of a vehicle, combination vehicle, or a commodity by adding together the results obtained by separately and not simultaneously weighing each end of such vehicle or individual elements of such coupled combinations.
- ~~17.23.~~ "Standard" means test equipment used for certifying weighing or measuring devices.
- ~~18.24.~~ "Variance permit" means a temporary or permanent suspension of a particular rule granted to an owner or operator of a commercial weighing or measuring device ~~because of an economic hardship, a site restriction requiring modification to the design or installation of a device, or a special installation or operational condition, to be determined by the commission on a case-by-case basis.~~
- ~~19.25.~~ "Weights and measures inspector" means a commission employee ~~in the testing and safety division performing duties set by the commission~~engaged in enforcing provisions of article 69-10 and North Dakota Century Code title 64.

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; August 1, 2000; January 1, 2002; March 1, 2003; November 1, 2003; July 1, 2008; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-01-02. Installation by other than a registered service person.

A person, other than a registered service person, who installs a commercial weighing or measuring device must report the installation to the commission within seven working days from the day the installation was completed. The device must then be certified by a weights and measures inspector or a registered service person, ~~as allowed by section 69-10-04-02.1,~~ before the device can be used in commerce.

History: Amended effective April 1, 1992; August 1, 1993; July 1, 1997; July 1, 1998; January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-01-02.1. Certification.

A weighing and measuring device may only be certified for commercial use by the commission or a registered service person. Certification must take place at the location of intended use unless the device is otherwise designed, in which case the device must be tested by the commission or a registered service company at the location of intended use within fifteen months of its installation. The commission may certify a weighing or measuring device by actual testing of the device, or by witnessing the test.

History: Effective April 1, 1992; amended effective August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-01-02.3. ~~Recertification~~ Device recertification.

The commission or a registered service person may inspect, test, and calibrate a commercial weighing or measuring device annually. The owner of any commercial weighing or measuring device is responsible for its accuracy and must have it tested once every fifteen months. ~~Commission staff shall issue a written compliance order to the owner or operator of any commercial device that has not been tested within the fifteen-month time limit. The compliance order must allow thirty days for the owner of the device to have it recertified by a registered service person. Failure to comply with a compliance order within the thirty-day time limit will cause the device to be removed from commercial service.~~ The commission may extend the fifteen-month certification interval up to twenty-four months.

History: Effective July 1, 2008; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-01-03. ~~Sealing~~ Certifying and sealing.

~~—A weighing or measuring device used in commerce must be certified and sealed. A security seal must be installed where applicable, to prevent adjustments to the calibration of the device. An adhesive sticker that is of sufficient quality that it remains readable and unaffected by the elements must be installed externally to show visual proof of certification. It is unlawful to remove, or allow to be removed, an official tag or seal without commission approval. Effective January 1, 1995, an adhesive sticker must contain the following information: name and telephone number of the commission or registered service company certifying the device, the words "tested and approved", and the month and year of certification.~~

1. A weighing or measuring device used in commerce must be certified and sealed. A security seal must be installed where applicable, to prevent or indicate unauthorized adjustments to the calibration of the device. If a security seal is unable to be installed, the device must be equipped with an audit trail. The audit trail number must be recorded on the test report.

2. A security seal must:

a. Be registered with the commission;

b. If utilizing crimpable or lead wire type, contain the year in which the security seal was applied on one side and the initials of the registered service company certifying the device on the other side;

c. If utilizing a pressure-sensitive adhesive sticker, contain the name of the registered service company certifying the device, the word "sealed", and a place to write the year of installation; and

d. If utilizing a plastic and wire pressure-sensitive seal, contain the company's name or initials and a unique numeric serial number.

3. A certification seal must:

a. Contain the following information:

(1) Name and telephone number of the commission or registered service company certifying the device;

(2) Prominently display the words "tested and approved"; and

(3) Utilize preprinted month and year indicators that are to be punched out upon device certification;

b. Be made of sufficient quality material, other than paper, to remain readable and unaffected by the elements; and

c. Be installed externally and located so that it is clearly visible to the public using the device.

4. A registered service company may not use green, red, yellow, or orange certification seals. These colors are reserved for commission use.

5. It is unlawful to remove, or allow to be removed, an official tag, certification seal, or security seal without commission approval.

History: Amended effective April 1, 1992; August 1, 1993; September 1, 1994; July 1, 1997; July 1, 1998; January 1, 2002; July 1, 2008; January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-01-03.1. Registration of a new or moved commercial device.

Repealed effective January 1, 2021.

~~—A written report must be filed with the commission by the owner or operator of any new commercial weighing or measuring device and any commercial weighing or measuring device that has been moved from its original location of certification within seven working days of installation or relocation.~~

~~**History:** Effective July 1, 1997; amended effective July 1, 1998; January 1, 2002.~~

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

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

69-10-01-03.2. Equipment repair notice - Applicable usage.

An equipment repair notice tag defaults to a rejection seal if the device is not repaired or modified to a compliant state within sixty days. An equipment repair notice tag may be used in the following circumstances:

1. During the period any one of the following is pending:
 - a. Response to a variance permit request;
 - b. Completion of design requirements; or
 - c. Repair of required peripheral equipment;
2. When a point of sale liquid-measuring device:
 - a. Is a retail liquid-measuring device that is no more than two cubic inches [32.77 milliliters] outside of the applicable tolerance for over-registration or ten cubic inches [163.87 milliliters] outside the applicable tolerance for under-registration, using a five gallon [18.93 liter] test measure;
 - b. Is a vehicle tank or wholesale liquid-measuring device that is no more than twenty-two cubic inches [360.52 milliliters] outside of the applicable tolerance for over-registration or one hundred cubic inches [1638.71 milliliters] outside the applicable tolerance for under-registration, using a one hundred gallon [378.54 liter] prover;
 - c. Is an LPGa liquefied petroleum gas liquid-measuring device that is no more than five-tenths of one percent outside of the applicable tolerance for over-registration or five

percent outside the applicable tolerance for under-registration, using a one hundred gallon [378.54 liter] test with a one hundred gallon [378.54 liter] prover;

- d. Is ~~an LPG~~ a liquefied petroleum gas or anhydrous ammonia liquid-measuring device equipped with an automatic temperature compensating system, the allowable error difference between an activated and not activated mechanical or electronic automatic temperature compensating system is no more than one-half of one percent outside of the applicable tolerance for over-registration or under-registration; or
 - e. Is a liquid hydrocarbon or agri-chemical measuring device that has an automatic temperature compensating system, the difference between the meter error (expressed as a percentage) for results determined with and without the mechanical or electronic automatic temperature compensating system activated may be no more than one-tenth of one percent outside of the applicable tolerance for over-registration or under-registration;
3. When a point of sale weighing device is no more than one scale division outside of applicable tolerance for over-registration or two scale divisions outside the applicable tolerance for under-registration; ~~or~~
 4. When a point of purchase or point of sale weighing device is no more than one scale division outside of applicable tolerance for over-registration or under-registration; or
 5. When fifty-one percent or more of retail fuel devices tested, either by grade or by location, over-registers:
 - a. Four cubic inches [65.55 milliliters] or more when using a five-gallon [18.93-liter] test measure; or
 - b. Forty-seven cubic inches [770.19 milliliters] or more when using a one hundred-gallon [378.54-liter] prover.

History: Effective March 1, 2003; amended effective November 1, 2003; May 1, 2005; July 1, 2008; January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-01-04.1. Variance permit requests.

The operator of any commercial weighing or measuring device, other than an operator seeking a split-weigh variance permit under section 69-10-01-04.2, may make written request for a variance permit from the commission under North Dakota Century Code section 64-02-02. The request for a variance permit must contain:

1. The name, address, and telephone number of the business making the request along with the name of its contact person and the reason for the request;
2. A plan for compliance over a period not to exceed one hundred eighty days if the variance permit request results from a rejection; or, a plan for compliance over a period not to exceed five years if the variance request results from economic hardship. ~~Through reapplication, the economic hardship variance may be a permanent variance permit provided the applicant can show that compliance will continue to cause economic hardship;~~
3. The manufacturer's name, type, location, serial number, class, deck length, and capacity of the device;

4. The maximum amount that will be weighed on the device, along with a certified letter from an engineer or competent scale engineering authority certifying that operating the device at that weight will not constitute a safety hazard (if applying for a variance permit that will allow a device to be used beyond its rated sectional or concentrated load capacity); and
 5. Detailed information showing that compliance with specific regulations will cause economic hardship (if applicable to the variance permit request); and must include:
 - a. Specific details on how adhering to current laws and rules places an economic hardship on the operation;
 - b. Itemized list of costs associated with adhering to current laws and rules; and
 - c. Any additional information requested by the commission.
- ~~6. Any other information the operator believes may expedite the variance permit request.~~

A variance permit granted by the commission is a temporary variance permit and does not become permanent until sufficient time to conclude inspection and testing (usually two years) has elapsed. A notice of the variance permit must be conspicuously posted on the device during the time the temporary variance permit is in effect. An owner or operator shall reapply for the variance permit prior to the current variance permit expiration date.

History: Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996; July 1, 1997; July 1, 2008; January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-01-04.2. Split-weigh variance permit requests.

The operator of any motor truck or motor truck dump scale installed after April 1, 1965, may make written request for a permanent split-weigh variance permit from the commission under North Dakota Century Code section 64-02-02. The request for a variance permit must contain:

1. The name, address, and telephone number of the business making the request along with the name of its contact person and the reason for the request;
2. The manufacturer's name, type, location, deck length, serial number, and capacity of the device;
3. The maximum amount of weight that will be placed upon the device at any time during the split-weighing operation. If that maximum weight exceeds the rated sectional capacity or concentrated load capacity of the device, the applicant must also include a letter from an engineer or competent scale engineering authority certifying that operating the device at that weight will not constitute a safety hazard;
4. The maximum distance between the front and rear outer axles of the vehicle or coupled-combination vehicle that will be split-weighed;
5. A statement in the variance permit request certifying that each axle of the vehicle or each axle of the coupled-combination vehicle will rest on a smooth straight surface, in the same plane with, and not to exceed one-third inch [8.47 millimeters] per foot [30.48 centimeters] out of level with, the scale deck during the split-weighing operation;
6. A statement in the variance permit request agreeing to the following procedures to be observed during the split-weighing operation:
 - a. Use of the vehicle brakes is prohibited;

- b. The vehicle transmission must be in neutral; and
 - c. Chocking of the vehicle's wheels should be discouraged; and
7. For an operator of a motor truck or motor truck dump scale installed after April 1, 1995, a temporary variance permit will be issued only if the operator has substantiated that it is unable to install a scale of sufficient length to allow single-draft weighing due to economic hardship. If the operator chooses to pursue the plea of economic hardship, then the operator's split-weight variance permit request must also include a plan for compliance over a period not to exceed five years. ~~Through reapplication, at the end of the five-year period, the economic hardship temporary variance permit may be made a permanent variance permit provided the operator can show that compliance will continue to cause economic hardship.~~

History: Effective February 1, 1996; amended effective July 1, 1997; July 1, 2008; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-04

69-10-01-05. Rejected devices.

Once a weighing or measuring device has been rejected, the device may not be used in commerce. A device that is rejected for repair must be modified or repaired by a registered service person within thirty days of the date it was rejected. The commission may install a security seal on the device to prevent its use until the device has been retested and certified or a variance permit has been granted.

History: Amended effective April 1, 1992; September 1, 1994; July 1, 2008; January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-01-06.1. Liquefied petroleum gas meters - Temperature compensation.

All sales of liquefied petroleum gas in a liquid state ~~shall~~must be made through a meter having an automatic temperature ~~compensator~~compensator. The compensator ~~shall~~must be connected, operable, and in use at all times.

History: Effective February 1, 1996; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-03

69-10-01-08. Assisting inspector.

When requested, the owner or operator of any commercial weighing or measuring device shall supply access and assistance to ~~the division~~a weights and measures inspector in movement of the test weights to and from and on and off the scale for testing purposes, or for returning liquids to aboveground or belowground storage tanks. Failure to provide inspector access and assistance in a timely manner may be grounds for ~~tagging the device "not sealed"~~sealing the device as a "noncommercial device".

History: Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996; January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-01-11. Device adjustments.

~~State weights~~Weights and measures inspectors may not make adjustments to a commercial weighing or measuring device other than to zero a device or adjust the level on certain counter, dormant, and platform scales.

History: Effective September 1, 1994; amended effective July 1, 1997; November 1, 2003; January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-01-13. Enforcement.

An operator of a commercial weighing and measuring device shall ensure that the device is designed, constructed, operated, and maintained to meet applicable standards in ~~state and national institute of standards and technology handbook no. 44 requirements (1999 edition)~~the North Dakota Century Code and the North Dakota Administrative Code. The commission may require proof of compliance. The commission may file a complaint for noncompliance, and, in addition to other appropriate sanctions, assess civil penalties under North Dakota Century Code chapter 49-07 after notice and opportunity for hearing on the complaint.

History: Effective May 1, 2005; amended effective July 1, 2008; January 1, 2021.

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

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

69-10-01-15. Devices ~~taken out of~~removed from service.

When a ~~state weights and measures inspector or a registered service person removes a~~ commercial weighing or measuring device ~~from service, the inspector or~~is removed from service, a weights and measures inspector shall affix a noncommercial device seal to the device. A device that is sealed as a "noncommercial device" must not be used in commerce. A registered service person shall notify the commission in writing within seven working days ~~of the removal~~when a device is removed from commercial service.

History: Effective May 1, 2005; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

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

CHAPTER 69-10-02 SCALES

Section

69-10-02-01	Livestock Scales - Specifications
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69-10-02-12	Observation Windows or , Video Cameras, or Photoelectric Eyes
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69-10-02-19	Single-Draft Weighing - Exceptions
69-10-02-20	Split-Weigh Agreements
69-10-02-21	Shift Test - Load-Bearing and Section Testing
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69-10-02-25	Law Enforcement Scales - Exemption
69-10-02-26	Hoppers Scale Design Requirements
69-10-02-27	Medical Marijuana Scales - Requirements

69-10-02-02.1. Livestock scales - Certification.

All livestock scales under the jurisdiction of the federal packers and stockyards administration must be certified once every six months. ~~The scales may~~[A scale must](#) be certified by ~~either a weights and measures inspector or~~ a registered service person.

History: Effective August 1, 1993; [amended effective January 1, 2021.](#)

General Authority: NDCC 64-02-03

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

69-10-02-05.1. Fixed pitless scales - [Foundation](#).

~~A fixed pitless scale must have at least twelve inches [304.80 millimeters] of clearance between the "I" beam and the slab and the piers must extend down below the frostline and must be installed to manufacturer's specifications to support the device, prevent shifting, and provide protection from the environment.~~[A fixed pitless scale foundation may be either a pier foundation or floating slab foundation and installed as follows:](#)

1. [A pier foundation must:](#)

- a. Maintain at least ten inches [254 millimeters] of clearance between the "I" beam and the slab along the entire length and width of the scale;
- b. Have piers that extend below the frostline;
- c. Be installed to manufacturer's specifications to support the device, prevent shifting, and provide protection from the environment;
- d. Include a reinforced concrete washout slab poured independently of the load bearing piers, a minimum four inches [101.6 millimeters] thick, poured underneath the entire length and width of the scale; and
- e. Be installed to ensure that surface water will drain away from the scale area.

2. A concrete floating slab foundation must:

- a. Maintain at least ten inches [254 millimeters] of clearance between the "I" beam and the slab along the entire length and width of the scale;
- b. Be constructed on soil that has a uniform natural or engineered soil bearing of at least one thousand five hundred pounds per square foot [71.82 kilopascals];
- c. Be supported on a monolithic, steel-reinforced, concrete slab a minimum of twelve inches [304.8 millimeters] thick poured on top of a base of uniform, compacted, permeable aggregate, at least twenty-four inches [609.6 millimeters] deep;
- d. Be installed to manufacturer's specifications to support the device, prevent shifting, and provide protection from the environment; and
- e. Be installed with the top surface of the foundation slab above the surrounding grade level so that water will flow away from the foundation and away from the permeable aggregate base that supports the foundation.

History: Effective August 1, 1993; amended effective September 1, 1994; February 1, 1996; January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-02-06. Clearances - Drainage - Pit entrances.

Motor truck, motor truck dump, railway track, and livestock scales, other than fixed pitless scales, regardless of capacity, must have a clearance of not less than four feet [12.19 decimeters] from the finished floorline of the scale pit to the bottom of the "I" beam of the scale bridge. A five-eighths-inch [15.88-millimeter] clearance must be provided between the live deck and the pit coping. A "crushing strip" or "rock guard" must be installed in the event a concrete deck is installed on a scale; wood decks must be undercut around deck to prevent foreign material from lodging between deck and coping. Scale pits must be kept reasonably clean and dry at all times, and adequate drainage must be provided. Convenient entrances to the scale pit must be provided for the purpose of inspecting and cleaning.

History: Amended effective August 1, 1993; September 1, 1994; January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-02-07. Foundation and supports.

The foundation and supports of any scale installed in a fixed position ~~shall~~must consist of reinforced concrete of sufficient strength to ensure rigidity and permanence. The fulcrum stands for the

levers or the load cells of large capacity scales must be installed on level piers with a minimum of grouting. All footings must be of adequate depth to extend below the frostline.

History: Amended effective August 1, 1993; [January 1, 2021](#).

General Authority: NDCC 64-02-03

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

69-10-02-12. Observation windows ~~or~~, video cameras, or photoelectric eyes.

1. Windows must be provided and must be located in such a position and manner so that the scale operator has full view of the scale platform and weighing operation, including the front, back, and one side of the vehicle being weighed from the scale operator's working position, and that the weighman and indicating elements are clearly visible to interested parties.
2. Video cameras may be substituted for windows if the substitution does not diminish the view for either the scale operator or other interested parties. However, installations that exceed two hundred feet [61 meters] from the main indicating element must be equipped with two-way audio communication and remote or video display of weight indication.
3. Photoelectric eyes or similar devices that are electronically interlocked with the weighing system and positioned such that a vehicle must be entirely on or off a scale prior to a weight being recorded, may be used for unattended scale applications. If the photoelectric eye or similar device is the sole source for vehicle placement verification and is not operational, the scale may not be used.

History: Amended effective August 1, 1993; September 1, 1994; July 1, 2008; [January 1, 2021](#).

General Authority: NDCC 64-02-03

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

69-10-02-18. Concrete hopper scales - ~~Jurisdiction~~Exemption.

A concrete hopper scale that is used for measuring a finished concrete product that is sold by a measurement other than weight, even though the quality of its composition (cement, sand, aggregate, and water) is determined by weight, shall be defined as a "batching scale" and is exempt from the provisions of this article.

History: Effective September 1, 1994; [amended effective January 1, 2021](#).

General Authority: NDCC 64-02-03

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

69-10-02-18.1. Exemptions from testing.

Grain moisture testing meters, jewelers' scales, prescription scales, and postal scales used by the United States postal service, including scales at a location identified as a contract postal unit, are exempt from the provisions of this article.

History: Effective January 1, 2002; [amended effective January 1, 2021](#).

General Authority: NDCC 64-02-03

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

69-10-02-19. Single-draft weighing - Exceptions.

It ~~shall be~~is unlawful to weigh a vehicle or a combination vehicle in any method other than the single-draft method, as outlined in the NIST Handbook No. 44, section 2.20. scales, UR.3.3., Single-draft Vehicle Weighing, except for the following:

1. When the sale of the commodity being weighed is determined by destination weight;

2. For a motor truck or motor truck dump scale installed prior to April 1, 1965; or
3. For a motor truck or motor truck dump scale installed after April 1, 1965, provided a split-weight variance permit has first been granted by the commission under section 69-10-01-04.2, and the parties involved have complied with section 69-10-02-20 prior to split-weighing.

History: Effective February 1, 1996; amended effective August 1, 2000; July 1, 2008; [January 1, 2021](#).

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

69-10-02-21. Shift test - Load-bearing and section testing.

After January 1, 1996, all motor truck, motor truck dump, and railroad track/truck combination scales ~~shall~~**must** be load-bearing and section tested. The load-bearing test must be conducted with a minimum standard of the lesser value of either ten thousand pounds [4535.9 kilograms] or one-quarter the device capacity in test weights, with the test weights centered, as nearly as possible, successively over each main load support. Section testing ~~shall~~**must** be conducted with a minimum standard of either twenty thousand pounds [9071.8 kilograms] or one-half the device capacity in test weights, with the test weights centered, as nearly as possible, successively at the center of each quarter of the load receiving element. Applicable tolerances from NIST Handbook No. 44, scale section, T.N.3.1. and T.N.3.2., ~~shall~~**must** be applied to the amount of test load used.

History: Effective February 1, 1996; [amended effective January 1, 2021](#).

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-03, 64-02-04

69-10-02-25. Law enforcement scales - [Exemption](#).

Axle load scales or portable wheel load scales used to enforce load limit restrictions ~~by the North Dakota highway patrol may be tested annually, but must be tested at least once every fifteen months~~**are exempt from the provisions of this article.**

History: Effective May 1, 2005; amended effective July 1, 2008; [January 1, 2021](#).

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

[69-10-02-27. Medical marijuana scales - Requirements.](#)

Scales used in the packaging and sale of medical marijuana in quantities of one ounce [28.35 grams] or less must be an NTEP class I or II scale with a scale verification division of one one-hundredths of a gram or less.

History: Effective [January 1, 2021](#).

General Authority: NDCC 64-02-03

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

CHAPTER 69-10-03 STANDARDS

Section

- 69-10-03-01 National Institute of Standards and Technology (NIST) Handbook No. 44
- 69-10-03-01.1 National Institute of Standards and Technology (NIST) Handbook No. 44 - NTEP - Exceptions
- 69-10-03-01.2 National Institute of Standards and Technology (NIST) Handbook No. 105-1 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Class F Field Standard Weights
- 69-10-03-01.3 National Institute of Standards and Technology (NIST) Handbook No. 105-3 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Graduated Neck-Type Volumetric Field Standards
- 69-10-03-01.4 National Institute of Standards and Technology (NIST) Handbook No. 105-4 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Liquefied Petroleum Gas and Anhydrous Ammonia Liquid Volumetric Provers
- 69-10-03-01.5 National Institute of Standards and Technology (NIST) Handbook No. 105-2 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Field Standard Measuring Flasks
- 69-10-03-01.6 National Institute of Standards and Technology (NIST) Handbook No. 105-7 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Dynamic Small-Volume Provers
- 69-10-03-01.7 National Institute of Standards and Technology (NIST) Handbook No. 105-8 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Field Standard Weight Carts
- 69-10-03-02 Adequate Standards
- 69-10-03-03 Master Test Weights and Prover Tanks [Repealed]
- 69-10-03-04 Enforcement [Repealed]
- 69-10-03-05 Weight Carts [Repealed]
- 69-10-03-06 Metrology Service [Repealed]
- 69-10-03-07 Delivery of Standards for Certification [Repealed]
- 69-10-03-08 Rejection of Standards

69-10-03-01. National institute of standards and technology (NIST) Handbook No. 44.

Except as modified in this article, the specifications, tolerances, tests, and other technical requirements for commercial weighing and measuring devices in North Dakota must conform to the following sections and subsections of the ~~1999~~2020 edition of the United States department of commerce, NIST Handbook No. 44, which is adopted by reference: all of section 1, section 2 (except subsection ~~2.242.245~~), all of ~~subsection 3.30, subsection 3.31 (except S.1.1.1., UR.2.2., and UR.2.3.), subsection 3.32 (except UR.2.5. and UR.2.6.), and all of subsections 3.33, 3.35, and 3.37~~section 3 (except subsections 3.34, 3.36, 3.38, and 3.39). In the event of a conflict between the NIST Handbook No. 44 and North Dakota laws and rules, North Dakota laws and rules shall prevail. Copies of the handbook may be obtained from:

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

History: Amended effective October 1, 1988; December 1, 1990; February 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; October 1, 1999; August 1, 2000; January 1, 2002; May 1, 2005; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-07

69-10-03-01.1. National institute of standards and technology (NIST) Handbook No. 44--~~NTEP--~~Exceptions.

~~North Dakota may consider the requirements of the national~~National type evaluation program (NTEP) ~~referenced within any edition of NIST Handbook No. 44 adopted by this state, but shall not require NTEP certification as a prerequisite~~is required for the design, sale, installation, operation, and certification of a commercial weighing and measuring device. A commercial weighing and measuring device used in commerce prior to January 1, 2021, is exempt from national type evaluation program requirements provided the device is certified in accordance with section 69-10-01-02.3.

History: Effective January 1, 2002; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-03-01.2. National institute of standards and technology (NIST) Handbook No. 105-1 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for class f field standard weights.

The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing commercial weighing and measuring devices in North Dakota ~~shall~~must conform to the sections and subsections of the ~~1990~~2019 edition of the United States department of commerce, NIST Handbook No. 105-1, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

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

History: Effective March 1, 2003 amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-03-01.3. National institute of standards and technology (NIST) Handbook No. 105-3 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for graduated neck-type volumetric field standards.

The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing commercial measuring devices in North Dakota ~~shall~~must conform to the sections and subsections of the ~~1997~~2010 edition of the United States department of commerce, NIST Handbook No. 105-3, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

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

History: Effective March 1, 2003; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-03-01.4. National institute of standards and technology (NIST) Handbook No. 105-4 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for liquefied petroleum gas and anhydrous ammonia liquid volumetric provers.

The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing commercial liquefied petroleum gas and anhydrous ammonia liquid measuring devices in North Dakota shall ~~shall~~ must conform to the sections and subsections of the ~~1997~~ 2016 edition of the United States department of commerce, NIST Handbook No. 105-4, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

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

History: Effective March 1, 2003; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-03-01.5. National institute of standards and technology (NIST) Handbook No. 105-2 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for field standard measuring flasks.

The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing commercial manufacturers and distributors of liquid products, research and testing laboratories, and others concerned with accurate measurements of the volume of liquids in North Dakota must conform to the sections and subsections of the 1996 edition of the United States department of commerce, NIST Handbook No. 105-2, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

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

History: Effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-03-01.6. National institute of standards and technology (NIST) Handbook No. 105-7 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for dynamic small-volume provers.

The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing or verification of commercial liquid measurement devices in an operational line for compliance with the requirements of commercial device requirements without interrupting normal process flow in North Dakota must conform to the sections and subsections of the 1997 edition of the United States department of commerce, NIST Handbook No. 105-7, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

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

History: Effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-03-01.7. National institute of standards and technology (NIST) Handbook No. 105-8 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for field standard weight carts.

The specifications, tolerances, and other technical requirements for reference standards and field standard weight carts used for testing commercial weighing devices in North Dakota must conform to the sections and subsections of the 2019 edition of the United States department of commerce, NIST Handbook No. 105-8, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

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

History: Effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-03-02. Adequate standards.

A standard used to certify any commercial weighing and measuring device must be annually certified as traceable by ~~an~~ NIST-recognized metrology laboratory. The commission may extend the ~~twelve-month~~ recertification interval ~~up to fifteen months~~ an additional ninety days provided that the request is made thirty days before the certification expires.

A current legible copy of the certificate of traceability must be maintained with the commission.

Annual recertification is subject to the following exceptions and conditions:

1. ~~The standards~~ Standards integral to and used for recertification of a commercial automatic bulk-weighing system must be certified traceable by ~~an~~ NIST-recognized laboratory at least once every five years.
2. ~~The volumetric~~ Volumetric graduated neck and dynamic small volume provers used to certify commercial loading-rack, processing plant, or refinery meters used for petroleum-based products must be certified traceable by ~~an~~ NIST-recognized laboratory at least once every three years.
3. Unless otherwise approved by the commission, the operator of a coal belt conveyor scale jurisdictional to the commission must conduct a material load test at least once every two years provided that electronic or other simulated load testing is done at least once every three months.
4. A master meter may not be used as a standard to certify commercial ~~LPG~~ liquid petroleum gas devices.
5. Notwithstanding the other provisions of this section, the commission may require recertification of any standard if upon inspection the physical condition of a standard indicates a need for recertification.

History: Amended effective April 1, 1992; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 2008; October 1, 2010; January 1, 2021.

General Authority: NDCC 64-02-03

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

CHAPTER 69-10-04 SERVICE REGULATIONS

Section

69-10-04-01	Registration of Registered Service Persons - Privileges and Responsibilities
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69-10-04-06.1	Quality Control - Failures [Repealed]
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69-10-04-01. ~~Registration of~~Registered service persons - Privileges and responsibilities.

~~A registered service person has the authority to certify weighing or measuring devices described in North Dakota Century Code section 64-02-13 and to remove an official rejection, "equipment repair notice", or "not sealed" tag or sticker and place the device in service.~~ A registered service person has the authority to remove an official rejection seal, equipment repair notice tag, noncommercial device seal, device certification seal, or other mark placed on a weighing or measuring device by the authority of the commission. Furthermore, a registered service person has the authority to certify weighing or measuring devices described in North Dakota Century Code section 64-02-13.

A registered service person is responsible for installing, repairing, and adjusting devices such that the devices are adjusted as closely as practicable to zero error.

History: Amended effective April 1, 1992; September 1, 1994; July 1, 1997; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-01.1. ~~Registration of~~Registered service companies - Privileges and responsibilities.

A registered service company has the authority to maintain state-certified field standards and to employ a registered service person to design, install, and repair a commercial weighing or measuring device as described in North Dakota Century Code section 64-02-13.

History: Effective July 1, 1998; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-02. Application for registration and permitting of a service person.

An applicant must be employed by a currently permitted registered serviced company to be eligible for permitting as a registered service person. Annual application for registration as a registered service person must be submitted to the commission under the following requirements:

1. A first-time applicant or an applicant whose permit has been expired more than two years shall:

a. Submit a complete application for registration as a registered service person on the form prescribed by the commission. The form must include certification that the applicant is fully qualified to install, service, repair, recondition, test, and certify the device types for which permitting is being requested;

b. Provide a ~~written~~ history of education ~~and~~or work experience to show that the applicant is fully qualified to install, service, repair, recondition, test, and certify a commercial weighing or measuring device; and on the form provided by the commission. Applicants may only qualify to test devices for which they have met the education and work history requirements. Education and work history requirements include:

(1) Sixty days of on the job training directly related to the installation, maintenance, repair, and calibration of all device types the applicant will be certifying or placing into service; or

(2) Satisfactorily completed a manufacturer's in-depth training course covering the installation, maintenance, repair, and calibration of each device type the applicant will be certifying or placing into service. Proof of course completion is required; or

(3) Holding a certification from another state as a registered service person, for at least sixty days, with authority to certify or place weighing or measuring devices into service. Proof of current certification must be provided.

~~b.c.~~ Complete written tests that must be taken at a location and time designated by the commission, and must be administered as follows:

(1) The written test will be open book, with ~~seventy-five~~eighty percent as the minimum passing score. The test material will cover the applicable sections of the adopted ~~1999~~-edition of NIST Handbook No. 44, North Dakota Century Code title 64, and North Dakota Administrative Code article 69-10; and

(2) In the case of a test failure, an applicant may retake the tests after a review period of ten working days.

2. Each applicant registered by the commission shall utilize adequate standards during the testing and certification of a commercial device as provided in this chapter.

3. An applicant who is applying for renewal of an existing registration shall complete and submit the application at least ~~fifteen~~thirty days prior to the expiration date of the applicant's existing registration. ~~Each applicant who has renewed an existing registration shall utilize adequate standards during the testing and certification of a commercial device.~~

History: Amended effective April 1, 1992; September 1, 1994; July 1, 1997; January 1, 2002; May 1, 2005; July 1, 2008; October 1, 2010; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-02.1. Self-certification.

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

1. Only hazardous liquid pipeline operators, ~~North Dakota highway patrol,~~ natural gas pipeline operators, and manufacturing-processing operators may self-certify;

2. Applications must be submitted to the commission in writing;

3. Commission approval is required annually; and
4. Applications must address the following conditions:
 - a. The person doing the self-certification must be registered with the commission under section 69-10-04-02. ~~However, persons or companies who make written application to the commission describing their weighing or measuring devices, operating and maintenance procedures, testing processes including a list of testing technicians and their expertise, and reporting requirements, subject to commission approval, may be exempt from the provisions of section 69-10-04-02, except for subdivision d of subsection 1 and subdivision b of subsection 2 of section 69-10-04-02.~~
 - b. Upon testing, the device must be within commission-approved tolerance.
 - c. Whenever a weighing or measuring device is recertified, the person or company recertifying that device shall, within seven working days, report the recertification to the commission. The report must clearly identify each device, the initial test results recorded during self-certification, and the test results upon recertification.
 - d. A weights and measures inspector may randomly recertify any self-certified weighing or measuring device either by performing a test or by witnessing a test performed by a self-certified service person.

History: Effective April 1, 1992; amended effective August 1, 1993; September 1, 1994; July 1, 1997; January 1, 2002; May 1, 2005; January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-04-02.2. Application for registration of a service company.

1. An annual application for registration as a registered service company must be filed with the commission prior to conducting any service work on commercial weighing or measuring devices and must include:
 - ~~1.~~ a. Acceptable evidence that all of the service standards used to test and approve commercial weighing or measuring devices have been certified under section 69-10-03-02;
 - ~~2.~~ b. A copy of the company's standardized report form, ~~if not currently on file with the commission~~, as required by section 69-10-04-05;
 - ~~3.~~ c. A sample of the company's "tested and approved" sticker and internal seals, ~~if not currently on file with the commission~~ certification seal, and security seals, as required by section 69-10-01-03; and
 - ~~4.~~ d. An application for registration.
2. Upon acceptance and approval of an application, the commission will issue the service company an annual permit as a registered service company.

History: Effective July 1, 1998; amended effective May 1, 2005; January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-04-02.3. ~~Issuing a placing~~ Placing in service ~~permit~~ permits.

Upon acceptance and approval of an application, the commission shall issue a placing in service permit to the ~~applicant~~ registered service person. All permits issued under this section remain the

property of the commission and must be surrendered upon demand. Permits issued will be either probationary or ~~permanent~~annual as defined in this section. Permits must be carried at all times while conducting weighing or measuring device servicing or certification and must be produced upon request.

1. **Probationary permits.**

- a. An ~~applicant with less than three months' experience repairing and placing devices into service will receive a probationary permit~~annual permitholder's permit may be downgraded to probationary for not performing proper tests and inspections or other violations deemed relevant by the commission;
- b. The duration of ~~a~~the probationary permit will be at the discretion of the commission but will not exceed six months from the effective ~~date of testing~~; and
- c. A probationary permitholder shall be accompanied by, and have each placing in service test report cosigned by, ~~a permanent~~an annual permitholder from the same service company and qualified in the same weighing or measuring device category in order for the test report or the placing in service to be considered valid.

2. **~~Permanent~~Annual permits.**

- a. An applicant ~~with more than three months' experience repairing and placing devices into service~~who has met the work history or experience requirements of a registered service person and satisfactorily completed all required tests will receive ~~a permanent~~an annual permit;
- b. An applicant who has ~~been previously tested and issued a permanent~~held an annual permit by the commission within the last ~~five~~two years, but has allowed it to expire, ~~will receive a permanent permit; or is eligible for permit reinstatement; and~~
- c. A probationary permitholder who has completed probationary time ~~assigned~~or requirements without receiving any quality ~~control~~assurance failures will receive ~~a permanent~~an annual permit.

History: Effective May 1, 2005; amended effective October 1, 2010; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-03. Revocation of ~~registration~~permit - Service company and service person.

The commission may, for good cause, suspend or revoke a registered service person's permit or a registered service company's permit. A person or a company not registered with the commission but qualified to install a commercial weighing or measuring device may install but may not place in service, service, repair, or recondition a commercial weighing or measuring device without a variance permit from the commission.

History: Amended effective April 1, 1992; July 1, 1997; July 1, 1998; October 1, 1999; July 1, 2008; January 1, 2021.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-05. Standardized report forms.

All test report forms filed with the commission ~~after July 1, 1994,~~ must be in a commission-approved format. ~~The commission will issue copies of the standardized prototype to all newly permitted~~

~~registered service companies. Failure to file a test report in a commission-approved format may result in the rejection of the report.~~

History: Effective August 1, 1993; amended effective February 1, 1996; October 1, 1999; January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-04-06. Quality ~~control~~assurance - Evaluation.

1. The commission may evaluate the work performed by a registered service person to ensure that the person is performing proper inspections and tests. The evaluation method may be by direct observation ~~of a registered service person placing a commercial device into service~~ or by reinspection of a device previously placed ~~into service~~ or recertified by a registered service person. The commission may consider the following criteria during the evaluation:

- ~~1.~~ a. ~~The results of a random sampling of at least one inspection and test per year, or more if so ordered by the commission, of the devices certified by a registered service person~~ The results of previous quality assurance inspections;
- ~~2.~~ b. Complaints filed against a registered service person, and whether those complaints are valid; and
- ~~3.~~ c. Other factors deemed relevant by the commission.

2. A quality assurance inspection ends when the tested device either fails a portion of the inspection or it passes the inspection. When a device fails a quality assurance inspection, the failure will be documented, the device will be rejected, and a followup quality assurance inspection will be conducted as soon as practical. When a device passes a quality assurance inspection, a weights and measures inspector shall affix a quality assurance inspected tag to the device. A quality assurance inspection does not take the place of the annual certification.

History: Effective September 1, 1994; amended effective February 1, 1996; October 1, 1999; July 1, 2008; October 1, 2010; January 1, 2021.

General Authority: NDCC 64-02-03

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

69-10-04-06.2. Procedures for evaluating work of registered service persons.

Repealed effective January 1, 2021.

~~— A quality control inspection to evaluate the work of a registered service person will be conducted as set forth in this section:~~

- ~~— 1. — Selection criteria includes:~~
 - ~~— a. — Location of the device in relation to location of the appropriate state inspector is a controlling factor;~~
 - ~~— b. — Each registered service person whose annual device testing total is at least one hundred will be evaluated on one of every one hundred devices tested;~~
 - ~~— c. — Each registered service person whose annual device testing total is less than one hundred will be assigned a quality control level related to the number of total devices tested the previous year; and~~
 - ~~— d. — Receipt of a complaint.~~

- ~~2. A registered service person who receives multiple quality control inspections within a twelve-month period because of the number of devices tested, and has not failed on the first scheduled quality control inspection for that time period, will receive an honorary pass on the second scheduled quality control inspection. If the number of devices tested requires a third quality control inspection which the registered service person does not fail, the fourth scheduled quality control inspection will again be an honorary pass.~~
- ~~3. A specific quality control inspection ends when the tested device either fails a portion of the inspection or it passes the inspection.~~
- ~~4. When a device fails a quality control inspection, the failure will be documented, the device will be rejected, and a followup quality control inspection will be conducted as soon as practicable.~~

History: Effective May 1, 2005; amended effective October 1, 2010.

General Authority: NDCC 64-02-03

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

69-10-04-06.3. Quality ~~control~~assurance - Failures.

A quality ~~control~~assurance evaluation test report that discloses a failure must include any alleged violations of North Dakota Century Code ~~chapter 64-03~~title 64, North Dakota Administrative Code ~~chapter 69-10-03~~title 69, and any applicable sections of the NIST Handbook No. 44, as adopted by reference in section 69-10-03-01. If a registered service person fails three ~~consecutive~~ quality ~~control~~assurance inspections within a twelve-month period, the commission may:

- 1. Issue a written warning requiring remedial action within thirty days from the date of the warning;
- 2. ~~Schedule a conference with the registered service person and that person's employer;~~
- ~~3. Require that the registered service person retake the written tests required for licensing under section 69-10-04-02;~~
- ~~4.3. Reduce the registered service person's permit status to probationary for up to six months; or~~
- ~~5.4. Suspend the registered service person's permit and assess a civil penalty; or~~
- 5. Other actions deemed suitable by the commission.

The results of any quality ~~control~~assurance failures and associated enforcement actions may be sent to the registered service person's employer and to the owner or operator of the affected device.

A quality ~~control~~assurance evaluation report and a record of any associated enforcement action is filed as part of the overall quality ~~control~~assurance profile of the affected registered service person and must remain part of that profile for twelve months from the date of the failure.

History: Effective October 1, 2010; amended effective January 1, 2021.

General Authority: NDCC 64-02-03

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

TITLE 75
DEPARTMENT OF HUMAN SERVICES

JANUARY 2021

**ARTICLE 75-02
ECONOMIC ASSISTANCE**

Chapter	
75-02-01	Aid to Families With Dependent Children [Repealed]
75-02-01.1	Aid to Families With Dependent Children [Repealed]
75-02-01.2	Temporary Assistance for Needy Families Program
75-02-01.3	Child Care Assistance
75-02-02	Medical Services
75-02-02.1	Eligibility for Medicaid
75-02-02.2	Children's Health Insurance Program [Repealed]
<u>75-02-02.3</u>	<u>[Reserved]</u>
<u>75-02-02.4</u>	<u>Home and Community-Based Services Informed Choice Referrals</u>
75-02-03	Homes for Aged and Infirm [Superseded]
75-02-04	Child Support Division
75-02-04.1	Child Support Guidelines
75-02-04.2	State Disbursement Unit
75-02-05	Provider Integrity
75-02-05.1	Nursing Home Sanctions [Repealed]
75-02-05.2	Nursing Facility Enforcement Action
75-02-06	Ratesetting for Nursing Home Care
75-02-07	Provider Reimbursement - Basic Care Facilities [Repealed]
75-02-07.1	Ratesetting for Basic Care Facilities
75-02-08	Homes for the Aged and Infirm [Repealed]
75-02-09	Ratesetting for Psychiatric Residential Treatment Facilities
75-02-10	Aid to Vulnerable Aged, Blind, and Disabled Individuals
75-02-11	Food Stamp Program [Repealed]

CHAPTER 75-02-02.3
[Reserved]

CHAPTER 75-02-02.4
HOME AND COMMUNITY-BASED SERVICES INFORMED CHOICE REFERRALS

Section

- 75-02-02.4-01 Definitions
- 75-02-02.4-02 Informed Choice for Target Population Members
- 75-02-02.4-03 Powers and Duties of the Department
- 75-02-02.4-04 Powers and Duties of Public and Private Entities
- 75-02-02.4-05 Service Availability
- 75-02-02.4-06 Disclosure

75-02-02.4-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Case manager" means the individual who coordinates and leads the person-centered planning process, and who provides each target population member with information about and assistance in accessing home and community-based services.
2. "Community provider" means an individual or entity that provides one or more home and community-based services, paid in whole or part by the department, to target population members.
3. "Department" means the North Dakota department of human services.
4. "Home and community-based services" means department-administered long-term services and supports that target population members are eligible to receive, and which are determined to be necessary through a person-centered planning process to serve target population members in the community.
5. "Informed choice" means:
 - a. The process by which the department ensures target population members have an opportunity to make an informed decision about where to receive services;
 - b. A choice made after the department has provided virtual or face-to-face person-centered planning and information about the benefits of integrated settings; which may include facilitated visits or other experiences in such settings; and offered opportunities to meet with other individuals with disabilities who are living, working, and receiving services in integrated settings, with their families, and with community providers; and
 - c. Making reasonable efforts to identify and address any concerns or objections raised by the target population member or another relevant decisionmaker.
6. "Most integrated setting" means a setting, determined through person-centered planning, that enables individuals with physical disabilities to interact with nondisabled persons to the fullest extent possible. The most integrated setting for a target population member usually will be a private residence owned or rented by the individual or their family member and in which the individual or their family member has property rights.
7. "Nursing facility level of care" means criteria that an individual must meet to be eligible to receive services provided by a nursing facility, pursuant to section 75-02-02-09.
8. "Person-centered planning" means:

- a. A Medicaid-mandated process, which is driven by the individual, that identifies supports and services that are necessary to meet the individual's needs in the most integrated setting;
 - b. The individual directs the process to the maximum extent possible and is provided sufficient information and support to provide informed choice; and
 - c. The process is timely and occurs at times and locations convenient to the individual, reflects the cultural and linguistic considerations of the individual, provides information in plain language and in a manner that is accessible to individuals within the target population, and includes strategies for resolving conflict or disagreement that arises in the planning process.
9. "Physical disability" means an impairment, including age-related impairments, that substantially limits a major life activity, including one or more major bodily functions, that the individual meets nursing facility level of care.
10. "Public and private entities" include those organizations enrolled as North Dakota Medicaid providers who submit nursing facility level of care determinations for target population members in need of long-term care.
11. "Target population member" means an individual with a physical disability over the age of twenty-one who is eligible or likely to become eligible to receive Medicaid long-term services and supports and is likely to require such services for at least ninety days.

History: Effective January 1, 2021.

General Authority: NDCC 50-06-16, 50-06.2-03(6)

Law Implemented: 42 USC 12102; 28 CFR 35, Appendix B; 28 CFR 35.108; 42 CFR 441.725; S.L. 2019, ch. 37, § 44

75-02-02.4-02. Informed choice for target population members.

The department will work with public and private entities in identifying target population members in order to inform them about home and community-based service options. A public or private entity may not require target population members and their guardians or legal representatives to consent to the referral or sign a release of information before a referral is made. However, target population members and their guardians or legal representatives may refuse to participate in the informed choice process. The target population is comprised of:

- 1. Individuals with physical disabilities who are at serious risk of entering nursing facilities to access Medicaid-funded long-term care composed of individuals with physical disabilities who:
 - a. Have been referred for a level of care determination screening to access nursing facility services and are likely to require long-term services and supports;
 - b. Need services to continue living in the community, have impairments that make them likely to screen at a nursing facility level of care, and have been determined eligible for service payments for the elderly and disabled with less than twenty-five thousand dollars in assets; or
 - c. Need home and community-based services to continue living in the community and currently have a case management provider or have contacted the North Dakota aging and disability resource link; and
- 2. Individuals with physical disabilities who:

- a. Are receiving Medicaid-funded nursing facility services and are likely to require long-term services and supports; or
- b. Are receiving nursing facility services, are likely to become eligible for Medicaid within ninety days, have submitted a Medicaid application, and seeking approval for a long-term nursing facility stay.

History: Effective January 1, 2021.

General Authority: NDCC 50-06-16, 50-06.2-03(6)

Law Implemented: S.L. 2019, ch. 37, § 44

75-02-02.4-03. Powers and duties of the department.

The department has the following powers and duties under this chapter:

1. To assign a case manager to complete the informed choice process.
2. To provide information through a person-centered planning process led by the case manager to target population members and their guardians or legal representatives about home and community-based service options and the benefits of integrated settings.
3. To ask target population members or their guardians or legal representatives to provide written or verbal confirmation that they received information through a person-centered planning process, or that they waive their right to receive such information. The department shall retain documentation of the consent or waiver.
4. To determine and develop the type of information necessary to provide the target population members or their guardians or legal representatives with an opportunity to decide whether they oppose receiving services in the least integrated setting appropriate to meet their needs.
5. To provide information about transition supports that may be available to target population members already receiving services in a nursing facility who do not oppose receiving services in the community.
6. To not unnecessarily delay the hospital discharge or nursing facility admission process of target population members if an appropriate referral has been made by a public or private entity to the North Dakota aging and disability resource link or through the request for a level of care determination no later than the day a request for a nursing facility level of care determination is submitted for approval.
7. To assist target population members in accessing home and community-based services if the target population member or their guardian or legal representative do not oppose receiving services in the community and services are appropriate to meet their needs.
8. To not impede any decision made to receive services in a nursing facility for those target population members or their guardians or legal representatives who determine after receiving information about home and community-based options to receive or continue to receive services in a nursing facility.

History: Effective January 1, 2021.

General Authority: NDCC 50-06-16, 50-06.2-03(6)

Law Implemented: S.L. 2019, ch. 37, § 44

75-02-02.4-04. Powers and duties of public and private entities.

Public and private entities enrolled as North Dakota Medicaid providers have the following powers and duties to assist the department in identifying target population members and informing target population members about home and community-based service options:

1. To make a referral in a form and manner determined by the department to the North Dakota aging and disability resource link or through the request for a level of care determination for all target population members and their guardians or legal representatives who formally request or are referred for placement in a nursing facility or who are screened for a continued stay in a nursing facility. Nursing facility level of care screening determinations will not be made for target population members unless an appropriate referral has been submitted to the aging and disability resource link or through the request for a level of care determination.
2. To make a referral as soon as the target population member or their guardian or legal representative formally requests or is referred for placement in a nursing facility but no later than the day when a nursing facility level of care is submitted for approval.
3. To inform target population members, or their guardians or legal representatives, in a form and manner determined by the department, that a referral to complete the informed choice process must be made.
4. To afford case managers full access to target population members who are residing in or currently admitted to their facility to complete the informed choice process.
5. To not prevent or impede the informed choice process or attempt to influence in any way the decision of a target population member or their guardian or legal representative to receive services in the most integrated setting appropriate to meet their needs.

History: Effective January 1, 2021.

General Authority: NDCC 50-06-16, 50-06.2-03(6)

Law Implemented: S.L. 2019, ch. 37, § 44

75-02-02.4-05. Service availability.

The extent to which appropriate services other than informed choice services are available to target population members are dependent upon legislative appropriations and resources. Eligibility for informed choice services does not create an entitlement to services other than information about home and community-based service options if resources are not available.

History: Effective January 1, 2021.

General Authority: NDCC 50-06-16, 50-06.2-03(6)

Law Implemented: S.L. 2019, ch. 37, § 44

75-02-02.4-06. Disclosure.

Public and private entities may disclose target population members individually identifiable health information to the department or its contractors for referral purposes and the disclosure is a disclosure for treatment, including the provision, coordination, and management of health care.

History: Effective January 1, 2021.

General Authority: NDCC 50-06-16, 50-06.2-03(6)

Law Implemented: S.L. 2019, ch. 37, § 44

CHAPTER 75-04-05

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 costs in the period when incurred, regardless of when they are paid.
2. "Administrative costs" means those costs that are necessary to operate the business but are not client related.
3. "Allowable cost" means the program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations.
4. "Assessment score" means the client's score from the standard assessment tool administered by the department or its designee.
5. "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 payment through Medicaid federal financial participation.
6. "Basic services" means all of the services that provider agencies deliver to clients, including nondevelopmental disabilities services.
7. "Board" means all food and dietary supply costs.
8. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used for client care.
9. "Client" means 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.
10. "Client-authorized representative" means a person who has legal authority, either designated or granted, to make decisions on behalf of the client.
11. "Client representative" means a client-authorized representative or relative who has maintained significant contacts with the client.
12. "Community contribution" means a contribution to a civic organization or sponsorship of community activities. Community contribution does not include a donation to a charity.
13. "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 provider agency are divided for purposes of cost assignment and allocations.
14. "Day habilitation" means a day program 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 must focus on improving a client's sensory motor, cognitive, communication, and social interaction skills.
15. "Department" means the North Dakota department of human services.
16. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.

17. "Depreciable asset" means a capital asset or other asset for which the cost must be capitalized for statement of costs purposes.
18. "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".
19. "Direct care staff" means employees who are actively providing support to clients receiving a service from a provider agency.
20. "Direct care wage" means the wage level that is used as the basis of the payment system.
21. "Direct program support costs" means costs that are specific to the service provision of a client, including medical and program supplies.
22. "Documentation" means the furnishing of written or electronic records, including original invoices, contracts, timecards, and workpapers prepared to complete reports or for filing with the department.
23. "Employment-related expenses" means employee benefits, including federal Insurance Contributions Act, unemployment insurance, medical insurance, workers' compensation, retirement, disability, long-term care insurance, dental, vision, life, accrued paid time off, and unrecovered medical costs furnished at the provider agency's cost.
24. "Employment support" means ongoing supports to assist clients in obtaining and 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.
25. "Facility-based" means a 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.
26. "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.
27. "Fixed equipment" means equipment used for client care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.
28. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
29. "Group home" means any community residential service facility, licensed by the department pursuant to North Dakota Century Code chapter 25-16, housing more than three individuals with developmental disabilities. "Group home" does not include a community complex with self-contained rental units.
30. "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.
31. "Hospital leave day" means any day that a client is not in the facility, but is in an acute care setting as an inpatient and is expected to return to the facility. A hospital leave day is only available to clients residing in an intermediate care facility for individuals with intellectual disabilities.

32. "In-house day" means a day that a client was actually receiving services in the intermediate care facility for individuals with intellectual disabilities setting and was not on therapeutic leave, in the hospital, or absent.
33. "Indirect program support costs" means costs that are neither direct care nor administrative, such as program development, supervision and quality assurance, and are not separately billable.
34. "In-home supports" 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.
35. "Interest" means the cost incurred with the use of borrowed funds.
36. "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.
37. "Land improvements" means any improvement to the land surrounding the facility used for client care and identified as such in the depreciation guidelines.
38. "Life-changing event" means a change in a client's life that will affect his or her support needs for six months or more, including a significant medical event, a crisis situation, a change in living arrangement, aging caregiver, significant medical or behavioral health event in the life of a caregiver, significant change in family functioning, or trauma.
39. "Medical assistance program" means the program that pays the cost of medical care and other services to eligible clients pursuant to North Dakota Century Code chapter 50-24.1.
40. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.
41. "Net investment in fixed assets" means the cost, less accumulated depreciation and the balance of notes and mortgages payable.
42. "Other asset" means any asset that has a life of more than one year and has a cost of five thousand dollars or greater.
43. "Parenting supports" means assisting clients who are or will be parents in parenting skills training that is individualized to assist with focusing on the health, welfare, and developmental needs of their child.
44. "Person-centered service plan" means an individual plan that identifies service needs of the eligible client, the services to be provided, and is developed by the client or client-authorized representative, or both, client select team, and developmental disabilities program manager considering all relevant input.
45. "Personal assistance retainer" means a payment used in residential habilitation to allow continued reimbursement during a client's temporary absence from the setting. The personal assistance retainer allows for payment while a client is hospitalized or otherwise away from the setting to ensure stability and continuity of staffing.
46. "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.

47. "Program support" means the direct and indirect program support costs that support providing services to a client.
48. "Program support staff" means employees whose duties are associated with client care but who are not actively providing direct support services to clients receiving a service from a provider agency.
49. "Property costs" means the cost category for allowable costs to operate the owned or leased property.
50. "Provider agency" means the organization or individual who has executed a Medicaid agreement with the department to provide services to individuals with developmental disabilities.
51. "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.
52. "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.
53. "Relief staff" means the replacement of direct care staff when the regular direct care staff are on leave and there is a cost component in the direct care hourly rate that covers the cost of relief staff.
54. "Residential services" means formalized training and supports provided to clients to assist with and develop self-help, socialization, and adaptive skills that improve the client's ability to independently reside and participate in an integrated community. Residential services include residential habilitation and independent habilitation.
55. "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.
56. "Service" means the provision of living arrangements and programs of daily activities subject to licensure by the department.
57. "Staff training" means an organized program to improve staff performance.
58. "Statement of costs" means the department-approved form for reporting costs, statistical data, and other relevant information of the provider agency.
59. "Statement of costs year" means the fiscal year from July first through June thirtieth.
60. "Therapeutic leave day" means any day that a client is not in the intermediate care facility for individuals with intellectual disabilities, nursing facility, swing-bed facility, transitional care unit, subacute unit, another intermediate care facility for individuals with intellectual disabilities, a basic care facility, or an acute care setting, or if not in an institutional setting, is not receiving home- and community-based waiver services and is expected to return to the facility. A therapeutic leave day is only available to clients residing in an intermediate care facility for the intellectually disabled.

61. "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.
62. "Units of service" for billing purposes means:
- a. (1) In residential habilitation and intermediate care facility for individuals with intellectual disabilities, one client served for one ~~24-hour~~twenty-four-hour day; or
 - (2) In day habilitation, prevocational services, employment supports, parenting supports, in-home supports, and independent habilitation settings, one client served for fifteen minutes; ~~or~~
 - ~~(3) In parenting supports and 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 habilitation and intermediate care facility for individuals with intellectual disabilities.
63. "Vacancy factor" means a cost component of the residential habilitation and intermediate care facility for individuals with intellectual disabilities rate intended to cover costs when a client is no longer in the setting, with no intent to return.

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; April 1, 2018; April 1, 2020; January 1, 2021.

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

Law Implemented: NDCC 25-18-03, 50-24.1-01

TITLE 85
UNIVERSITY AND SCHOOL LANDS, BOARD OF

JANUARY 2021

CHAPTER 85-01-01

85-01-01-01. Definitions.

The following definitions, in addition to the definitions in North Dakota Century Code chapters 15-05, 15-06, 15-07, 15-08, 15-08.1, 38-09, 47-06, 47-30.1, and 57-62, apply to this title:

1. "Acquired lands" includes all property defined as "nongrant" and "other than original grant lands" in North Dakota Century Code section 15-07-01.
2. "Arm's length transaction" means a transaction between parties with adverse economic interests in which each party to the transaction is in a position to distinguish its economic interest from that of the other party and does not mean a transaction made by a corporation or other entity with itself, or a parent, subsidiary, or interrelated corporation or entity, or between partners or co-joint venturers, or between corporations or other entities having interlocking directorships or close business relationships that may compromise their individual interests.
- ~~2-3.~~ "Agricultural use" includes the use of trust lands for the purpose of grazing, cropping, haying, and honey bee pasture or meadow.
- ~~3-4.~~ "Board" means the board of university and school lands.
- ~~4-5.~~ "Bonus" means the monetary consideration paid by a lessee for the execution of a lease by the board.
- ~~5-6.~~ "Certified appraiser" means a certified general appraiser or a certified residential appraiser who holds a valid permit issued by the North Dakota real estate appraiser qualifications and ethics board.
7. "Coal" means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term includes consolidated lignitic coal, in both oxidized and nonoxidized forms, and leonardite, having less than eight thousand three hundred British thermal units per pound [453.59 grams], moist and mineral matter free, whether or not the material is enriched in radioactive materials.
- ~~6-8.~~ "Coal lease" means a contract entered between the board and a third party for a coal mining operation on trust lands.
- ~~7-9.~~ "Coal leased premises" means the land subject to a given coal lease.

- | ~~8-10.~~ "Coal mining operation" means any type of activity conducted to discover, or prospect for, the presence of coal, or to remove the coal so discovered from its original position on or in the land by any means whatsoever.
- | ~~9-11.~~ "Commercial quantities" means whether:
 - a. The well yields a profit exceeding operating costs over a reasonable period of time; and
 - b. A reasonably prudent operator would continue operating a well in the manner being operated under the facts and circumstances.
- | ~~40-12.~~ "Commissioner" means the commissioner of university and school lands.
- | ~~41-13.~~ "Construction aggregate" means gravel, sand, scoria, road material, building stone, colloidal or other clays, and cement materials.
- | ~~42-14.~~ "Construction aggregate lease" means a contract entered between the board and a third party for mining of construction aggregate on trust lands.
- | ~~43-15.~~ "Construction aggregate leased premises" means the land area subject to a given construction aggregate lease.
- | ~~44-16.~~ "Construction aggregate mining operation" means any type of activity conducted to discover, or prospect for, the presence of construction aggregate, or to remove the construction aggregate so discovered from its original position on or in the land by any means whatsoever.
- | ~~45-17.~~ "Custodial agreement" means an agreement between the lessee and a third party in which the lessee agrees to take custody of livestock not owned by the lessee for a specified period of time and to provide day-to-day care for the livestock.
- | ~~46-18.~~ "Delay rental" means the annual minimum payment given to maintain a lease in the absence of production in commercial quantities during the primary term.
- | ~~47-19.~~ "Department" means the office of the commissioner and the department of trust lands.
- | ~~48-20.~~ "Disturbed" means any alteration of the surface or subsurface of any lands subject to a lease or encumbrance with the board.
- | ~~49-21.~~ "Encumbrance" means a right other than an ownership interest in real property. The term includes easements, permits, surface damage agreements and any other restrictions, encroachments, licenses, mortgages, and liens that relate to trust lands, and specifically excludes leases for agricultural use, construction aggregate, sodium sulfate, chemical substances, metallic ores, uranium ores, and oil, gas, and coal which are administered separately.
- | ~~20-22.~~ "Fair market value" means the price set by the commissioner after an analysis of prices paid for similar products or services in the local area under article 85-04.
- | ~~21-23.~~ "F.O.B." means free on board.
- | ~~22-24.~~ "Gas" means all natural gas and all other gaseous or fluid hydrocarbons not defined as oil, but does not include coal, lignite, oil shale, or similar hydrocarbons.
- | ~~23-25.~~ "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the North Dakota industrial commission, other than from coalbed methane.
- | ~~24-26.~~ "Gross proceeds" means the sum of all consideration in whatever form or forms, paid for the gas attributable to the lease.

- ~~25-27.~~ "Invasive species" means a species that is nonnative to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.
- ~~26-28.~~ "Market value" means the price a willing buyer would pay a willing seller in an arm's length transaction in which the buyer is not compelled to buy or the seller is not compelled to sell.
- ~~27-29.~~ "Net construction aggregate interest" means the undivided portions of the total construction aggregate estate on a given tract of land.
- ~~28-30.~~ "Offset drainage" means the drainage of oil or gas to an adjoining tract of land on which a well is being drilled or is already in production.
31. "Offset well" means any well drilled opposite another well on adjoining property with the specific purpose of preventing drainage to the adjoining property.
32. "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity produced in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
- ~~29-33.~~ "Oil and gas lease" means a contract entered between the board and a third party for oil and gas production.
- ~~30-34.~~ "Oil and gas leased premises" means the land subject to a given oil and gas lease.
- ~~31-35.~~ "Oil well" means a well capable of producing oil and which is not a gas well as defined herein.
- ~~32-36.~~ "Original grant lands" means all those lands granted to the state of North Dakota by virtue of the Enabling Act of 1889, as further defined in North Dakota Century Code section 15-06-01.
37. "Payor" means either the lessee or an entity other than the lessee who assumes, or agrees to perform, any of the lessee's rights and responsibilities under a lease.
- ~~33-38.~~ "Pest" means any insect, rodent, nematode, fungus, weed, any form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms, except viruses, bacteria, or other micro-organisms, whose presence causes or is likely to cause economic or environmental harm or harm to human health.
- ~~34-39.~~ "Surface land lease" means a contract entered between the board and a third party for agricultural use on trust lands.
- ~~35-40.~~ "Surface land leased premises" means the land area subject to a given surface land lease.
- ~~36-41.~~ "Terminate," unless otherwise provided, has the same meaning as the word "cancel."
- ~~37-42.~~ "Trust lands" means any property owned by the state of North Dakota and managed by the board.
- ~~38-43.~~ "Trusts" means permanent trusts and other funds managed or controlled by the board.
- ~~39-44.~~ "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway or trail, except devices moved by human power.
- ~~40-45.~~ "Vertical oil and gas well" means a well, the wellbore of which is drilled on a vertical or directional plane into a non-shale formation and is not turned or curved horizontally to allow the wellbore additional access to the oil and gas reserves in the formation.

46. "When run" means that point in the time when the production from a well is removed or sold from the leased premises and delivered to the purchaser or user of such production; for purposes of computing royalties, that point in time must be considered to be 7:00 a.m., on the day the production is delivered, using central standard time, to the purchaser or user regardless of the actual time delivered.

History: Effective January 1, 2019; amended effective January 1, 2020; January 1, 2021.

General Authority: NDCC 15-05-05, 15-07-20, 15-08.1-06, 28-32, 61-33-06

Law Implemented: NDCC 4.1-47-04, 15-01, 15-04, 15-05, 15-07, 15-08, 15-08.1

ARTICLE 85-04
SURFACE LAND MANAGEMENT

Chapter	
85-04-01	Leasing Trust Lands for Agricultural Use
85-04-02	Construction Aggregate
85-04-03	Permanent Improvements
85-04-04	Encumbrances of Trust Lands
85-04-05	Public Access and Use
<u>85-04-06</u>	<u>Land Exchange</u>
<u>85-04-07</u>	<u>Land Sales Under North Dakota Century Code Chapter 15-06</u>
<u>85-04-08</u>	<u>Land Sales Under North Dakota Century Code Chapter 15-07</u>
<u>85-04-09</u>	<u>Land Sales Under North Dakota Century Code Chapter 15-09</u>

CHAPTER 85-04-06
LAND EXCHANGE

Section	
<u>85-04-06-01</u>	<u>Approval of Land Exchange</u>
<u>85-04-06-02</u>	<u>Criteria for Land Exchange</u>
<u>85-04-06-03</u>	<u>Application for Land Exchange</u>
<u>85-04-06-04</u>	<u>Evaluation of Application</u>
<u>85-04-06-05</u>	<u>Comments and Notice</u>
<u>85-04-06-06</u>	<u>Exchange Report</u>
<u>85-04-06-07</u>	<u>Board Authorization</u>

85-04-06-01. Approval of land exchange.

The board may approve an exchange of trust lands which it determines is in the best interests of the trusts and complies with current law. Under North Dakota Century Code section 15-06-01, any land received under an exchange of original grant land maintains its status as "original grant lands".

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: N.D. Constitution article IX, § 6; NDCC 15-06-01, 15-06-19.1

85-04-06-02. Criteria for land exchange.

The department shall consider the criteria listed below numbered one through six in any land exchange. Land exchanges are not required to satisfy all six criteria outlined below.

1. Equal or greater value.

a. In connection with any exchange the department may use information, provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment. The commissioner shall procure appraisals, completed by a certified appraiser, to determine the value of the trust lands and the proposed exchange land. The same appraiser shall conduct appraisals of the trust lands to be exchanged and the proposed exchange land. In the event the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.

b. The department shall advise the appraiser regarding the scope of work to ensure the value of the trust lands to be exchanged is determined by the highest and best use of the

land, not simply the present use. For example, if an exchange is proposed in which the trust lands to be exchanged are currently leased for grassland but the land is in the path of residential, commercial, or industrial development, the trust lands to be exchanged must be appraised for the highest and best use for residential, commercial, or industrial development rather than its current use as grassland.

c. The department shall consider features not reflected in the market price which are difficult to assign a monetary value, including location, proximity to public lands, recreational opportunities, scenery, other amenities, and results of cultural resources inventories in evaluating the relative value of trust lands to be exchanged.

2. Equal or greater income to the trusts. A land exchange must result in the board receiving equal or greater income to the trusts. The projected income for the proposed exchange land will be estimated using the board's minimum lease rate. The minimum lease rate for the proposed exchange land will be compared to the present income received by the trusts from the trust lands to be exchanged, including all current and potential future revenue streams from surface leases, encumbrances, development of natural resources, and other sources, and any tax liability.

3. Acreage. Land exchanges should result in the board receiving equal or greater acreage. The board, however, may consider receiving less acreage in return for substantially higher value or income, or both.

4. Consolidation of trust lands. The proposed land exchange must not fragment trust land holdings by creating isolated parcels of trust land. In all exchanges, the board shall reserve all minerals underlying the trust lands to be exchanged pursuant to section 5 of article IX of the Constitution of North Dakota subject to applicable law.

5. Potential for long-term appreciation. The proposed exchange land must have similar revenue potential as the trust lands to be exchanged.

6. Access. A land exchange must not diminish access to trust lands. Accessible trust lands should be exchanged with lands that offer equal or improved access.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-06-19.1, 15-06-22, 15-07-02

85-04-06-03. Application for land exchange.

An applicant shall submit a written letter of application to the commissioner to request a land exchange. The application must include:

1. Legal description of the trust lands to be exchanged;

2. Legal description of the proposed exchange land;

3. Applicant's estimated valuation of the proposed exchange land;

4. The most recent tax assessment for the proposed exchange land;

5. Statement of ownership of the proposed exchange land, including owners' names and ownership interest;

6. Purpose of exchange request; and

7. A nonrefundable application fee as determined by the board.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-06-19.1

85-04-06-04. Evaluation of application.

The department shall evaluate the application and may request the applicant provide additional information. After the department's evaluation:

1. The commissioner may reject an application:

a. If the application does not meet the requirements of subsections 1 and 2 of section 85-04-06-02; or

b. If the application fails to comply with North Dakota law.

2. If the commissioner determines an application meets the requirements of section 85-04-06-02, the commissioner shall present the application to the board to determine if the application reflects a tract the board is willing to exchange.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-06-19.1

85-04-06-05. Comments and notice.

1. Upon receipt of an application for land exchange and a determination by the board that the application covers a tract the board is willing to exchange, the department shall post on the department's website a notice of the application for land exchange, any supporting documentation, and instructions for submitting public comments. The department also shall publish notice of an application for land exchange in the official newspaper of the county where the proposed exchange land and proposed trust lands to be exchanged are located and in the Bismarck Tribune. Notice must be published once each week for three consecutive weeks prior to the deadline for comments. The notice must contain the legal description of the proposed exchange land and proposed trust lands to be exchanged and the deadline for comments. If publication of any notice is omitted inadvertently by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled comment period if it appears the omission or error is not prejudicial to the department's interest.

2. All comments must be in writing and contain the following:

a. Name and address of the interested person;

b. Applicant's name and address;

c. The legal description of the proposed exchange land and proposed trust lands to be exchanged as shown on the published notice; and

d. A detailed statement as to whether the interested person supports or opposes the proposed land exchange.

3. The department shall give notice of the proposed exchange to any entity having a property interest in any portion of trust lands involved in the exchange as reflected in the records of the department and if the land is leased, the commissioner shall notify the lessee of the intent to exchange the property during the months of October through January.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-06-19.1

85-04-06-06. Exchange report.

Following the department's application evaluation, the board's determination that the application covers a tract the board is willing to exchange, and expiration of the public comment period, the department shall prepare an exchange report to be presented to the board, which will include the following:

1. A summary discussion of how the exchange meets or exceeds any of the six criteria for land exchange under section 85-04-06-02;
2. A summary of public comments received on the proposed exchange;
3. The department's concerns or opinions of the merits of the proposed exchange;
4. The department's recommendations for board direction regarding further review, if needed, of the proposed exchange; and
5. The applicant's commitment to fund the costs of the department's detailed review, including appraisals, title examinations, advertising costs, recording fees, and other costs as may be necessary to complete an exchange as determined by the department. The applicant is responsible for payment of all costs, unless payment of the costs is otherwise waived by the board or shared by the parties to the exchange.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-06-19.1

85-04-06-07. Board authorization.

Upon receipt of the department's exchange report, the board shall consider the specific recommendations of the department and public comments and evaluate the merits of the land exchange. The board shall determine whether further review and public comment are required.

When a proposed exchange satisfies the exchange criteria, the board may exercise its discretion to suspend further review and disapprove the application as not in the best interests of the trusts.

Alternatively, the board may direct the commissioner to complete specific tasks relating to the merits of the proposed exchange and report back to the board with findings before proceeding further. When the board is satisfied that the department and applicant have generated all information necessary for its decision, the board shall review and determine whether the proposed exchange is in the best interests of the trusts.

The commissioner is authorized to complete all documents for the exchange on the board's behalf if the board approves the exchange.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-06-19.1

CHAPTER 85-04-07
LAND SALES UNDER NORTH DAKOTA CENTURY CODE CHAPTER 15-06

Section

<u>85-04-07-01</u>	<u>Sale of Original Grant Lands</u>
<u>85-04-07-02</u>	<u>Requirements of Sale</u>
<u>85-04-07-03</u>	<u>Sale Procedure</u>
<u>85-04-07-04</u>	<u>Payment of Costs</u>
<u>85-04-07-05</u>	<u>Board Review</u>

85-04-07-01. Sale of original grant lands.

The board shall retain and manage original grant lands to produce revenue consistent with the long-term maintenance of the original grant lands' income producing potential and ecological health. The commissioner may propose, or accept letters of application for, the sale of original grant lands after the original grant lands have been evaluated by the commissioner for "highest and best use" as defined in North Dakota Century Code section 15-02-05.1 and the department considers the following criteria:

1. If the tract has been zoned or has high potential to be zoned residential, commercial, or industrial;
2. The tract's potential for mineral development, including sand, gravel, clay, and scoria;
3. If the tract has been a source of persistent management problems, resulting in the sale of the tract being prudent from a long-term financial point of view;
4. If the tract and adjacent trust land tracts total less than eighty acres [32.37 hectares] in size, more or less, for grassland and less than forty acres [16.19 hectares], more or less, for cropland or hayland, except those tracts which are severed by a highway, road, railroad, canal, river, or lake, which may be sold if the severed portion is less than these amounts; or
5. If the tract and adjacent trust land tracts exceed eighty acres [32.37 hectares] in size, more or less, for grassland or more than forty acres [16.19 hectares] in size, more or less, for cropland.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-06, 15-08

85-04-07-02. Requirements of sale.

Any sale of original grant lands, with the exception of tracts provided in subsection 1 of section 85-04-07-01 is subject to the following:

1. The proposed sale would result in no net loss of leasable original grant lands;
2. The applicant agrees to provide accessible and leasable land equal or greater in acres and value to the trust from which the original grant lands were sold, for which the department then shall consider the criteria listed below in subsections a through f in any no net loss sale. Land provided for a no net loss sale is not required to satisfy all six criteria outlined below.
 - a. Equal or greater value.
 - (1) In connection with any no net loss sale the department may use information, provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including

completion of an environmental assessment. The commissioner shall procure appraisals in accordance with North Dakota Century Code sections 15-06-22 and 15-06-23, and shall request additional appraisals be completed by a certified appraiser, to determine the value of the trust lands and the proposed no net loss sale land. The same appraiser shall conduct appraisals of the trust lands and the proposed no net loss sale land. In the event the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.

(2) The department shall advise the appraiser regarding the scope of work to ensure the value of the trust lands is determined by the highest and best use of the land, not simply the present use. For example, if a no net loss sale is proposed in which the trust lands are currently leased for grassland but the land is in the path of residential, commercial, or industrial development, the trust lands must be appraised for the highest and best use for residential, commercial, or industrial development rather than its current use as grassland.

(3) The department shall consider features not reflected in the market price that are difficult to assign a monetary value, including location, proximity to public lands, recreational opportunities, scenery, other amenities, and results of cultural resources inventories in evaluating the relative value of trust lands.

b. Equal or greater income to the trusts. A no net loss sale must result in the board receiving equal or greater income to the trusts. The projected income for the proposed no net loss sale land will be estimated using the board's minimum lease rate. The minimum lease rate for the proposed no net loss sale land will be compared to the present income received by the trusts from the trust lands, including all current and potential future revenue streams from surface leases, encumbrances, development of natural resources, and other sources, and any tax liability.

c. Acreage. A no net loss sale should result in the board receiving equal or greater acreage. The board may, however, consider receiving less acreage in return for one or more of the following:

(1) Improved dedicated access;

(2) Substantially higher value; or

(3) Substantially higher income.

d. Consolidation of trust lands. The proposed no net loss sale must not fragment trust land holdings by creating isolated parcels of trust land. In all no net loss sales, the board shall reserve all minerals underlying the trust lands pursuant to section 5 of article IX of the Constitution of North Dakota subject to applicable law.

e. Potential for long-term appreciation. The proposed no net loss sale land must have similar revenue potential as the trust lands.

f. Access. A no net loss sale must not diminish access to trust lands. The no net loss land should provide equal or improved access.

3. Any land acquired pursuant to a sale of original grant lands, subject to no net loss, shall be treated by the board as "original grant lands".

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-06, 15-08

85-04-07-03. Sale procedure.

1. A letter of application for purchase of original grant lands meeting the criteria in section 85-04-07-01 may be accepted at any time. An application must include:
 - a. A nonrefundable application fee in an amount set by the board;
 - b. A legal description of the trust lands; and
 - c. A legal description of the lands to be provided to ensure no net loss.

Upon board approval, a sale of original grant lands must be conducted in accordance with North Dakota Century Code chapter 15-06.

2. Upon receipt of a letter of application to purchase a tract, the potential sale must be presented to the commissioner for preliminary approval or rejection.
3. The commissioner may recommend to the board that a tract meeting the criteria of section 85-04-07-01 may be offered for sale even though no letter of application has been received.

Upon a determination that the application covers a tract the board is willing to sell, the department shall post on the department's website a notice of the application for sale, any supporting documentation, and instructions for submitting public comments. The department also shall publish notice of a letter of application for sale in the official newspaper of the county where the nominated tract is located and in the Bismarck Tribune. Notice must be published once each week for three consecutive weeks prior to the deadline for comments. The notice must contain the legal description of the proposed tract and the deadline for comments. If publication of any notice is omitted inadvertently by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled comment period if it appears the omission or error is not prejudicial to the department's interest. All comments must be in writing and contain the following:

- a. Name and address of the interested person;
 - b. Applicant's name and address;
 - c. The legal description of the proposed tract for sale as shown on the published notice; and
 - d. A detailed statement as to whether the interested person supports or opposes the sale.
4. The board shall review all appraisals, any public comments, other relevant information including title examinations, and determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall establish a minimum acceptable sale price.
 5. If the land is leased, the commissioner shall notify the lessee of the intent to sell the property during the months of October through January.
 6. The department shall notify the applicant, if any, of the price set by the board, which must be the minimum acceptable sale price.
 7. The department may contract a legal metes and bounds survey for the tract to be sold at public auction under North Dakota Century Code chapter 15-06.
 8. If the applicant desires to proceed, the applicant shall submit to the department a formal offer to purchase. The formal offer to purchase must serve as the opening bid at the public sale. The applicant shall provide five percent of the minimum sale price as earnest money, as a condition of the formal offer to purchase.

9. Land must be advertised for sale at public auction under North Dakota Century Code chapter 15-06.

10. If no bids are received on a tract for which no formal application was received, the tract may be sold for the board-established minimum acceptable sale price to the first interested party at a private sale during the six months following the date of the auction.

11. The sale of any tract under this chapter may be by:

a. Contract under section 6 of article IX of the Constitution of North Dakota; or

b. A purchase agreement requiring twenty percent payment of the purchase price on the day of the sale, which may include earnest money paid, and the balance due within sixty calendar days. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days from the date of the sale. Interest must be charged on any remaining balance, beginning sixty days after the date of sale, at the Bank of North Dakota base rate plus one percent.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-06, 15-08

85-04-07-04. Payment of costs.

The purchaser is responsible for payment of all costs, including appraisals, title examinations, and other costs as may be necessary to complete the sale.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-06, 15-08

85-04-07-05. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall recommend if board review is warranted.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-06, 15-08

CHAPTER 85-04-08
LAND SALES UNDER NORTH DAKOTA CENTURY CODE CHAPTER 15-07

Section

<u>85-04-08-01</u>	<u>Sale of Acquired Lands</u>
<u>85-04-08-02</u>	<u>Requirements of Sale</u>
<u>85-04-08-03</u>	<u>Sale Procedure</u>
<u>85-04-08-04</u>	<u>Payment of Costs</u>
<u>85-04-08-05</u>	<u>Board Review</u>

85-04-08-01. Sale of acquired lands.

The board shall retain and manage acquired lands to produce revenue consistent with the long-term maintenance of the acquired lands' income producing potential and ecological health until sold. The commissioner may propose, or accept a letter of application for, the sale of acquired lands if the department has reviewed its potential for mineral development and the acquired lands have been evaluated by the commissioner for "highest and best use" as defined in North Dakota Century Code section 15-02-05.1 and the department considers the following criteria:

1. If a tract is acquired through foreclosure or deed in lieu of foreclosure from the board's loan pool account, established under North Dakota Century Code section 15-03-04.1, after January 1, 2020;
2. If the tract has been zoned or has high potential to be zoned residential, commercial, or industrial;
3. The tract's potential for mineral development, including sand, gravel, clay, and scoria;
4. If the tract has been a source of persistent management problems, resulting in the sale of the tract being prudent from a long-term financial point of view;
5. If the tract and adjacent trust land tracts total less than eighty acres [32.37 hectares] in size, more or less, for grassland and less than forty acres [16.19 hectares], more or less, for cropland or hayland, except those tracts which are severed by a highway, road, railroad, canal, river, or lake, which may be sold if the severed portion is less than these amounts; or
6. If the tract and adjacent trust land tracts exceed eighty acres [32.37 hectares] in size, more or less, for grassland or more than forty acres [16.19 hectares] in size, more or less, for cropland.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-07, 15-08

85-04-08-02. Requirements of sale.

Any sale of acquired lands, with the exception of tracts provided in subsections 1 and 2 of section 85-04-08-01, is subject to the following:

1. The proposed sale would result in no net loss of leasable acquired lands; and
2. The applicant agrees to provide accessible and leasable land equal or greater in acres and value to the trust from which the acquired lands were sold, for which the department then shall consider the criteria listed below in subdivisions a through f in any no net loss sale. Land provided for a no net loss sale is not required to satisfy all six criteria outlined below.

a. Equal or greater value.

- (1) In connection with any no net loss sale the department may use information, provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment. The commissioner shall procure appraisals, completed by a certified appraiser, to determine the value of the trust lands and the proposed no net loss sale land. The same appraiser shall conduct appraisals of the trust lands and the proposed no net loss sale land. In the event the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.
- (2) The department shall advise the appraiser regarding the scope of work to ensure the value of the trust lands is determined by the highest and best use of the land, not simply the present use. For example, if a no net loss sale is proposed in which the trust lands are currently leased for grassland but the land is in the path of residential, commercial, or industrial development, the trust lands must be appraised for the highest and best use for residential, commercial, or industrial development rather than its current use as grassland.
- (3) The department shall consider features not reflected in the market price that are difficult to assign a monetary value, including location, proximity to public lands, recreational opportunities, scenery, other amenities, and results of cultural resources inventories in evaluating the relative value of trust lands.

b. Equal or greater income to the trusts. A no net loss sale must result in the board receiving equal or greater income to the trusts. The projected income for the proposed no net loss sale land will be estimated using the board's minimum lease rate. The minimum lease rate for the proposed no net loss sale land will be compared to the present income received by the trusts from the trust lands, including all current and potential future revenue streams from surface leases, encumbrances, development of natural resources, and other sources, and any tax liability.

c. Acreage. A no net loss sale should result in the board receiving equal or greater acreage. The board may, however, consider receiving less acreage in return for one or more of the following:

- (1) Improved dedicated access;
- (2) Substantially higher value; or
- (3) Substantially higher income.

d. Consolidation of trust lands. The proposed no net loss sale must not fragment trust land holdings by creating isolated parcels of trust land. In all no net loss sales, the board shall reserve all minerals underlying the trust lands pursuant to section 5 of article IX of the Constitution of North Dakota subject to applicable law.

e. Potential for long-term appreciation. The proposed no net loss sale land must have similar revenue potential as the trust lands.

f. Access. A no net loss sale must not diminish access to trust lands. The no net loss land should provide equal or improved access.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-07, 15-08

85-04-08-03. Sale procedure.

1. A letter of application for purchase of acquired lands meeting the criteria in section 85-04-08-01 may be accepted at any time. An application must include:
 - a. A nonrefundable application fee in an amount set by the board;
 - b. A legal description of the trust lands; and
 - c. A legal description of the lands to be provided to ensure no net loss.

Upon board approval, a sale of acquired lands must be conducted in conformance with North Dakota Century Code sections 15-06-25 and 15-07-04.

2. Upon receipt of a letter of application for sale of a tract, the potential sale must be presented to the commissioner for preliminary approval or rejection.
3. The commissioner may recommend to the board that a tract be sold even though no letter of application for sale has been received.
4. Upon a determination that the application covers a tract the board is willing to sell, the department shall post on the department's website a notice of the application for sale, any supporting documentation, and instructions for submitting public comments. The department also shall publish notice of a letter of application for sale in the official newspaper of the county where the nominated tract is located and in the Bismarck Tribune. Notice must be published once each week for three consecutive weeks prior to the deadline for comments. The notice must contain the legal description of the proposed tract and the deadline for comments. If publication of any notice is omitted inadvertently by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled comment period if it appears the omission or error is not prejudicial to the department's interest. All comments must be in writing and contain the following:
 - a. Name and address of the interested person;
 - b. Applicant's name and address;
 - c. The legal description of the proposed tract for sale as shown on the published notice; and
 - d. A detailed statement as to whether the interested person supports or opposes the sale.
5. The board shall review all appraisals, public comments received, and any other relevant information, and determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall use the appraisal to establish a sale price. The board reserves the right to increase the sale price if it deems the appraised value is inadequate.
6. If the land is leased, the commissioner shall notify the lessee of the intent to sell the property during the months of October through January.
7. The department shall notify the applicant, if any, of the price set by the board, which must be the minimum acceptable sale price.
8. The department may contract a legal metes and bounds survey for the tract to be sold at public auction under North Dakota Century Code chapter 15-07.
9. If the applicant desires to proceed, the applicant shall submit to the department a formal offer to purchase. The formal offer to purchase must serve as the opening bid at the public sale.

The applicant shall provide five percent of the minimum sale price as earnest money, as a condition of the formal offer to purchase.

10. The department shall determine if acquired lands will be advertised for sale at public auction or by sealed bids, with the sale price set by the board as the minimum bid. If no bids are received on property for which an application has been received, the acquired lands may be sold to the applicant at the minimum bid.

11. If no bids are received on property for which no formal application was received, the property may be sold for the board-established minimum acceptable sale price to the first interested party at a private sale during the six months following the date of the auction.

12. The sale of land may be by:

a. Contract under section 6 of article IX of the Constitution of North Dakota; or

b. A purchase agreement requiring twenty percent payment of the purchase price on the day of the sale, which may include earnest money paid, and the balance due within sixty calendar days. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days from the date of the sale. Interest must be charged on any remaining balance, beginning sixty days after the date of sale, at the Bank of North Dakota base rate plus one percent.

13. Acquired lands acquired after January 1, 2020, may be sold to any mortgagor or a member of the mortgagor's immediate family under North Dakota Century Code section 15-07-10. The sale must be for cash only with twenty percent payment of the purchase price on the day of the sale, which may include earnest money paid, and the balance due within sixty calendar days. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days from the date of the sale. Interest must be charged on any remaining balance, beginning sixty days after the date of sale, at the Bank of North Dakota base rate plus one percent.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-07, 15-08

85-04-08-04. Payment of costs.

The purchaser is responsible for payment of all costs, including appraisals, title examinations, and other costs as may be necessary to complete the sale.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-07, 15-08

85-04-08-05. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall recommend if board review is warranted.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-07, 15-08

CHAPTER 85-04-09
LAND SALES UNDER NORTH DAKOTA CENTURY CODE CHAPTER 15-09

Section

<u>85-04-09-01</u>	<u>Sale of Lands for Public or Quasi-Public Purpose</u>
<u>85-04-09-02</u>	<u>Sale Procedure</u>
<u>85-04-09-03</u>	<u>Payment of Costs</u>
<u>85-04-09-04</u>	<u>Fencing</u>
<u>85-04-09-05</u>	<u>Reversion Clause</u>
<u>85-04-09-06</u>	<u>Board Review</u>

85-04-09-01. Sale of lands for public or quasi-public purpose.

The department shall consider the following criteria when reviewing an application for sale under North Dakota Century Code chapter 15-09:

1. The tract is required for the purposes stated in the application and issuance of the patent or deed must not have a significant negative impact on the remainder of the trust lands;
2. Environmental impacts are minimal or are required to be mitigated in an acceptable manner;
3. Impacts on the value of the remainder of the trust lands are minimal or are required to be mitigated in an acceptable manner;
4. Impacts to significant archaeological and historical sites are minimal, or are required to be mitigated in an acceptable manner;
5. The sale must produce a positive financial return to the trusts;
6. There is no known formal challenge regarding the project;
7. The surface lessee has been notified of the project; and
8. If the application is for a sale of land for use as a landfill by a public entity, the following requirements must be met:
 - a. Applicants shall work with the department of environmental quality to ensure the operation of the proposed landfill is in accordance with state and federal laws, rules, and regulations.
 - b. Before final approval of a sale is given, the applicant shall submit evidence that the site meets appropriate geological, hydrological, and other requirements established by the department of environmental quality and the United States environmental protection agency. A permit for feasibility testing may be issued prior to final approval of a sale.
 - c. When determining the purchase price, the board shall consider the following additional factors:
 - (1) The unique geological and hydrological characteristics which make the site suitable for use as a landfill;
 - (2) The effect on the value of adjacent state properties caused by using the site as a landfill; and
 - (3) The price paid by other purchasers for similar landfill sites.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-09

85-04-09-02. Sale procedure.

1. An application for purchase of land may be accepted and the land sold in conformance with North Dakota Century Code chapter 15-09. An application must be submitted using a paper application provided by the department upon request and be completed and signed by authorized personnel and must include a nonrefundable application fee in an amount set by the board unless waived by the commissioner. The application must meet the requirements of North Dakota Century Code section 15-09-01 and may require, depending on the land to be purchased, the following:
 - a. A siting and environmental review completed by the department; and
 - b. A "metes and bounds" survey of the land to be purchased, including both a plat and written narrative of the survey completed by the applicant. The narrative must include the distances and angles between points of intersection and points of entry and exit tied into the section corners, quarter section corners, or lot corners, and a breakdown of the acreage in the parcel for each separate quarter section or lot included in the purchase.
2. If the land is leased, the commissioner shall notify the lessee of the intent to sell the property during the months of October through January.
3. Upon receipt of an application for sale of lands for public or quasi-public purpose and a determination that the application covers a tract the commissioner is willing to consider for sale, the department shall post on the department's website a notice of the application for sale of lands for public or quasi-public purpose, any supporting documentation, and instructions for submitting public comments. All comments must be in writing and contain the following:
 - a. Name and address of the interested person;
 - b. Applicant's name and address;
 - c. The legal description of the proposed tract as shown on the published notice; and
 - d. A detailed statement as to whether the interested person supports or opposes the sale.
4. The department shall secure a real property appraisal in accordance with North Dakota Century Code sections 15-06-22 and 15-06-23 and may secure additional appraisals from certified appraisers. Appraisals must consider the matter of severance of adjacent trust lands caused by the sale and the effect on the value of adjacent trust lands, which may reflect a higher appraisal.
5. The department shall provide the board a report of all appraisals, public comments, and any other relevant information to allow the board to determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall establish a minimum acceptable sale price. The board reserves the right to increase the sale price if it deems the appraised value is inadequate.
6. The board shall obtain fair market value for all land sold under North Dakota Century Code chapter 15-09 and must consider its "highest and best use" as defined in North Dakota Century Code section 15-02-05.1.
7. The department shall notify the applicant, if any, of the price set by the board, which must be the approved sale price.

8. The notice of the application and the board approved sale price must be published and a hearing must be held in conformance with North Dakota Century Code section 15-09-03. If publication of any notice is omitted inadvertently by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled hearing if it appears the omission or error is not prejudicial to the department's interest.

9. Any comments made at the hearing must be brought to the board, along with the department's recommendations regarding those comments.

10. If the applicant desires to purchase the property at the price set by the board and pays full purchase price, the commissioner may complete the sale on the board's behalf. If an agreement as to price cannot be reached, the applicant may proceed under North Dakota Century Code section 15-09-05.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-09

85-04-09-03. Payment of costs.

The purchaser is responsible for payment of all costs, including appraisals, title examinations, and other costs as may be necessary to complete the sale.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-09

85-04-09-04. Fencing.

A no-fencing clause may be added to the conveyance to keep trust lands from being severed.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-09

85-04-09-05. Reversion clause.

Any conveyance must contain a reversion clause stipulating that if the property is at any time not used for its stated purpose at the time of purchase, the board may terminate the estate created by the conveyance and repossess the property. The power of termination and re-entry may be exercised by the board without reimbursement to the purchaser of any part of the purchase price, and without payment of any other consideration.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-09

85-04-09-06. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall recommend if board review is warranted.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

CHAPTER 85-06-01 OIL AND GAS

Section

85-06-01-01	Oil and Gas Lease Nomination
85-06-01-02	Advertisement for Public Auction
85-06-01-03	Public Auction
85-06-01-04	Rejection of Nomination and Bids
85-06-01-05	Form and Term of Oil and Gas Lease
85-06-01-06	Assignment, Amendment, or Extension
85-06-01-07	Voluntary Release
85-06-01-08	Royalties
85-06-01-09	Disputed Title Royalty Escrow Account
85-06-01-10	Breach of Oil and Gas Lease
85-06-01-11	Board Review
85-06-01-12	Reports of Lessee - Delinquency Penalty
85-06-01-13	Audit and Examination
85-06-01-14	Request for Shut-In Status for Oil
85-06-01-15	<u>Offset Obligations for Vertical Oil and Gas Wells</u>

85-06-01-15. Offset obligations for vertical oil and gas wells.

1. If a vertical oil and gas well has been drilled and is producing in commercial quantities from mineral acreage owned by another or from adjacent trust lands leased at a lesser royalty, which vertical oil and gas well is within one thousand feet [304.8 meters] of the trust lands, the lessee of the trust lands shall, within one hundred twenty days after completion of such vertical oil and gas well, exercise one of the following options:

- a. Diligently begin in good faith the drilling of a corresponding offset well on the leased trust lands, or on lands pooled therewith;
- b. Pay a compensatory royalty, as determined by the commissioner, in lieu of the drilling of an offset well. If a lessee elects to pay a compensatory royalty, the lessee shall submit to the commissioner, within thirty days of the date such election, a proposed compensatory royalty agreement based on the estimated drainage area of the vertical oil and gas well located within one thousand feet [304.8 meters] of the trust lands. Geological, engineering, or other evidence in the form of a narrative or maps, or both, which form the basis for the offset drainage computation must be included with the proposed agreement;
- c. Release the leased acreage to avoid the offset requisites; or
- d. Submit a request to the commissioner for a waiver of the offset obligation as follows:

(1) A request for a waiver of the offset obligation must be in writing and provide the grounds for the request. If a request is made, the lessee shall submit to the commissioner, within thirty days of the request, geological, engineering, or other evidence in the form of a narrative or maps, or both, which, in the opinion of the lessee, indicates that an additional offset well need not be drilled to reasonably develop or protect the trust lands from offset drainage due to the vertical oil and gas well located within one thousand feet [304.8 meters] on trust land. After a review of the evidence required to be submitted, the commissioner may:

(a) Request that the lessee supply additional evidence to support:

[1] The request for a waiver of the offset obligation; or

[2] The proposed compensatory royalty agreement submitted by the lessee.

(b) Grant a waiver of the offset obligation;

(c) Approve the proposed compensatory royalty agreement of the lessee;

(d) Require the lessee to pay compensatory royalties as determined by the commissioner;

(e) Take such other action as the commissioner may deem appropriate, including the acceptance of a release either in whole or in part as to all or less than all strata included in the lease; or

(f) Cancel the lease in accordance with section 85-06-01-10.

(2) A waiver of offset obligation is effective from the date of approval by commissioner. The commissioner may revoke a waiver of offset obligation if the commissioner determines the action is in the best interests of the trusts. If a waiver of offset obligation is revoked, the department shall provide notice to the lessee by certified mail. In the event of revocation, the lessee shall have one hundred twenty days from the date of revocation to exercise one of the options under this section.

(3) Lessee shall submit a report as to the conditions regarding offset drainage from an offset well every five years from the date of approval of waiver of offset obligation. If there is a change of conditions regarding offset drainage from an offset well at any time, the lessee shall be required to submit a report notifying the department of the change within one hundred twenty days of the change of conditions.

(4) The commissioner shall notify the lessee of the commissioner's decision.

2. If the lessee fails to exercise any of the options in subsection 1 the oil and gas lease is subject to cancellation under section 85-06-01-10.

3. The commissioner may approve compensatory royalties on the board's behalf in accordance with this section.

4. If an application does not comply with this section, or if the commissioner determines board review is desirable, the application may be brought before the board for its consideration.

History: Effective January 1, 2021.

General Authority: NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 61-33-06, 61-33.1

TITLE 92
WORKFORCE SAFETY AND INSURANCE

JANUARY 2021

CHAPTER 92-01-02

92-01-02-45.2. Medical service provider electronic billing responsibilities.

Medical service providers shall submit electronic medical bills and supporting documentation to the organization unless the health care provider is exempt.

1. A medical service provider is exempt from the requirement of electronic submission of medical bills if:

a. The provider submits fewer than fifty bills per calendar year; or

b. The provider can sufficiently demonstrate electronic medical bill implementation will create an unreasonable financial hardship and can provide supporting documentation, such as financial statements or other documentation which reflect the financial hardship. The exemption process must be initiated by the medical service provider. Granting an exemption lies solely within the organization's discretion and is not subject to appeal.

2. The organization shall identify and maintain an electronic billing source to enable the transaction of these services.

3. ~~When submitting an electronic medical bill transaction, all~~All medical service providers shall ~~use~~submit the most current version of the following electronic medical bill processing standards:

~~1.~~ a. Professional billing - ASC X12 837P;

~~2.~~ b. Institutional/hospital billing - ASC X12 ~~8374~~837I; or

~~3.~~ c. Dental billing - ASC X12 837D.

History: Effective April 1, 2020; amended effective January 1, 2021.

General Authority: NDCC 65-02-08, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07, 65-05-07.3

TITLE 112
INTEGRATIVE HEALTH CARE

JANUARY 2021

CHAPTER 112-01-01

112-01-01-01. Organization and functions of the board of integrative health care.

- ~~1.~~ **History.** ~~The board of integrative health care was established in 2011 under North Dakota Century Code chapter 43-57 to provide a means to regulate integrative health care practitioners. The first integrative health care practitioners to be licensed and regulated by the board are naturopaths in accordance with North Dakota Century Code chapter 43-58 and music therapists in accordance with North Dakota Century Code chapter 43-59. Acupuncturists became licensed and regulated by the board in 2015 under North Dakota Century Code chapter 43-61. North Dakota is the sixteenth state of the United States to license naturopaths and the forty-fifth state to license acupuncturists.~~
- ~~2.~~ **Functions.** The function of the board is to determine if acupuncturists, behavior analyst professionals, naturopaths, and music therapists meet the qualifications to practice in the state of North Dakota and to prevent unqualified acupuncturists, behavior analyst professionals, naturopaths, and music therapists from practicing in North Dakota. The board establishes and enforces the education, licensing examinations, and professional conduct of acupuncturists, behavior analyst professionals, naturopaths, and music therapists in accordance with North Dakota Century Code chapters 43-58, 43-59, and 43-61.
- ~~3.~~2. **Board membership.** The initial board consists of five to seven members appointed by the governor: one acupuncturist, one behavior analyst professional, one naturopath, one music therapist, one medical or osteopathic doctor, one advanced practice registered nurse, one pharmacist, and up to two public members. Members of the board serve three-year terms, except for the initial board members which shall be staggered. Two to three three-year terms expire each year. Board members annually elect from the board membership the chairman, vice chairman, secretary, and treasurer of the board.
- ~~4.~~3. **Secretary and treasurer.** The secretary and the treasurer are elected by the board.
- ~~5.~~4. **Executive director.** The board may hire an executive director to oversee the clerical needs of the board, and who will answer to the board chairman.
- ~~6.~~5. **Inquiries.** Any questions or suggestions concerning these rules should be sent to the executive director or to the secretary during any time period that the executive director position is unfilled.

History: Effective April 1, 2013; amended effective July 1, 2017; [January 1, 2021](#).

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-02, 43-57-03

CHAPTER 112-01-04 LICENSEE DUTIES AND DISCIPLINARY MATTERS

Section

112-01-04-01	Unlicensed Practice
112-01-04-02	Code of Ethics
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112-01-04-04	Administrative Sanction
112-01-04-05	Report of Disciplinary Actions
112-01-04-06	Reporting Contagious or Infectious Diseases
112-01-04-07	Reporting Child Abuse
112-01-04-08	Self Reporting Offenses and Actions
112-01-04-09	Supervision of Students - Music Therapy, Acupuncture, Naturopathy

112-01-04-02. Code of ethics.

1. **Naturopaths.** The board adopts the 2011 edition of the American Association of Naturopathic Physicians Code of Ethics as the code of ethical conduct governing the practice of naturopathy.
2. **Music therapists.** The board adopts the 2011 edition of the Certification Board for Music Therapists Code of Professional Practice as the code of ethical conduct governing the practice of music therapy.
3. **Acupuncturists.** The board adopts the 2008 edition of the National Certification Commission of Acupuncture and Oriental Medicine (NCCAOM) as the code of ethical conduct governing the practice of acupuncture and oriental medicine.
4. **[Behavior analyst professionals.](#)** [The board adopts the 2014 edition of the behavior analyst certification board professional and ethical compliance code for behavior analysts as the code of ethical conduct governing the practice and supervision of applied behavior analysis.](#)

History: Effective April 1, 2013; amended effective July 1, 2017; [January 1, 2021](#).

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03

112-01-04-09. Supervision of students - [Music therapy, acupuncture, naturopathy.](#)

Licensees [for music therapy, acupuncture, and naturopathy](#) in good standing who have been in practice for one or more years may accept prospective professional students for limited practice observation, and may accept current professional students of recognized accredited schools for unpaid preceptorships. Prospective students and preceptor students may participate in observation of professional practice with the permission of patients. Preceptor students may assist in hands-on tasks if the student is under the direct supervision of a licensee, the student is in the clinical phase of their education, the patient grants permission, and the licensee has a recognized preceptor affiliation with an approved school within their own profession or the preceptee's profession. The licensee may not allow hands-on assistance with tasks that exceed the education and training of the student.

History: Effective July 1, 2017; [amended effective January 1, 2021](#).

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03

ARTICLE 112-05
BEHAVIOR ANALYST LICENSURE

Chapter
112-05-01 Behavior Analysts

CHAPTER 112-05-01
BEHAVIOR ANALYSTS

Section
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112-05-01-01. Definitions.

Unless specifically stated otherwise, all definitions found in North Dakota Century Code chapter 43-64 are applicable to this title. In this title, unless the context or subject matter otherwise requires:

1. "Certifying entity" means behavior analyst certification board or a certifying entity accredited by the national commission for certifying entities or the American national standards institute.
2. "Licensed assistant behavior analyst" means an individual licensed under North Dakota Century Code chapter 43-64 as a licensed assistant behavior analyst and is supervised by a licensed behavior analyst.
3. "Licensed behavior analyst" means an individual licensed under North Dakota Century Code chapter 43-64 as a licensed behavior analyst.
4. "National board" means behavior analyst certification board or its successor.
5. "National board examinations" means the board-certified behavior analyst or board-certified assistant behavior analyst examination for board certification or its successor.

History: Effective January 1, 2021.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-64-04

112-05-01-02. Application for licensure - Requirements.

1. The board may grant licensure as a licensed behavior analyst to an applicant in the practice of applied behavior analysis, who meets all of the following requirements:

- a. The applicant has a doctorate or master's degree from a program accredited or verified by the association for behavior analysis international or approved by the behavior analyst certification board.
- b. The applicant has passed the board-certified behavior analyst examination offered by the behavior analyst certification board.
- c. The applicant is certified by the behavior analyst certification board.
- d. The applicant has passed the North Dakota professional responsibility examination once developed and approved by the board.

2. The board may grant licensure as a licensed assistant behavior analyst to an applicant in the practice of applied behavior analysis, who meets all of the following requirements:

- a. The applicant has a bachelor's degree from a school or college that meets one of the following requirements:
 - (1) A bachelor's degree in a program accredited or verified by the association for behavior analysis international.
 - (2) A bachelor's degree in a program approved by the behavior analyst certification board.
- b. The applicant has passed the board-certified assistant behavior analyst examination offered by the behavior analyst certification board.
- c. The applicant has passed the North Dakota professional responsibility examination once developed and approved by the board.
- d. The applicant provides proof acceptable to the board that the applicant will be supervised by a licensed behavior analyst in the state who is currently certified and in good standing with the behavior analyst certification board, and that the supervision complies with current behavior analyst certification board supervision requirements.

3. Notwithstanding the education, experience, and examination requirements for licensure under this section, if on December 31, 2019, an applicant held a valid license or registration issued by the state board of psychologist examiners under North Dakota Century Code chapter 43-32, the applicant is deemed to have met the education, experience, and examination requirements for licensure.

History: Effective January 1, 2021.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-64-04

112-05-01-03. Application for licensure - How made.

An application must be made on the official form issued by the board. The form may be secured from the board's official website. Applicants who meet the requirements for licensure are considered when all of the following has been received:

1. A signed and dated completed official application form;
2. Proof of current certification in good standing issued directly from the behavior analyst certification board;
3. The application fee; and

4. The initial license fee.

History: Effective January 1, 2021.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-64-04

112-05-01-04. License by endorsement.

An application for license by endorsement will be granted by the board if the following conditions are met:

1. The applicant has graduated from an accredited program in which the individual is applying in this state.
2. The applicant has completed the behavior analyst certification board national examination required by the board related to competence in applied behavior analysis.
3. The applicant holds a verified current valid license in good standing to practice as a behavior analyst professional in another state or jurisdiction.
4. The current board certification requirements of the other state or jurisdiction are substantially similar as the current licensure requirements of this state. Official verification of board certification requirements must be received by the board from the other state or jurisdiction.
5. The applicant has filed with the board an official application for licensure by endorsement, a copy of the diploma from an approved school, a copy of the current valid license, and the required application fee.

History: Effective January 1, 2021.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-64-03

112-05-01-05. License issued - Approved designation.

When it has been determined by the board that any applicant is at least eighteen years of age, has met the requirements outlined in chapter 112-04-01, and is an individual whose past conduct aligns with the code of ethics adopted by the board, the board shall issue to such applicant a license to practice behavior analysis. The licensee may use the designation licensed behavior analyst or licensed assistant behavior analyst.

History: Effective January 1, 2021.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-06, 43-64-02, 43-64-03

112-05-01-06. Student supervision.

1. Students intending to seek licensure must be supervised by a qualified supervisor.

a. Qualified supervisors must be one of the following:

(1) A licensed behavior analyst in good standing with the board;

(2) A licensed or registered psychologist certified by the American board of professional psychology in behavioral and cognitive psychology who was tested in applied behavior analysis; or

(3) An authorized, verified course sequence instructor who is providing supervision in a practicum or intensive practicum; and

b. The supervisor must have met the requirements for providing supervision before providing supervision to anyone seeking experience hours and must be in good standing with the board.

2. The supervisor and student shall develop and sign a written contract at the outset of the supervisory relationship outlining the responsibilities of each party and description of the activities. Each contract must indicate that both parties shall adhere to the code of ethics adopted by the board.

History: Effective January 1, 2021.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-06, 43-64-03, 43-64-04

112-05-01-07. License displayed.

1. If a licensed behavior analyst or licensed assistant behavior analyst moves to a new office location, the board must be notified of the change in address within thirty days.

2. A current certificate issued by the board must at all times be displayed in each office location of the licensed behavior analyst or licensed assistant behavior analyst. In case of loss or destruction, a duplicate certificate may be issued by the board upon receipt of satisfactory evidence of the loss or destruction.

History: Effective January 1, 2021.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-64-02

112-05-01-08. License renewal and fees.

1. Every licensed behavior analyst or licensed assistant behavior analyst who has been licensed by the board shall renew the license by remitting a renewal fee on or before November fifteenth of each odd-numbered year and completing the renewal application provided by the board. For applicants who receive an initial license after July first in an odd-numbered year, the license will be deemed to be automatically renewed on November fifteenth for an additional two years without payment of an additional renewal fee.

2. The applicant for renewal shall certify on the renewal application that the continuing education requirements have been or will be met by November fifteenth. The applicant shall keep records of completed continuing education for at least two years. The board shall conduct random compliance audits of licensees. Failure to complete continuing education is considered unprofessional conduct.

3. A license renewal application received on or after November sixteenth of an odd-numbered year is a late renewal and requires a new completed application form, the renewal fee, plus a late fee set by the board. Proof of appropriate continuing education hours must be presented. A license that has not been renewed by eleven fifty-nine p.m. on November fifteenth in an odd-numbered year is a lapsed license.

History: Effective January 1, 2021.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-07, 43-59-03

112-05-01-09. Lapsed licenses - Reactivation.

1. Once a license has lapsed, the individual who held the lapsed license may not practice behavior analysis or use a title reserved under state law for individuals who are licensed by the board until a new license is issued. An individual whose license has lapsed but who

continues to practice applied behavior analysis or use a restricted title violates state law and this chapter. Such a violation is grounds for denying an application by the former licensee for renewal of the lapsed license or for a new license.

2. An application for reactivation of a lapsed license will be considered if:

- a. The applicant provides a letter from all states in which that licensee has practiced since their North Dakota license lapsed indicating the applicant is in good standing to practice as a behavior analyst or licensed assistant behavior analyst in that other state or states.
- b. The applicant shall appear before the board if the applicant cannot show proof of active practice in some state or jurisdiction for at least six months of the last two years.
- c. The applicant must take and pass the behavior analyst certification board national examination related to competence in applied behavior analysis if it has been two or more years since the behavior analyst or licensed assistant behavior analyst was in active practice in any state. The board may select to have any holder of a lapsed license applying for reactivation take the behavior analyst certification board national examination related to competence in applied behavior analysis or any other evaluation at its discretion.

History: Effective January 1, 2021.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-07

112-05-01-10. Continuing education requirements.

1. All active licensees shall complete a minimum of thirty-two hours of approved continuing education credits biennially, including four credits in ethics. Only hours earned at board-accepted continuing education programs will be allowed. One hour of credit is earned for every fifty minutes of actual class time.
2. An extension of time or other waiver to complete the hours required in subsection 1 must be granted upon written application if the licensee failed to meet the requirements due to illness, military service, medical charitable activities, religious missionary activities, or other extenuating circumstances.

History: Effective January 1, 2021.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-07

112-05-01-11. Board approval of continuing education.

1. In order to receive board approval, a continuing education program must be accepted by the behavior analyst certification board.
2. It is the responsibility of the licensee to verify the appropriate credit designation with the source of the program, not with the board. All licensees must verify eligibility for continuing credit and the appropriate credit designation before taking any particular course.

History: Effective January 1, 2021.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-07, 43-59-03

112-05-01-12. Board audit.

Each biennium the board shall audit randomly selected licensed behavior analysts and licensed assistant behavior analysts to monitor compliance with the continuing education requirements. Any licensed behavior analyst or licensed assistant behavior analyst so audited will be required to furnish documentation of compliance, including the name of the continuing education provider, name of the program, hours of continuing education completed, dates of attendance, and verification of attendance. Any licensed behavior analyst or licensed assistant behavior analyst who fails to provide verification of compliance with the continuing education requirements will be subject to revocation of licensure. In order to facilitate the board's audits, every licensed behavior analyst or licensed assistant behavior analyst is required to maintain a record of all continuing education activities in which the licensed behavior analyst has participated. Every licensed behavior analyst or licensed assistant behavior analyst must maintain those records for a period of at least two years following the time when those continuing education activities were reported to the board.

History: Effective January 1, 2021.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-07, 43-57-08

112-05-01-13. Fees.

The board charges the following nonrefundable fees:

1. **Application.** The fee for filing an application for an initial license is fifty dollars.
2. **Initial license.** The fee for an initial license is five hundred dollars. The licensing period is biennial, ending on November fifteenth of every odd year. The initial license fee must be prorated quarterly based upon the time period remaining in the two-year cycle at application.
3. **Temporary license.** The temporary license fee is one hundred dollars. The cost of the temporary license fee will be applied toward the initial license fee upon receipt of application for the initial license.
4. **Renewal.** Licenses renew on November fifteenth of every odd year. The renewal fee is one hundred dollars.
5. **Late filing.** A late filing fee will be charged on renewal applications not received by November fifteenth of every odd year. The late filing fee is seventy-five dollars.
6. **Duplicate license.** The duplicate license fee for a license is twenty-five dollars.

History: Effective January 1, 2021.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-07

112-05-01-14. Exemptions from licensure.

The following individuals are exempted from the licensure requirements of this chapter:

1. College or university students or postdoctoral fellows whose applied behavior analysis activities are part of a defined program of study, course, practicum, internship, or fellowship and are directly supervised by a behavior analyst licensed by the board. Such individuals may not represent themselves as professional behavior analysts and must use titles that clearly indicate their trainee status, such as "student", "intern", or "trainee". The student or intern status and the supervisor must be clearly stated.

2. Unlicensed individuals pursuing experience in applied behavior analysis consistent with the experience requirements of the certifying entity, provided such experience is supervised in accordance with the requirements of the certifying entity.
3. Individuals licensed to practice psychology pursuant to North Dakota Century Code chapter 43-32 and those who deliver psychological services under their supervision, provided that:
 - a. Applied behavior analysis is in the scope of practice section of the psychology licensure law;
 - b. The applied behavior analysis services provided are within the boundaries of the licensed psychologist's education, training, and competence; and
 - c. The licensed psychologist does not represent themselves as a licensed behavior analyst unless also licensed under North Dakota Century Code chapter 43-64.
4. Individuals certified or licensed to practice other professions in this state and those who deliver services under their supervision, provided that:
 - a. Applied behavior analysis is in the scope of practice section of the psychologist's licensure law;
 - b. The applied behavior analysis services provided are within the boundaries of the licensed professional's education, training, and competence; and
 - c. The licensed professional does not represent that licensed professional is a licensed behavior analyst or licensed assistant behavior analyst unless also licensed under North Dakota Century Code chapter 43-64.
5. A lecturer or professor, from any accredited school or college, when lecturing to institutions or organizations. However, the lecturer or professor may not engage in the practice of applied behavior analysis or represent that the lecturer or professor is a licensed behavior analyst or licensed assistant behavior analyst unless the lecturer is licensed under North Dakota Century Code chapter 43-64. "Lecturing" does not include clinic practice, training, or research.
6. An individual providing applied behavior analysis services to an individual in a public school setting. Such individuals may not represent themselves as licensed behavior analysts or licensed assistant behavior analysts unless licensed under North Dakota Century Code chapter 43-64.
7. Behavior technicians who deliver applied behavior analysis services under the extended authority and direction of a licensed behavior analyst or a licensed assistant behavior analyst. Such individuals may not represent themselves as professional behavior analysts, and must use titles that indicate their nonprofessional status, such as "ABA technician", "behavior technician", "registered behavior technician", or "tutor".
8. An individual or caregiver who is implementing applied behavior analysis services to an immediate family member or as a paid or volunteer caregiver implementing procedures established by the family, the individual served, or a licensed behavior analyst or a licensed assistant behavior analyst in any setting, if the individual or caregiver does not represent themselves as a "licensed behavior analyst" or "licensed assistant behavior analyst".
9. Professionals who provide general applied behavior analysis services to organizations, so long as those services are for the benefit of the organizations and do not involve direct services to individuals. Such professionals may use the title "behavior analyst" but may not represent themselves as licensed behavior analysts or licensed assistant behavior analysts unless licensed under North Dakota Century Code chapter 43-64.

History: Effective January 1, 2021.
General Authority: NDCC 43-57-03
Law Implemented: NDCC 43-57-03