

CHAPTER 75-03-15
RATESETTING FOR PROVIDERS OF SERVICES TO FOSTER CHILDREN -
GROUP HOMES AND RESIDENTIAL CHILD CARE FACILITIES

Section

75-03-15-01	Definitions
75-03-15-02	Financial Reporting Requirements
75-03-15-03	<u>Client-Child</u> Census
75-03-15-04	Ratesetting
75-03-15-05	Cost Allocation
75-03-15-06	Private Pay Rates
75-03-15-07	Allowable Costs for Maintenance and Administration
75-03-15-08	Rehabilitation Rate <u>Costs</u>
75-03-15-09	Nonallowable Costs
75-03-15-10	Revenue Offsets
75-03-15-11	Related Organization
75-03-15-12	Home Office Costs
75-03-15-12.1	Startup Costs
75-03-15-13	Taxes
75-03-15-13.1	Depreciation
75-03-15-14	Cost Allowability and Limitations
75-03-15-15	Variance
75-03-15-16	Reconsiderations and Appeals

SECTION 1. Section 75-03-15-01 is amended as follows:

75-03-15-01. Definitions.

1. "Accrual basis" means the recording of revenue in the period revenue is earned, regardless of when revenue is collected, and the recording of expenses in the period expenses are incurred regardless of when expenses are paid.
2. "Administration" means the cost of activities performed by the facility staff employees in which the direct recipient of the activity is the organization itself. These include fiscal activities, statistical reporting, recruiting, and general office management which are indirectly related to services for which a rate is set.
3. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by this chapter.
4. "Chain organization" means a group of two or more program entities which are owned, leased, or, through any other device, controlled by one business entity.

5. "Department" means the North Dakota department of human services.
6. "Facility" means a residential child care facility or group home.
7. "Historical cost" means those costs reported on the cost statement which were incurred and recorded in the facility's accounting records.
8. "Home Office" means the single business entity that controls a group of two or more facilities owned, leased, or through any other device including proprietary chains and chains operated by various religious or other charitable organizations. A chain organization may also include business organizations engaged in activities not directly related to child care.
79. "Interest" means the cost incurred with the use of borrowed funds.
10. "Professional social services" means case management and therapeutic services offered by an employee directly to the children in placement in the facility.
811. "Rate year" means the twelve-month period beginning the seventh month after the end of a facility's fiscal year.
912. "Reasonable cost" means the cost of providing food, clothing, shelter, daily supervision, school supplies, and personal incidentals for children in care-placement, staff-employee liability insurance with respect to children in care-placement, travel of the a child in placement to the child's home for visitation, and operation of the facility which must be incurred by an efficient and economically operated facility to provide services in conformity with applicable federal and state laws, regulations, rules, and quality and safety standards. Reasonable cost takes into account that the facility seeks to minimize costs and that actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or service.
4013. "Related organization" means an organization which a facility is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the facility. Control exists if an individual or organization has the power, directly or indirectly, to significantly influence or direct the policies of an organization or facility.
4414. "Report year" means the facility's fiscal year.
4215. "Usable square footage" means the allocation of the facility's total square footage, excluding common areas, identified first to a cost category and then allocated based on the allocation method described for that cost category.

History: Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

SECTION 2. Subdivision a of subsection 1 and subdivision c of subsection 2 of section 75-03-15-02 are amended as follows:

75-03-15-02. Financial reporting requirements.

1. Records.
 - a. The facility shall maintain on the premises the required child census records and financial information sufficient to provide a proper audit or review. For any cost being claimed on the cost report, adequate data must be available and provided to the department in the form and manner requested by the department as of the audit date, to fully support the report item.
2. Accounting and reporting requirements.
 - c. The facility shall submit the cost report ~~must be submitted~~ on or before the last day of the third month following the facility's report year. The report must contain all costs of the facility, adjustments for nonallowable costs, and ~~client~~ child census days.

History: Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

SECTION 3. Section 75-03-15-03 is amended as follows:

75-03-15-03. Client-Child census.

1. ~~A facility shall maintain a daily child census record must be maintained by the facility. Any~~ The facility shall count any day for which services are provided or payment is ordinarily sought for an available bed ~~must be counted, including the day of discharge, as a client one day for the child census.~~ The day of admission or death must be counted. The day of discharge must be counted if payment is sought for that day.
2. ~~Adequate~~ A facility shall prepare and maintain child census records must be prepared and maintained on a daily basis by the facility to allow for

proper audit of the child census data. The daily child census records must include:

- a. Identification of the client-child in placement;
- b. Entries for all days a child is in placement. ~~Entries cannot be made solely by exception;~~
- c. Identification of type of day, ~~i.e.:~~ general facility programming, shelter care, outbased day, regular or out-based program; and
- d. Monthly totals by resident-child in placement and by type of day.

History: Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

SECTION 4. Section 75-03-15-04 is amended as follows:

75-03-15-04. Ratesetting.

1. The department shall base the established rate ~~is based~~ on prospective ratesetting procedures. The establishment of a rate begins with historical costs. Adjustments are then made for claimed costs which are not includable in allowable costs. Adjustment factors are then applied to allowable costs. ~~No~~ The department may not make retroactive settlements for actual costs incurred during the rate year which exceed the final rate will be made unless specifically provided for authorized in this chapter.
2. Desk audit rate.
 - a. The department ~~will~~ shall establish desk audit rates for ~~maintenance and rehabilitation~~, based on the cost report, which will be effective the first day of the seventh month following the facility's fiscal yearend.
 - b. The desk rates will continue in effect until final rates are established.
 - c. The department shall review the cost report ~~will be reviewed~~ taking into consideration the prior year's adjustments. ~~Facilities will be notified~~ The department shall notify a facility by telephone, electronic mail, or mail of any desk adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why a desk adjustment should not be made. The department will review the submitted information, make

appropriate adjustments, including adjustment factors, and issue the desk rates.

- d. ~~No reconsideration will be given by the department for~~ The department may not reconsider the desk rates unless the facility has been notified that the desk rates are the final rates.

3. Final rate.

- a. ~~The department may perform a field audit of the cost report may be field audited~~ to establish final rates. If no field audit is performed, the desk rates will become the final rates upon notification to the facility from the department.
- b. ~~The final rate for rehabilitation will be effective beginning the first day of the seventh month following the facility's fiscal yearend.~~
- e. The final rate for maintenance will be effective beginning the first day of the month in which notification of the rate is given to the facility.
- dc. The final rate will include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk rate of at least five cents per day.
- ed. Adjustments, errors, or omissions which are found after a final rate has been established will be included as an adjustment in the report year that the adjustments, errors, or omissions are found.

4. Special rates.

- a. Facilities providing services for the first time.
 - (1) ~~Rates-The department shall establish rates~~ for a facility which is providing services which are purchased by the department ~~will be established~~ using the following methodology for the first two fiscal years of the facility if such period is less than twenty-four months.
 - (a) The facility ~~must~~ shall submit a budget for the first twelve months of operation. ~~A-The department shall establish a final rate will be established~~ for a rate period which begins on the first of the month in which the facility begins operation. This rate will remain in effect for eighteen months. No adjustment factors will be included in the first-year final rate.

(b) Upon completion of the first twelve months of operation, the facility ~~must~~shall submit a cost report for the twelve-month period regardless of the fiscal yearend of the facility.

[1] The twelve-month cost report is due on or before the last day of the third month following the end of the twelve-month period.

[2] The department shall use a twelve-month cost report~~will be used~~ to establish a rate for the remainder of the second rate year. ~~Appropriate~~ The department shall use appropriate adjustment factors~~will be used~~ to establish the rate.

(2) The facility ~~must~~shall submit a cost report ~~which that the~~ department will be used~~use~~ to establish rates in accordance with subsections 2 and 3 after the facility has been in operation for the entire twelve months of the ~~center's~~ facility's fiscal year.

b. Facilities changing ownership.

(1) For facilities changing ownership, the rate established for the previous owner will be retained until the end of the rate year in which the change occurred.

(2) The department shall establish the rate for the second rate year after a change in ownership occurs~~will be established~~ as follows:

(a) For a facility with four or more months of operation under the new ownership during the report year, the department shall use a cost report for the period since the ownership change occurred~~will be used~~ to establish the rate for the next rate year.

(b) For a facility with less than four months of operation under the new ownership in the reporting year, the department shall index forward the prior report year's costs as adjusted for the previous owner~~will be indexed forward~~ using appropriate adjustments.

- c. Facilities having a capacity increase or major renovation or construction.
- (1) For facilities which increase licensed capacity by twenty percent or more or have renovation or construction projects in excess of fifty thousand dollars, the department may adjust the rate established for the rate year in which the licensed increase occurs or the construction or renovation is complete ~~may be adjusted~~ to include projected property costs. The department shall calculate the adjusted rate ~~will be calculated~~ based on a rate for historical costs, exclusive of property costs, as adjusted, divided by historical child census, plus a rate for property costs based on projected property costs divided by projected child census. The ~~established rate for rehabilitation, including projected property costs, will be effective on the first day of the month in which the renovation or construction is complete or when the capacity increase is approved if no construction or renovation is necessary.~~ The established rate for maintenance, including projected property costs, will be effective on the first day of the month in which notification of the rate is given to the facility after the renovation or construction is complete or the licensed capacity increased.
 - (2) For the rate year immediately following the rate year in which the capacity increase occurred or construction and renovation was completed, the department shall establish a rate ~~will be established~~ based on historical costs, exclusive of property costs, as adjusted for the report year, divided by reported child census, plus a rate for property costs, based on projected property costs, divided by projected child census.
- d. Facilities that have changes in services or staff-employees.
- (1) The department may provide for an increase in the established rate for additional costs that are necessary to add services or staff-employees to the existing program.
 - (2) The facility ~~must~~ shall submit information to the ~~division of children and family services department~~ supporting the request for the increase in the rate. Information must include a detailed listing of new or additional staff-employees or costs associated with the increase in services.

- (3) The department will review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the department shall adjust the established rate ~~will be adjusted~~. The effective date of the rate increase will be on the first of the month following approval by the department. The adjustment will not be retroactive to the beginning of the rate year.
 - (4) For the rate year immediately following a rate year in which a rate was adjusted under paragraph 3, the facility may request that consideration be given to additional costs. The facility must demonstrate to the department's satisfaction that historical costs do not reflect twelve months of actual costs of the additional staff-employees or added services in order to adjust the rate for the second rate year. The additional costs would be based on a projection of costs for the remainder of a twelve-month period.
5. The final rate must be considered as payment for all accommodations which include items identified in section 75-03-15-07. For any client-child in placement whose rate is paid in whole or in part by the department, ~~no~~ the facility may not solicit or receive ~~payment may be solicited or received~~ from the client-child in placement or any other person to supplement the rate as established.
6. For a facility terminating its participation in the program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until ~~clients~~ all children in placement can be relocated.
7. The historical costs combined with the adjustments take into consideration the economic conditions and trends during the period to be covered by the rate. ~~Rate-A facility may request rate~~ adjustments to provide appropriate compensation ~~may be requested~~ if major unforeseeable expenses are incurred. A facility shall make any request for rate adjustment ~~may be made~~ to the department, which shall determine if the expense is ~~resident related~~ child-related.
8. Limitations.
 - a. The department may accumulate and analyze statistics on costs incurred by the facilities. ~~These~~ The department may use these statistics ~~may be used~~ to establish cost ceilings and incentives for efficiency and economy, based on a reasonable determination of the standards of operations necessary for efficient delivery of needed services. ~~These~~ The department may establish these

limitations and incentives ~~may be established~~ on the basis of the cost of comparable facilities and services and the department may be applied apply these limitations and incentives as ceilings on the overall costs of providing services or on specific areas of operations.

b. When federal regulations establish a ceiling on foster care rates for these facilities, that ceiling must also be considered the maximum payment under title IV-E of the Social Security Act, [42 U.S.C. 670 et seq.].

c. A facility ~~is expected to~~ shall maintain an average annual occupancy rate of seventy-five percent. Shelter care beds designated by the facility and approved by the department are exempt from the occupancy rate percentage requirement. The computed ~~resident-child census~~ days apply only to the following areas:

- (1) Administrative costs;
- (2) Plant operation costs; and
- (3) Property costs.

A reserved paid bed is counted as an occupied bed. ~~A waiver of~~ The department may waive the minimum bed occupancy allowance ~~may be made for new facilities or existing facilities at the discretion of the department a facility.~~ A facility requesting a waiver shall include an adequate explanation as to why the referenced allocation method cannot be used by the facility. The facility also shall provide a rationale for the proposed allocation method. Based on the information provided, the department shall determine the allocation method used to report costs.

d. ~~Administrative cost~~ costs must be limited to the percent of total allowable costs exclusive of administrative costs, authorized by the department.

9. Rate adjustments.

a. ~~Adjustment~~ The department may apply adjustment factors ~~may be applied~~ to adjust historical costs. The department shall annually determine an appropriate adjustment factor to be applied to allowable costs exclusive of property costs.

- b. ~~Rate~~ The department may make rate adjustments ~~may be made~~ to correct departmental errors subsequently ~~determined~~ identified.
- c. ~~An~~ The department shall make an adjustment ~~must be made~~ for those facilities which have terminated participation in the program, disposed of depreciable assets, or changed ownership.

History: Effective November 1, 1985; amended effective July 1, 1993; March 1, 1999; August 1, 2002; June 1, 2004; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

SECTION 5. Section 75-03-15-06 is amended as follows:

75-03-15-06. Private pay rates.

1. The department's foster care maintenance rate ~~and rehabilitation rate,~~ combined, ~~must~~ may not exceed the ~~usual and customary~~ rate charged to private pay or other public pay residents ~~children in placement~~.
2. If the established rate exceeds the rate charged to nondepartmental or private pay ~~clients~~ children in placement for a service, on any given date, the facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received from the department at the higher rate, the facility shall refund the overpayment within thirty days. The refund must be the difference between the established rate and the lowest rate charged to nondepartment or private pay ~~clients~~ children in placement times the number of department ~~client~~ child census days paid during the period in which the established rate exceeded the nondepartmental or private rate, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not refunded within thirty days. Interest charges on these refunds are not allowable costs.

History: Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

SECTION 6. Section 75-03-15-07 is amended as follows:

75-03-15-07. Allowable costs for maintenance and administration.

1. Maintenance rate. Costs includable in the rate for room and board include those described in this subsection, unless limited by section 75-03-15-09.

- a. Salary and fringe benefits for direct care ~~personnel~~employees, which must be limited to:
- (1) The child care workers' supervisor;
 - (2) Child care workers;
 - (3) Relief child care workers;
 - (4) Cooks;
 - (5) Janitors and housekeepers; ~~and~~
 - (6) Laundry; and
 - (7) Nurses when performing daily supervision, children in placement physical examinations and medical care treatment. If the nurse is providing daily supervision, children in placement physical examinations, medical care treatment and other services, a time study will need to be completed. The portion that is daily supervision, children in placement physical examinations and medical care treatment may be included in the calculation of the daily rate for maintenance.
- b. Food. Actual food costs. The value of donated food may not be included in food costs.
- c. Operating supplies. The cost of supplies necessary to maintain the household for the ~~residents~~children in placement. Costs include cleaning supplies, paper products, and hardware supplies.
- d. Personal supplies and allowances. The cost of supplies used by an individual ~~resident~~child in placement, including medicine chest supplies, personal hygiene items, sanitary needs, and moneys given periodically to ~~residents~~children in placement for personal use. ~~Personal supplies and allowance does allowances do~~ not include payment, whether in cash or in kind, for work performed by the ~~resident~~children in placement or for bonuses or rewards paid based on behavior.
- e. School supplies. The cost of school supplies, books, activity fees, class dues, and transportation to school.
- f. Clothing. The cost of clothing to maintain a ~~resident's~~wardrobe for any child in placement.

- g. Recreation. Costs incurred for providing recreation to ~~the residents~~ children in placement, including magazine and newspaper subscriptions, sports equipment, games, dues for clubs, and admission fees to sporting, recreation, and social events.
- h. Utilities. The cost of heat, lights, water, sewage, garbage, and common area cable or satellite TV.
- i. Telephone. The cost of local service to the living quarters. Long distance calls are allowable only if specifically identified as being related to maintenance and are not service or administrative in nature. ~~Vehicular telephone costs are not allowable~~ Cellular telephones or electronic communication systems, that are less than the capitalization threshold, purchased by the facility for use by direct care employees to communicate for the purpose of child safety, programming, transportation, and supervision while on shift are allowable telephone costs.
- j. Repairs. The cost of routine repairs and upkeep of property and equipment used for the ~~residents-children in placement~~. All The facility shall capitalize and depreciate repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building or over one-half of the original estimated useful life, whichever is greater.
- k. Travel. All costs related to transporting ~~residents-children in placement~~, exclusive of transportation for evaluations and social service activities. Transportation costs may include actual vehicle expenses or actual costs not to exceed the amount established by the internal revenue service.
- l. Leases and rentals. The cost of leasing assets from a nonrelated organization. If the lease cost cannot be directly associated with a function, ~~an allocation must be made~~ the department shall allocate the cost in accordance with section 75-03-15-05.
- m. Depreciation expense. Depreciation expense on all capitalized equipment and property which was not purchased with funds made available through other government programs or grants is allowable.
- n. Insurance. The cost of insuring property and equipment used in the maintenance of ~~residents-children in placement~~ and liability insurance for direct care staff employees.

- o. Medical. Costs for necessary medical-related items for residents children in placement which are not covered by insurance or governmental medical care programs, provided that facility records demonstrate that the facility has made reasonable attempts ~~have been made~~ to secure insurance or program benefits. Costs may include ~~resident~~ physical examinations, drugs, dental work, corrective appliances, and required medical care and treatment for children in placement.
 - p. Administration. Costs of administration which do not exceed limitations, provided that the department, in its discretion, may exclude costs of administration based upon a lack of appropriated funds.
2. Administration costs. Unless limited by section 75-03-15-09, administration costs are allocated in accordance with section 75-03-15-04, subsection 4 of section 75-03-15-05, and this subsection. Costs for administration include only those allowable costs for administering the overall activities of the facility identified as follows:
- a. Compensation for employees such as administrators, accounting ~~personnel-employees~~, clerical ~~personnel-employees~~, secretaries, receptionists, data processing ~~personnel-employees~~, purchasing ~~personnel-employees~~, and security ~~personnel-employees~~;
 - b. Office supplies and forms;
 - c. Insurance, except property insurance directly identified to other cost categories, and insurance included as a fringe benefit;
 - d. The cost of telephone service not specifically included in other cost categories;
 - e. Postage and freight;
 - f. Professional fees for legal, accounting, and data processing;
 - g. Computer software costs, except costs that must be capitalized, and computer maintenance contracts;
 - h. Central or home office costs;
 - hj. ~~Personnel-Employee~~ recruitment costs;
 - ij. Management consultants and fees;

- jk. Dues, license fees, and subscriptions;
- kl. Travel and training not specifically included in other costs categories;
- lm. The cost of heating and cooling, electricity, and water, sewer, and garbage for space used to provide administration;
- mn. The cost of routine repairs and maintenance of property and equipment used to provide administration;
- no. The cost of plant operation and housekeeping salaries and fringe benefits associated with the space used to provide administration;
- op. Property costs. Depreciation, interest, taxes, and lease costs on equipment and buildings for space used to provide administration;
- pq. Startup costs; or
- qr. Any costs that cannot be specifically classified or assigned as a direct cost to other cost categories.

History: Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

SECTION 7. Section 75-03-15-08 is amended as follows:

75-03-15-08. Rehabilitation rate Costs.

1. ~~A rehabilitation rate for the facility must be established based on census and allowable social service costs. Costs which may be included in the rehabilitation rate determination are~~ include the following costs for rehabilitation:
 - a. Salaries and fringe benefits for social workers, psychologists, psychiatrists, nursing costs not covered under the maintenance rate, and other professional social service staff employees;
 - b. Staff Professional development for the professional social service staff employees; and
 - c. Travel and telephone costs related to evaluations and social service activities.

2. ~~The established rate must be the lesser of the actual costs of providing the social services in the facility or the monthly amount authorized by the department~~ shall use these costs in determining a facility's administration limit.

History: Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

SECTION 8. Section 75-03-15-09 is amended as follows:

75-03-15-09. Nonallowable costs. Nonallowable costs include:

1. Administrative costs not identified in section 75-03-15-07, overhead, and other expenses paid on behalf of employees who are not direct care ~~personnel~~ employees;
2. Advertising, except for reasonable advertising costs for employee recruitment, and public relations expenses;
3. Any cost which has not actually been incurred by the facility, including the value of donated goods and services;
4. Bad debt expenses;
5. Costs incurred solely to enhance income from investments;
6. Costs of securing contributions or donations;
7. Costs related to income-producing activities, including farms, rodeos, grass cutting services, or gaming, whether or not the activity is profitable;
8. Depreciation costs for idle facilities except when the facilities are necessary to meet caseload fluctuations;
9. Dues and subscriptions for employees;
10. Fines and penalties resulting from failure to comply with federal, state, and local laws;
11. Interest expense on borrowed funds or finance and late charges;
12. Recreational costs for activities, including ~~staff~~ employees only;
13. Religious salaries, space, and supplies;

14. Research and development costs;
15. Taxes, including federal and state income taxes, special assessments which must be capitalized, taxes from which exemptions are available, self-employment taxes, and taxes on property not used in providing maintenance for the resident-child in placement;
16. Any telephone costs, including ~~mobile telephone, car telephone, cellular telephone,~~ and beeper costs attributable to personal usage by ~~residents~~ and employees;
17. Costs related to facility-operated schools or to correspondence courses; and
18. Any costs unrelated to providing services to residents-children in placement.

History: Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

SECTION 9. Section 75-03-15-10 is amended as follows:

75-03-15-10. Revenue offsets. Facilities shall identify income to offset costs, where applicable, so that state financial participation does not supplant or duplicate other funding sources. Any income, whether in cash or in any other form which is received by the facility, with the exception of the established rate and income from payment made under the Job Training Partnership Act, must be offset up to the total of the appropriate actual costs. If actual costs are not identifiable, income must be offset in total to the appropriate cost category. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each of the cost categories. Treatment appropriate to some sources of income is provided in this section:

1. **Clothing.** Facilities receiving initial clothing allowances separately from the state or other sources shall reduce costs by the amount of the reimbursement.
2. **Food income.** Facilities receiving revenue for food and related costs from other programs, including the United States department of agriculture or the department of public instruction or amounts from or paid on behalf of employees, guests, or ~~other nonclients~~ children not in placement for meals or snacks shall reduce allowable food costs by the revenue received.
3. **Insurance recovery.** Any A facility shall offset any amount received from insurance for a loss incurred ~~must be offset~~ against the appropriate cost

category, regardless of when the cost was incurred, if the facility did not adjust the basis for depreciable assets.

4. **Refunds and rebates.** ~~Any~~ A facility shall offset any refund or rebate received for a reported cost ~~must be offset against to~~ the appropriate cost.
5. **Transportation income.** ~~Any~~ A facility shall offset any amount received for use of the facility's vehicles ~~must be offset to~~ transportation costs.
6. **Vending income.** ~~Income~~ A facility shall offset income from the sale of beverages, candy, or other items ~~must be offset to the cost of the vending items or, if the cost is not identified, the facility shall offset all vending income must be offset to~~ maintenance costs.
7. **Gain on the sale of assets.** ~~Gain~~ A facility shall offset gain from the sale of an asset ~~must be offset against~~ depreciation expenses.
8. **Rental income.** ~~Revenue~~ A facility shall offset revenue received from outside sources for the use of facility buildings or equipment ~~must be offset to~~ property expenses.
9. **Grant income.** ~~Grants~~ A facility shall offset grants, gifts, and awards from the federal, state, or local agencies ~~must be offset to the costs which are allowed under the grant.~~
10. **Other cost-related income.** ~~Miscellaneous~~ A facility shall offset miscellaneous income, including amounts generated through the sale of a previously expensed item, e.g., supplies or equipment, ~~must be offset to the cost category where the item was expensed.~~
11. **Other income from government sources.** ~~Other~~ The department may determine that other income to the facility from local, state, or federal units of government ~~may be determined by the department to be is~~ an offset to costs.

History: Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

SECTION 10. Section 75-03-15-11 is amended as follows:

75-03-15-11. Related organization.

1. Costs applicable to services, facilities, and supplies furnished to a facility by a related organization may not exceed the lower of the costs to the related organization or the price of comparable services, facilities, or

supplies purchased elsewhere primarily in the local market. The facility shall identify such related organizations and costs, and shall submit allocations ~~must be submitted~~ with the cost report.

2. A facility may lease buildings or equipment from a related organization. In that case, the rent or lease expense paid to the lessor is allowable in an amount not to exceed the actual costs associated with the asset if the rental of the buildings or equipment is necessary to provide programs and services to ~~clients~~ children in placement. The actual costs associated with the asset are limited to depreciation, real estate taxes, property insurance, and plant operation expenses incurred by the lessor.

History: Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

SECTION 11. Section 75-03-15-12 is amended as follows:

75-03-15-12. Home office costs.

1. Home offices of chain organizations vary greatly in size, number of locations, ~~staff~~ employees, mode of operations, and services furnished to member facilities. Although the home office of a chain is normally not a facility in itself, the home office may furnish to the individual facility central administration or other services, including centralized accounting, purchasing, ~~personnel~~ employees, or management services. Only the home office's actual costs of providing these services are includable in the facility's allowable costs under the program.
2. Costs that are not allowed in the facility may not be allowed as home office costs that are allocated to the facility.
3. Any service provided by the home office which is included in costs as payments by the facility to an outside vendor or which duplicates costs for services provided by the facility is considered a duplication of costs and is not allowed.
4. If ~~the~~ a home office makes a loan to or borrows money from one of the components of ~~a~~ its chain organization, the interest paid is not an allowable cost and interest income is not used to offset interest expense.

History: Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

SECTION 12. Section 75-03-15-12.1 is amended as follows:

75-03-15-12.1. Startup costs. In the first stages of operation, a new facility incurs certain costs in developing the ability to care for ~~clients~~ children prior to admission. ~~Staff is~~ Employees are obtained and organized, and other operating costs are incurred during this time of preparation which cannot be allocated to ~~client~~ facility direct care during that period because there are no ~~clients~~ children in placement receiving services. These costs are commonly referred to as startup costs. The startup costs are to be capitalized and must be recognized as allowable administration costs amortized over sixty consecutive months starting with the month in which the first ~~client~~ child is admitted.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

SECTION 13. Section 75-03-15-13.1 is amended as follows:

75-03-15-13.1. Depreciation.

1. **General principles.** Ratesetting principles require that payment for services must include depreciation on all depreciable type assets that are used to provide necessary services. This includes assets that may have been fully or partially depreciated on the books of the facility, but are in use at the time the facility enters the program. The useful lives of these assets are considered to be ongoing and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and ~~must be included~~ the facility shall include it as a gain or loss on the cost report.
2. **Depreciation methods.**
 - a. ~~The A facility shall use the~~ straight-line method of depreciation ~~must be used~~. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, are unacceptable. The facility shall apply the method and procedure for computing depreciation ~~must be applied~~ on a basis consistent from year to year, and shall maintain detailed schedules of individual assets ~~must be maintained~~. If the books of account reflect depreciation different from that submitted on the cost report, the facility shall prepare a reconciliation ~~must be prepared by the~~ facility.

- b. ~~Facilities~~ A facility shall use a composite useful life of ten years for all equipment and land improvements and four years for vehicles. ~~Buildings~~ A facility shall depreciate buildings and improvements to buildings ~~are to be depreciated~~ over the length of the mortgage or a minimum of twenty-five years, whichever is greater.

3. **Acquisitions.**

- a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least ~~one~~ five thousand dollars for each item, the facility shall capitalize and depreciate the cost ~~must be capitalized and depreciated~~ over the estimated useful life of the asset, except as provided ~~for~~ in subsection 3 of section 75-03-15-13. ~~Costs~~ A facility shall capitalize costs, including architectural, consulting, and legal fees, and interest, incurred during the construction of an asset, ~~must be capitalized~~ as a part of the cost of the asset.
- b. ~~All~~ A facility shall capitalize and depreciate repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings ~~must be capitalized and depreciated~~ over the remaining useful life of the equipment or building or one-half of the original estimated useful life, whichever is greater.

4. **Recordkeeping.** Proper records must provide accountability for the fixed assets and must also provide adequate means by which depreciation may be computed and established as an allowable ~~client-related~~ child-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.

5. **Donated assets.** For purposes of this chapter, a facility may record and depreciate donated assets ~~may be recorded and depreciated~~ based on their fair market value. If the facility's records do not contain the fair market value of the donated asset as of the date of the donation, ~~an appraisal must be made~~ the donated asset must be appraised. The appraisal must be ~~made~~ performed by a recognized appraisal expert and must be accepted for depreciation purposes. The facility may elect to forego depreciation on donated assets, ~~thereby~~ negating the need for a fair market value determination.

6. **Basis for depreciation.**

- a. Determination of the cost basis of a facility and its depreciable assets, which have not been involved in any programs which are funded in whole or in part by the department, depends on whether or not the transaction is a bona fide sale. If the issue arises, the

purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.

- (1) If the sale is bona fide, the cost basis must be the cost to the buyer.
 - (2) If the sale is not bona fide, the cost basis must be the seller's cost basis less accumulated depreciation.
- b. The cost basis of a facility, including depreciable assets which are purchased as an ongoing operation, must be the seller's cost basis less accumulated depreciation.
 - c. The cost basis of a facility, including depreciable assets which have been used in any programs which are funded in whole or in part by the department, must be the cost basis used by the other program less accumulated depreciation.
 - d. Sale and leaseback transactions must be considered a related party transaction. The cost basis of a facility, including depreciable assets purchased and subsequently leased to a provider who operates the facility, must be the seller's cost basis less accumulated depreciation.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

SECTION 14. Section 75-03-15-14 is amended as follows:

75-03-15-14. Cost allowability and limitations. Any questions regarding cost allowability and limitations are governed by title IV-E of the Social Security Act [42 U.S.C. 670 et seq.] and 45 CFR part 74, unless further limited by this chapter. The department sets rates under this chapter for not-for-profit organizations only and ~~purchases group home and residential child care~~ facility services for children in foster care only from facilities in North Dakota for which rates have been set under this chapter.

History: Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

SECTION 15. Section 75-03-15-15 is amended as follows:

75-03-15-15. Variance. Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from the provisions

of this chapter upon terms the department may prescribe, except no variance may permit or authorize a danger to the health or safety of ~~the residents of a facility~~ children in placement and no variance may be granted except at the discretion of the department. A refusal to grant a variance is not subject to a request for reconsideration or an appeal.

History: Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-06-16, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03.2

CHAPTER 75-03-16
LICENSING OF GROUP HOMES AND RESIDENTIAL CHILD CARE FACILITIES

Section

75-03-16-01	Definitions
75-03-16-02	Effect of License
75-03-16-02.1	Application for License
75-03-16-02.2	Provisional License
75-03-16-02.3	Correction Orders
75-03-16-02.4	Fiscal Sanctions
75-03-16-02.5	Denial or Revocation of License or Endorsement
75-03-16-02.6	Residential Bed Conversion
75-03-16-03	Organization and Administration
75-03-16-04	Financial Records and Reports
75-03-16-05	Personnel Records <u>Employee and Nonemployee Files</u>
75-03-16-06	Facility Administrator
75-03-16-07	Program Director
75-03-16-08	Social Service Staff <u>Employee</u>
75-03-16-09	Social Service Staff <u>Employee</u> Supervision
75-03-16-10	Child-Direct <u>Care Staff-Employees</u>
75-03-16-11	Volunteers, Student Field Placements, and Internships <u>Nonemployees</u>
75-03-16-12	Personnel Policies
75-03-16-12.1	Criminal Conviction - Effect on Operation of Facility or Employment by Facility
75-03-16-12.2	Employee Background Checks
75-03-16-12.3	Staff <u>Employee and Nonemployee</u> Health Requirements
75-03-16-13	Minimum Employee Requirements
75-03-16-14	Staff <u>Employee</u> Professional Development
75-03-16-15	Child Abuse and Neglect
75-03-16-16	Intake and Discharge Committee
75-03-16-17	Case Plan
75-03-16-18	Interstate Compact on the Placement of Children
75-03-16-19	Law Enforcement Notification
75-03-16-19.1	Sentinel Event Reporting
75-03-16-19.2	Suicide Prevention
75-03-16-20	Programs and Services
75-03-16-21	Case File
75-03-16-22	Religious Opportunities
75-03-16-23	Medical Care
75-03-16-24	Nutritional Requirements
75-03-16-25	Children's Needs
75-03-16-26	Discipline
75-03-16-26.1	Use of Isolation <u>Separation</u> or Physical Restraint
75-03-16-26.2	Use of Mechanical Restraints - Limitations
75-03-16-27	Confidentiality

75-03-16-28	Education
75-03-16-28.1	Water Safety
75-03-16-29	Buildings, Grounds, and Equipment
75-03-16-30	Variance
75-03-16-31	Outcomes Data Collection
75-03-16-32	[Reserved]
75-03-16-33	[Reserved]
75-03-16-34	[Reserved]
75-03-16-35	[Reserved]
75-03-16-36	[Reserved]
75-03-16-37	[Reserved]
75-03-16-38	[Reserved]
75-03-16-39	[Reserved]
75-03-16-40	[Reserved]
75-03-16-41	Other Rules Applicable to Out-Based Programs
75-03-16-42	Participation by Foster Children in Out-Based Programs - Time Limits
75-03-16-43	Eligibility for Endorsement to Operate Out-Based Program - Effect of Endorsement
75-03-16-44	Contents of Application for Endorsement
75-03-16-45	Effect of Single Serious Violation
75-03-16-46	Out-Based Program Activities
75-03-16-47	Voluntary Participation
75-03-16-48	Administration and Organization for Out-Based Programs
75-03-16-49	Out-Based Program Admission - Policies on Discharge
75-03-16-50	Out-Based Program Orientation
75-03-16-51	Case Plan
75-03-16-52	Records of Participation in Out-Based Program
75-03-16-53	Mail to and From Participants in Out-Based Programs
75-03-16-54	Discipline and Behavior Management for Out-Based Programs
75-03-16-55	Health and Medical Care - Consent to Medical Care
75-03-16-56	Out-Based Program Staff - Participant Ratio
75-03-16-57	Staff, Interns, and Volunteers for Out-Based Programs
75-03-16-58	Staff Training For Out-Based Programs
75-03-16-59	Operation of Out-Based Programs Outside North Dakota
75-03-16-60	Daily Schedule and Log
75-03-16-61	Emergency and Safety Procedures - Communications
75-03-16-62	Transportation for Out-Based Programs
75-03-16-63	Mobile Program Travel Plan - Predeparture Procedures
75-03-16-64	Out-Based Program Participants' Clothing and Personal Needs
75-03-16-65	Out-Based Program Toilet Facilities - Bathing
75-03-16-66	Water and Nutritional Requirements for Out-Based Programs
75-03-16-67	Program and Campsites - Permits - Sleeping Shelters and Equipment

75-03-16-68	Sanitation for Out-Based Programs
75-03-16-69	Hiking and Backpacking
75-03-16-70	Solo Activities

Section 16. Section 75-03-16-01 is amended as follows:

75-03-16-01. Definitions. As used in this chapter:

1. "Custodian" means a person, other than a parent or guardian, who stands in loco parentis to a child in placement or a person to whom legal custody of the child has been given by order.
2. "Department" means the North Dakota department of human services.
23. "Facility" means a residential child care facility or group home.
34. "Employee" means an individual compensated by the facility to work in a part-time, full-time, intermittent, or seasonal capacity for the facility. This definition is not inclusive to contracted service providers who come onsite to conduct trainings, treatment groups, individual therapy, or other program services.
45. "Nonemployee" means an individual who is not compensated by the facility, such as a volunteer or student intern.
56. "Out-based program" means a sequence of planned activities designed to provide therapeutic outdoor physical, environmental educational, athletic, or other activities which:
 - a. Involve physical and psychological challenges;
 - b. Are designed to:
 - (1) Stimulate competence and personal growth;
 - (2) Expand individual capabilities;
 - (3) Develop self-confidence and insight; or
 - (4) Improve interpersonal skills and relationships; and
 - c. Take place in a setting of twenty-four-hour participant supervision.
67. "Overnight hours" means from eleven p.m. until seven a.m.
78. "Participant" means a child participating in an out-based program.

89. "Solo activity" means an experience in which an individual cares for himself or herself in a solitary setting away from others, but under employee supervision.
910. "Utilization review" means a process that applies established criteria to evaluate the services provided in terms of cost-effectiveness, necessity, and effective use of resources.

History: Effective July 1, 1987; amended effective January 1, 1995; March 1, 1999; April 1, 2014; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

Section 17. Section 75-03-16-02 is amended as follows:

75-03-16-02. Effect of license.

1. A facility license is in force and effect for the period stated thereon, not to exceed two years, is nontransferable, and is valid only on the premises and for the number of children indicated on the license.
2. ~~For a facility not licensed to provide foster care services on July 31, 1998,~~ a licensed facility that changes its programming philosophy or ownership, or a provisionally licensed facility upon issuance of an unrestricted license:
 - a. The initial period of licensure is one year;
 - b. The license may be renewed for a second one-year period if the facility successfully completes a program review and certifies compliance with all other licensing rules and requirements;
 - c. The license may be renewed for a third one-year period if the facility successfully completes a licensing study; and
 - d. Thereafter, the facility or home may be eligible for a two-year license.
3. The department may, in its sole discretion, issue a license without inspecting a facility's buildings, grounds, and equipment, if the department finds that:
 - a. The facility was inspected and complied with the provisions of this chapter and of North Dakota Century Code chapter 50-11 regarding buildings, grounds, and equipment in the preceding year; and

- b. The facility is otherwise eligible to receive a license.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-01, 50-11-02

Section 18. Section 75-03-16-02.3 is amended as follows:

75-03-16-02.3. Correction orders.

1. The following time periods are allowed for correction of violations of North Dakota Century Code chapter 50-11 or this chapter:
 - a. For a violation that requires an inspection by a state fire marshal or local fire department authorized pursuant to section ~~75-03-16-40~~ 75-03-16-29, five days;
 - b. For a violation that requires substantial remodeling, construction, or change to a building, sixty days; and
 - c. For all other violations, twenty days.
2. The department may require immediate correction of a violation that threatens the life or safety of a ~~resident-child in placement~~.
3. All time periods under this section commence on the third day after the department mails notice of the correction order to the facility.
4. Upon written request by the facility and upon showing need for an extension created by circumstances beyond the control of the facility and that the facility has diligently pursued correction of the violation, the department may grant extensions of time to correct violations.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 19. Section 75-03-16-02.4 is amended as follows:

75-03-16-02.4. Fiscal sanctions.

1. The department shall assess the following fiscal sanctions for each day that a facility remains out of compliance with a correction order after expiration of the time for correction of deficiencies:
 - a. For violations that endanger the health or safety of ~~residents~~ children in placement, a maximum of twenty-five dollars per day;

- b. For violations of minimum ~~staff~~employee requirements, a maximum of twenty-five dollars per day;
 - c. For violations of the prohibitions contained in section 75-03-16-26, a maximum of twenty-five dollars per day; and
 - d. For all other violations, a maximum of ten dollars per day.
2. The levy of a fiscal sanction does not preclude the department's pursuit of other actions, including provisional licensure, injunction, and license revocation.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 20. Section 75-03-16-03 is amended as follows:

75-03-16-03. Organization and administration.

1. Each facility ~~shall~~must have a governing body that is responsible for the operation, policies, activities, and practice of the facility. For purposes of this chapter:
 - a. If the facility is owned by a corporation, the board of directors of the corporation is the governing body;
 - b. If the facility is owned by a partnership, the partners are the governing body;
 - c. If the facility is owned by a sole proprietor, the proprietor is the governing body; ~~and~~
 - d. If the facility is owned by a limited liability company, the board of governors is the governing body; and
 - e. If the facility is owned by a tribe or the department of public instruction, the facility shall appoint a governing body.
2. All partnerships and sole proprietorships must have an advisory committee consisting of no less than five members who are not relatives of the proprietor or any partner. The advisory committee shall meet at least once a year.

3. Each facility shall provide the department with an updated list of all the names and addresses of the members of the governing body and any advisory committee within thirty days after the member's selection of any membership change.
4. The governing body shall:
 - a. Adopt a written statement of the purpose and philosophy of the facility.
 - b. Adopt written policies for the facility regarding administration, personnel, nondiscrimination, admission and discharge, discipline buildings and grounds, and program services and smoking.
 - c. Adopt written policies for the facility regarding the procedures to be followed in the event the facility closes. The policies must indicate that the governing body will:
 - (1) Provide the department with at least sixty days' written notice that the facility will be closing.
 - (2) Provide ~~each child's~~ the custodian, parent, or guardian of the children in placement with at least thirty days' written notice that the facility will be closing.
 - (3) Provide for an appropriate North Dakota depository to maintain the facility's case, fiscal, ~~and personnel~~ employee and nonemployee records.
 - (4) Provide for the retention of all fiscal records for a period of seven years following account settlement.
5. The facility shall submit copies of all required policies to the department with the application for license and shall maintain all required policies ~~on file~~ at the facility or other designated location within the state of North Dakota.
6. All statements and policies required by this chapter must be in writing.
7. Each facility shall identify to the department all employee and nonemployee positions, using the titles and duties described in this chapter. For purposes of internal operations, a facility may use any definition or title for its positions. All employees and nonemployees must be capable of performing assigned duties.
8. Each facility shall carry general comprehensive liability insurance.

9. Representatives of the facility shall meet ~~on~~ with the department at least ~~an annual basis with the appropriate personnel of the department annually~~ to discuss the facility operations, ~~its programs programming~~, and any other pertinent issues that concern the needs of ~~the children cared for in the facility in placement~~.

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 21. Section 75-03-16-04 is amended as follows:

75-03-16-04. Financial records and reports.

1. If a facility is owned by a corporation, the certificate of incorporation must be ~~on file available for viewing~~ at the facility or other designated location within the state of North Dakota.
2. The facility shall maintain complete financial records regarding the facility. The financial books must be audited annually by a certified or licensed public accountant. ~~A~~ The facility shall submit a copy of the accountant's most recent annual report ~~must be submitted with the facility's license application. The facility shall make the annual audit report~~ ~~must be kept on file available for viewing~~ at the facility or other designated location within the state of North Dakota.
3. A facility shall submit a projected twelve-month budget based on predictable funds for the forthcoming year of operation. A new facility shall must have funds or documentation of available credit sufficient to meet the operating costs for the first twelve months. If a facility applies for a change in licensed capacity, it shall submit a projected budget reflecting the changed capacity.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 22. Section 75-03-16-05 is amended as follows:

75-03-16-05. ~~Personnel records~~ Employee and Nonemployee Files.

1. The facility shall maintain an individual ~~personnel~~-file on each employee. The ~~personnel~~-file must include:

- a. The application for employment including a record of previous employment and the applicant's statement in answer to the question, "Have you been convicted of a crime?";
 - b. Annual performance evaluations;
 - c. ~~First-aid training record;~~
 - d. ~~Cardiopulmonary resuscitation training record;~~
 - e. ~~Annual staff professional development and training record-records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation;~~
 - d. The following required training certificates:
 - (1) First-aid training;
 - (2) Cardiopulmonary resuscitation and automated external defibrillator; and
 - (3) Behavior management, crisis management, and nonviolent crisis intervention;
 - e. Evidence of the employee having read the law requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures;
 - f. Results of background checks for criminal conviction record, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
 - g. Any other evaluation or background check deemed necessary by the administrator of the facility; and
 - h. Documentation of the status of any required license or qualification for the position or tasks assigned to the employee.
- 2. ~~For purposes of subsection 1, "record" means documentation, including, with respect to development or training presentations, name of presenter, date of presentation, topic of presentation, and length of presentation.~~
 - 3. The facility shall maintain an individual ~~personnel~~-file on each volunteer, student, or intern nonemployee. The ~~personnel~~-file must include:

- a. Personal identification information;
- b. Results of background checks for criminal conviction record, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
- c. Description of duties;
- d. Orientation and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation; and
- e. Evidence of the nonemployee having read the law requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures.

43. The facility shall adopt a policy regarding the retention of ~~personnel records~~ employee and nonemployee files.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 23. Section 75-03-16-06 is amended as follows:

75-03-16-06. Facility administrator. The governing body of the facility shall designate an administrator for the facility.

- 1. The governing body of the facility shall clearly define, in writing, the responsibilities of the facility administrator ~~must be clearly defined in writing by the governing body of the facility~~. If the facility is licensed for ten or more children, it shall employ a full-time administrator onsite or in close proximity. A facility may not employ an administrator less than half time.
- 2. The administrator ~~shall~~ must have a bachelor's degree in business administration, social work, or a related behavior field, from an accredited college or university.
- 3. The administrator shall assure that ~~the facility provides adequate supervision~~ is provided to all staff members who are employees and nonemployees working with residents in the facility.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 24. Section 75-03-16-07 is amended as follows:

75-03-16-07. Program director. The ~~administrator~~ facility shall hire or designate a program director for the facility.

1. The facility shall clearly define, in writing, the responsibilities of the program director ~~must be clearly defined in writing by the administrator~~. The duties of the program director must be devoted to the provision of social services. If supervisory duties are assigned, the program director may only supervise ~~personnel~~ employees involved in treatment activities.
2. The program director must meet at least one of the following standards:
 - a. A licensed, certified social worker (MSW) with at least one year of clinical experience;
 - b. A doctor of philosophy or master of science degreed psychologist with at least one year of clinical experience;
 - c. A licensed addiction counselor who has a bachelor of arts degree in a social or behavioral science with at least three years of clinical experience;
 - d. An individual possessing a master's degree in a clinical discipline, such as a behavioral science with a clinical focus, with at least two years of supervised clinical experience; or
 - e. An individual possessing a bachelor's degree in social work with at least three years' clinical experience in a licensed facility; ~~or~~
 - f. ~~An individual otherwise qualified and serving as that facility's program director prior to August 1, 1998.~~

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 25. Section 75-03-16-08 is amended as follows:

75-03-16-08. Social service staff employees. The facility shall hire or designate social service ~~staff~~ employees.

1. A facility ~~shall~~ must have sufficient social service ~~staff~~ employees to meet minimum ~~staff to child~~ employee-to-child ratios required by this chapter.

2. ~~The facility shall clearly define, in writing, the duties and responsibilities of the social service staff must be clearly defined in writing~~ employees.
3. ~~Social-A social service staff employee~~ responsible for the supervision of other employees, ~~volunteers, or students on field placement or internship or nonemployees~~ must be allowed sufficient time to perform supervision tasks.
4. ~~Each-A social service staff person shall employee~~ must have, ~~as-at~~ a minimum, a bachelor's degree in social work or a related field and must be licensed as required by that field of practice.
5. ~~Social-A social service staff employee's~~ time must be devoted to the provision of social services.
6. If the facility holds itself out as furnishing or using a specific treatment method, the ~~staff-professional~~ development and training records must document that the ~~staff-employee~~ has had appropriate training ~~in-to~~ provide the specific training method.
7. ~~Social service staff beginning employment in the facility will be on probation for a specified time to be determined by the facility.~~
8. ~~Social-A social service staff employee~~ must have achieved the competencies necessary to implement any item of care or service which they are designated to perform in ~~any child's~~ the individualized plan of care of a child in placement.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 26. Section 75-03-16-09 is amended as follows:

75-03-16-09. Social service staff supervision.

1. The program director or assigned social service supervisor shall provide and ~~shall document the provision of~~ a minimum of one hour of individual supervision per week for each ~~staff member who is under the program director's supervision~~ social service employee.
2. Each full-time social service staff-supervisor may not supervise ~~no~~ more than six social service staff ~~holding positions as social service staff employees, treatment personnel employees, or child-direct care supervisor-supervisors~~. Social service-staff supervisors may not supervise other positions.

3. The facility shall ~~establish and implement a written plan for inservice document annual~~ training for the ~~program director calculated supervisors~~ to maintain and improve competence in the supervisory role and in facility social service practice practices.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 27. Section 75-03-16-10 is amended as follows:

75-03-16-10. ~~Child care staff~~ Direct Care Employees.

1. A facility shall must have on duty at all times sufficient ~~child care staff direct care employees~~ to meet the minimum ~~staff to child employee to child~~ ratios required by this chapter.
2. The ~~facility shall clearly define, in writing, the~~ duties and responsibilities of the ~~child care staff must be clearly defined in writing~~ direct care employees.
3. All ~~child care staff~~ direct care employees must be twenty-one years of age or older.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 28. Section 75-03-16-11 is amended as follows:

75-03-16-11. ~~Volunteers, student field placements, and internships~~ Nonemployees.

1. A facility which uses ~~volunteers, student field placements, or interns who work directly with children on a regular basis~~ nonemployees shall:
 - a. ~~Develop and provide a copy of a description of duties and specified responsibilities for volunteer, student field placement, or internship positions to be provided to the volunteer, the student, and the student's school;~~
 - b. ~~Designate appropriate staff members~~ an employee to supervise and evaluate ~~volunteers, student field placements, or interns~~ nonemployees; and

- c. Develop a plan for the orientation and training of ~~volunteers, student field placements, or interns in nonemployees~~ to include the philosophy of the facility, the needs of the children in care; placement and the needs of their families.
2. ~~Volunteers, student field placements, or interns Nonemployees~~ may provide services in support of, but not in substitution for, ~~paid staff members employees.~~ Volunteers, student field placements, and interns Nonemployees may not be counted ~~as staff as an employee~~ for purposes of ~~staff-to-child employee-to-child~~ ratio requirements imposed by this chapter.
3. ~~Volunteers, student field placements, and interns Nonemployees~~ shall create records of incidents that occur during their presence at the facility to the same extent that employees are required to create such records.
4. Nonemployees shall follow subsections 2 and 4 of section 75-03-16-12.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 29. Section 75-03-16-12 is amended as follows:

75-03-16-12. Personnel Employment policies. A facility shall ~~must~~ have clearly written ~~personnel employment policies. These~~ The facility shall make the policies must be made available to each employee and. The policies must include:

1. ~~A staff~~ An annual professional training and development plan for all employee positions;
2. Procedures for reporting suspected child abuse and neglect;
3. Procedures for ~~staff~~ employee evaluation, disciplinary actions, and terminations;
4. ~~A prohibition of sexual contact between staff and children~~ Zero tolerance policies, which must include zero tolerance for sexual abuse and sexual harassment by employees to others in the facility;
5. Procedures for employee grievances;
6. Evaluation procedures which include a written evaluation following the probationary period for new ~~staff~~ employees and at least annually thereafter; and

7. A plan for review of the personnel policies and practices with staff employee participation at least once every three years, or more often as necessary. The facility shall document policy reviews, revisions, and employee participants in writing.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 30. Section 75-03-16-12.2 is amended as follows:

75-03-16-12.2. Employee and Nonemployee background checks.

1. A facility shall make an offer of employment to a prospective employee or an offer of placement to a nonemployee conditional upon the ~~prospective employee's~~ their consent to and the results of background checks concerning
 - a. Criminal conviction record; and
 - b. Child abuse or neglect record.
2. ~~Where a position involves transporting children by motor vehicle the facility shall also make an offer of employment conditional upon the prospective employee's consent to and the results of a background report concerning the status of any motor vehicle operator's license issued to the prospective employee~~ While background check results are in pending status, a facility may choose to provide training and orientation to a prospective employee or nonemployee while waiting for the results. However, until the approved background check results are placed in the employee's or nonemployee's file, the prospective employee or nonemployee may not have contact with children in placement at any time.
3. If a prospective employee or nonemployee is in a position requiring the transportation of children in placement or the need to drive an approved facility vehicle, the facility shall complete an initial department of transportation driving record check for that employee or nonemployee. A facility shall develop a policy to determine how often a driving record check will be required. In addition, the facility shall identify procedures to follow if an employee or nonemployee approved to transport children in placement subsequently commits a driving violation.
4. If a prospective employee has previously been employed by one or more facilities, the facility shall request a reference from all previous facility employers regarding the existence of any determination or incident of

reported child abuse or neglect in which the prospective employee is the perpetrator subject.

45. The A facility shall submit proper paperwork to the department may perform a background check for reports of suspected child abuse or neglect each year on each facility employee year for the department to perform an annual child abuse and neglect index check on every facility employee and nonemployee. The facility shall place a copy of the results in each employee or nonemployee file.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 31. Section 75-03-16-12.3 is amended as follows:

75-03-16-12.3. Staff Employee and Nonemployee health requirements.

1. All personnel, including volunteers and interns, shall employees and nonemployees must be physically and mentally capable of performing assigned tasks.
2. Except as specified in subsection 3, the good physical health of each employee shall be verified by a health screening, including a test for tuberculosis. All employees shall undergo an initial health screening performed by or under the supervision of a physician not more than one year prior to or thirty days after employment to verify good physical health to work in the facility. The individual professional performing the screening shall sign a report indicating the presence of any health condition that would create a hazard to residents of the facility or other staff members others in the facility.
3. All employees and nonemployees shall undergo an initial test for tuberculosis.
4. Unless effective measures are taken to prevent transmission, each facility shall develop a policy addressing that an employee or nonemployee suffering from a serious communicable disease must be isolated from other employees, nonemployees, and residents of the facility children in placement who have not been infected.
45. The facility shall collect and maintain information obtained under this section regarding the medical condition or history of any employee or nonemployee on forms and in medical files which are kept separate from any other forms and the employee or nonemployee files and. Medical information of employees and nonemployees must be treated as a

confidential medical record available only to the employee, nonemployee, the facility, and official regulating authorities including the department.

56. The facility shall develop a policy regarding health requirements for volunteers, interns, and student placements which addresses tuberculin testing employees and nonemployees; including how often health screenings and tuberculosis testing will be required by the facility.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 32. Section 75-03-16-14 is amended as follows:

75-03-16-14. Staff Employee professional development.

1. Each facility shall ensure that ~~the administrator, program director, social service staff, child care workers, educational staff, and all other staff working directly~~ all employees in contact with children shall in placement receive at least twenty hours of annual training during each year of employment to assist in the overall quality of care provided to children in placement.
2. Training ~~must~~ Required training to prepare the staff employees to meet the needs of the children served ~~and shall include the following subject areas~~ includes:
 - a. ~~Children's emotional needs and problems~~ First Aid;
 - b. ~~Reporting of child~~ Child abuse and neglect mandated reporter training;
 - c. Behavior management techniques, including ~~crisis management and techniques of nonviolent crisis intervention~~ Cardiopulmonary resuscitation and automated external defibrillator training; and
 - d. Emergency and safety procedures, including ~~first aid and cardiopulmonary resuscitation~~ Behavior management, crisis management, and nonviolent crisis intervention training;
 - e. Training addressing children's emotional needs; and
 - f. Suicide prevention training.
3. Training ~~in~~ A certified instructor shall provide nonviolent crisis intervention, first aid, ~~and cardiopulmonary resuscitation, and automated external~~

defibrillator must be given by a certified instructor. The facility shall place training completion certificates in the employee file.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 33. Section 75-03-16-15 is amended as follows:

75-03-16-15. Child abuse and neglect.

1. All facility employees, ~~volunteers, student placements, interns, and other~~ and nonemployees who have or may have regular contact with children shall certify having read the law requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures.
2. Each facility shall adopt written policies and procedures requiring ~~any employee~~ employees and nonemployees to report cases of suspected child abuse or neglect. The procedures must include the following statement:

~~All employers~~ All facility employees and nonemployees will comply with North Dakota Century Code chapter 50-25.1, child abuse and neglect. Therefore, it is the policy of this facility that if any employee or nonemployee who knows or reasonably suspects that a child in residence placement whose health or welfare has been, or appears to have been, harmed as a result of abuse, neglect, or sexual molestation, that employee or nonemployee shall immediately report this information to the regional human service center in the region in which the facility is located department.

Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment and referral of the employee or nonemployee to the office of the state's attorney for investigation of possible criminal violation.

3. The facility's ~~procedure~~ policies and procedures must describe:
 - a. To whom a report is made;
 - b. When a report must be made;
 - c. The contents of the report;

- d. The responsibility of each individual in the reporting chain;
 - e. The status of an employee or nonemployee who is an alleged perpetrator subject of a report pending assessment, administrative proceeding, or criminal proceeding;
 - f. The discipline of an employee or nonemployee who is the perpetrator subject of a decision that services are required or a determination that institutional child abuse or neglect is indicated, up to and including termination; and
 - g. The status and discipline of an employee or nonemployee who fails to report suspected child abuse or neglect.
4. The facility shall cooperate fully with the department throughout the course of any investigation of any allegation of child abuse or neglect made concerning care furnished to a child residing at the facility in placement. The facility shall, at a minimum, provide the investigators or reviewers with all documents and records available to the facility and reasonably relevant to the investigation and permit confidential interviews with ~~both staff employees, nonemployees,~~ and children in placement. Internal facility interviews and investigations are not permitted to occur concurrent with a department or law enforcement investigation.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-25.1-03

Section 34. Section 75-03-16-16 is amended as follows:

75-03-16-16. Intake and discharge.

- 1. A facility shall adopt written intake, admission, and discharge policies including age, sex, and characteristics of children eligible for admission.
- 2. A facility shall must have an intake committee and a discharge committee. The committees may have the same members.
 - a. The intake and discharge committees may include the program director, a social service representative-employee, a child-care staff representative-direct care employee, and such additional members as the facility determines appropriate.
 - b. The program director or a social service staff representative employee shall chair each committee.

3. No child may be denied admission on the basis of race, color, creed, religion, or national origin.
4. Intake procedures.
 - a. The intake committee shall screen applications and decide which children are admitted to the facility for care. ~~These~~ The intake committee shall make admissions decisions must be made within thirty days of the receipt of sufficient information or a completed application.
 - b. ~~In order to~~ To determine if it is appropriate to admit a child, the facility shall ~~have~~ develop a policy requiring:
 - (1) The child's social and family history;
 - (2) The child's educational records including a copy of the school district notification, previous and current individual education plans, if any, and the name of the responsible school district;
 - (3) A psychiatric or psychological history, if indicated;
 - (4) A medical history, physical, and examination records;
 - (5) The terms and methods of payment for the child's maintenance, clothing, personal allowance, medical care, and other expenses;
 - (6) The name, address, and telephone number of the legal custodian, parent, or guardian, if any, and copies of the documents which establish the authority of the legal custodian or guardian-guardianship; and
 - (7) ~~The legal custodian's or guardian's~~ written authorization from the custodian, parent, or guardian to obtain necessary medical treatment.
 - c. A facility may admit a child without first securing all required information if:
 - (1) The facility has secured substantially all required information, has documented diligent efforts to secure all required information, and the facility's intake committee has determined that admission is appropriate; or

- (2) The child's circumstances require immediate placement and the facility's intake committee has preliminarily determined that admission is appropriate.
- d. A child admitted under paragraph 2 of subdivision c may be admitted only on condition that the referring agency provides, or arranges for provision of, substantially all required information within thirty days of the child's admission.
 - e. The facility shall request documentation of the services the ~~parents or custodians~~ family of a child in placement will receive in the home community while the child is receiving services in the facility.
 - f. The facility shall request quarterly child and family team meeting progress reports from the referring agency providing services to the parents or custodian.
 - g. ~~In any direct placement by a parent or guardian~~ If a private placement is made by a parent or guardian, rather than a court-appointed custodian, the individual parent or guardian making the placement is the referring agency.
 - h. If a child is not admitted, the facility shall indicate to the referring agency the reason the child was not admitted.
5. Prior to discharging a child in placement, the facility and the referring agency shall plan for the needs of the child, including preparation of a discharge report. The discharge report must include:
- a. A facility progress report concerning of the child including an outline of appropriate steps the child and family, if appropriate, can engage in to maintain placement out of facility care;
 - b. The reason for discharge;
 - c. ~~Future~~ The immediate and future services recommended for the child and the child's family, if appropriate, to remain successful; and
 - d. ~~The~~ A statement regarding the potential need for the child to return to the facility, if needed in the future; and
 - e. The facility's reason for not involving the family in discharge planning, if the family has not been included under subdivisions a and c.

6. The facility shall adopt a policy addressing the circumstances under which a child in placement may be discharged on an emergency basis. If a child in placement is discharged on an emergency basis, the facility shall immediately inform the child's custodian, parent, or guardian, or legal custodian of a child in placement.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 35. Section 75-03-16-17 is amended as follows:

75-03-16-17. Case plan.

1. ~~Social~~ A social service ~~staff employee~~ shall develop a written, individualized plan of care for each child in placement within thirty days of admission to the facility. The case plan must ~~demonstrate~~:
 - a. Be reviewed by the facility, if a plan was developed by another agency prior to admission, to determine the relevancy to the current needs of the child and the child's family;
 - b. Document that the facility has made reasonable efforts to gather information from ~~staff employees~~ within the facility, ~~parents,~~ the referring agency, custodian, parents, or guardians, courts, schools, or any other appropriate individuals or agencies; _;
 - c. ~~The plan must be~~ Be based on a thorough assessment of the situation and circumstances of the child and the child's family's needs, strengths, and weaknesses. ~~If a plan was developed by another agency prior to admission, it must be reviewed to determine the relevancy to the current needs of the child and the child's family;~~
 - d. ~~The plan must delineate~~ Delineate the individual or entity responsible for providing any item of care or service required; _;
 - e. Document an estimated projected length of stay; and
 - f. ~~The plan of care must be~~ Be reviewed for appropriateness and effectiveness at least every thirty days by the responsible social service ~~staff with changes~~ employee. Changes and modifications must be made and documented in writing as needed, but no less than quarterly. ~~The plan must state an estimated projected length of stay.~~

2. The written, individualized plan of care for a child in placement must include a description of the services that will be provided ~~for~~ by:
 - a. The facility to the child;
 - b. The facility to the child's family;
 - c. Community providers to the child;
 - d. Community providers to the family in the family's home community;
and
 - e. ~~plans~~ The facility as a formal plan for visitation ~~by the child's parents, legal from the custodian, parent, or guardian to the facility or and opportunities for the child's child to engage in~~ home visits; an indication of who will provide primary case management and service, and the child's signature or the signed statement of a member of the facility's social service staff that the plan of care was explained to the child and the child refused to sign the plan of care.

3. The written, individualized plan of care must include an indication of the services the child's family may receive from the facility or outside agencies who will provide primary case management and service, and the child in placement's signature or the signed statement of the facility's social service employee that the plan of care was explained to the child and the child refused to sign the plan of care.

4. If a facility engages in electronic data entry and case filing; the facility shall develop policy to manage this process. The policy must include the electronic medical record process, procedures for internal network security, employee access, and management of facility data, backup systems, and how the facility will engage in electronic file sharing with custodians, parents, or guardians.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 36. Section 75-03-16-19 is amended as follows:

75-03-16-19. Law enforcement notification. A facility shall notify law enforcement officials immediately after it is confirmed that the ~~resident child's whereabouts of the child in placement~~ are unknown. The facility shall notify the child's ~~parents custodian, parent, or guardian, or legal custodian~~ within twelve hours after the child's whereabouts become unknown. When the child is found, the facility shall report the child's return immediately to the law enforcement officials and the child's ~~parents custodian, parent, or guardian, or legal custodian.~~

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-01

Law Implemented: NDCC 50-11-02

Section 37. Section 75-03-16-20 is amended as follows:

75-03-16-20. Programs and services.

1. The facility shall adopt a written program plan which must:
 - a. Include a description of the facility's plan for the provision of services required in this chapter, as well as assessment and evaluation procedures to be used in program planning and delivery; and
 - b. Clearly state which services are provided directly by the facility and which services must be provided in cooperation with community resources such as public or private schools, and other appropriate agencies.
2. The facility shall provide information to referral sources, upon written request, which must include:
 - a. Identification of what the facility provides to ~~the resident~~ a child in placement;
 - b. Characteristics of ~~individuals~~ children appropriate for referral and admission to the facility;
 - c. The process by which the facility intends to achieve its goals;
 - d. Treatment orientation of the facility; and
 - e. Information required with the referral.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 38. Section 75-03-16-21 is amended as follows:

75-03-16-21. Case file. Within thirty days after placement, the facility shall establish and ~~shall thereafter maintain~~ a case file for each child in placement receiving care in the facility. This file must include:

1. The child's full name, birthdate, and other identifying information;
2. ~~A signed care agreement, contract, or current court order establishing the facility's authority to accept and care for the~~any child welfare placement. If a private placement is made, the facility shall include a signed care agreement or contract in the child's case file;
3. An explanation of custody and legal responsibility for consent to any medical ~~or surgical~~ care;
4. An explanation of responsibility for payments for care and services;
5. An explanation of ongoing services;
6. An explanation of services provided to the family by the facility as well as services the family is receiving in their home community in accordance with section 75-03-16-17;
7. ~~Projected planning plan~~ for discharge;
78. ~~A permanency planning report~~Child and family team meeting quarterly reports or equivalent documents~~documentation created by the custodian of the child in placement, if applicable;~~
89. A copy of the appropriate interstate compact forms, if applicable;
910. A copy of the written individualized plan of care prepared by the facility;
4011. Copies of periodic, but not less than quarterly, written reports to ~~the child's parent, custodian, parent, or guardian, or legal custodian, of children in placement,~~ developed by the facility's social service staff employee; and
4412. Documentation that the program director, administrator, or utilization review committee has reviewed each case file every thirty days.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 39. Section 75-03-16-24 is amended as follows:

75-03-16-24. Food and nutrition.

1. Food must be in wholesome condition, free from spoilage, filth, or contamination and shall must be safe for human consumption. Food in

damaged containers or with expired freshness dating is not considered safe for human consumption.

2. The facility shall ensure that the nutritional requirements of the children in ~~care~~ placement are met. The facility shall serve nutritionally balanced meals each day. Special diets must be prepared for those children medically requiring them.
3. Except for garden produce, all homegrown food, poultry, meat, eggs, and milk must be from an approved source as determined by the state or local health authorities. The facility shall document the approval of state or local health authorities.
4. No home-canned foods may be served.
5. Frozen homegrown food products may be served if maintained in compliance with standards prescribed by the state department of health for food and beverage establishments.
6. ~~Refrigeration-~~ The facility shall provide refrigeration for perishable food ~~must be provided and maintained-~~ shall maintain perishable food in accordance with standards prescribed by the state department of health for food and beverage establishments.
7. ~~Personnel preparing-~~ Employees, nonemployees, and children in placement helping to prepare food shall wash their hands before handling food, and as often as necessary to keep them clean, and shall use effective hair restraints to prevent contamination of food and food contact surfaces.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 40. Section 75-03-16-25 is amended as follows:

75-03-16-25. Children's needs.

1. A facility shall arrange for children in placement to have a personal supply of clean, well-fitting clothing and shoes for both indoor and outdoor wear and appropriate for the season.
2. ~~Jobs-~~ A facility shall assign jobs and household responsibility for children ~~must be assigned-~~ in placement in a manner that does not conflict with the educational schedule or physical health of the children or preclude the children's opportunity for socialization activities.

3. Participation in recreational and social activities must be on the basis of the individualized needs and goals of each child in placement.
4. The facility shall advise all children in placement and their custodian, parent, or guardian, in writing, of the day-to-day rules of the facility. The facility shall adopt day-to-day rules which create the least restrictive environment, consistent with the needs of children in care-placement.
5. The facility shall advise children in placement and their custodians, parents, or guardians, in writing, of the process used by facility employees to complete a search of children or their belongings when returning to the facility from off-site outings, events, school, or home visits. The facility shall inform children in placement of the reason searches will be conducted, the protocol for conducting searches, and any disciplinary action a facility will take if contraband items are identified during a search.
- ~~6.~~ Each child must be provided-The facility shall provide children in placement a bed with a clean mattress and clean bedding. Blankets must be available-The facility shall provide blankets to each child as temperatures make necessary. Sheets and bedding must be changed when soiled, and no less often than weekly. In addition, the facility shall make room assignments to best meet the needs and vulnerabilities of children in placement. The facility shall assess room assignments on an ongoing basis to minimize potential risk to children in placement.
- ~~67.~~ Each child must be provided-The facility shall provide children in placement personal hygiene and toilet articles, including washcloths and towels which must be changed when soiled, and no less often than weekly.
- ~~78.~~ A facility shall ensure that privacy is assured when a family member visits a child-custodians, guardians, or family members, visit children in placement. Any-The facility shall record any reason for restricting communications or visits between a child and the child's custodians, guardians, or family members must be recorded in the child's case file.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 41. Section 75-03-16-26 is amended as follows:

75-03-16-26. Discipline. Discipline must be constructive or educational in nature. Discipline may include diversion, separation from a problem situation, discussion with the child in placement about the situation, praise for appropriate

behavior, and gentle, physical restraint such as holding. A facility shall adopt and implement written policies for discipline and behavior management which include:

1. ~~Only adult staff members~~employees of the facility may prescribe, administer, or supervise the discipline of children in placement.
2. ~~No child~~Children in placement may not be slapped, punched, spanked, shaken, pinched, roughly handled, struck with an object, or otherwise receive any inappropriate physical treatment.
3. Authority to discipline may not be delegated to or be accomplished by other children.
4. ~~A child~~Children in placement may not be locked in any room or other enclosure.
5. Physical restraint or ~~isolation~~separation from the general facility population may be used only:
 - a. As a necessary complement to positive programming designed to strengthen desirable and adaptive behavior; and
 - b. To prevent immediate harm to ~~the child or to another individual~~children in placement and others.
6. ~~Isolation~~Separation from the general facility population means that a child is removed from peers or programming and placed in the time out room or an identified location to re-group when their behavior is escalated.
 - a. Separation from the general facility population, when used as discipline, must be brief and appropriate. The child must be within hearing of an adult in a safe, lighted, well-ventilated room. A child who is isolated from peers for disciplinary reasons must and be observed continuously by the staff an employee. When a child's behavior has deescalated, but the child needs additional separation, an employee shall observe the child at least every fifteen minutes until the child is ready to return to the general facility population.
 - b. The isolation of a child in a locked area for the purpose of modifying behavior is not permitted at any time.
7. Verbal abuse or derogatory remarks about ~~the child~~children in placement, the child's family, religion, or cultural background may not be used or permitted.

8. Neither physical restraints nor ~~isolation~~ separation from general facility population may be used for punishment, for the convenience of staff, or as a substitute for programming. Except as permitted under section 75-03-16-26.2, mechanical forms of physical restraints may not be used.
9. Cruel and unusual punishments are prohibited, ~~including the following:~~
 - a. ~~Physically strenuous work or exercise, when used solely as a means of punishment; and~~
 - b. ~~Forcing a child to maintain an uncomfortable position or to continuously repeat physical movements, when used solely as a means of punishment.~~
10. ~~A child~~ Children in placement may not be deprived of any of the following as a means of discipline:
 - a. A place to sleep with a pillow and bedclothes;
 - b. Meals;
 - c. Clean clothes;
 - d. Personal or telephone visits with ~~parents~~ the child's custodian, parent, or guardian, or legal representative;
 - e. Time necessary for personal hygiene;
 - f. Minimum exercise;
 - g. Receipt and sending of mail;
 - h. Access to toilet and water facilities, as needed;
 - i. Voluntary attendance at a religious service or religious counseling;
 - j. Clean and sanitary living conditions;
 - k. Medication; and
 - l. Sleep.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 42. Section 75-03-16-26.1 is amended as follows:

75-03-16-26.1. Use of ~~isolation~~separation from general facility population or physical restraint. Each use of ~~isolation~~time a child in placement is separated from the general facility population or ~~physical restraint~~physically restrained; the event must be documented, filed in the ~~child's~~case file of the child in placement within twenty-four hours, and entered in the central record maintained by the facility within seventy-two hours. Documentation must include:

1. The date and time of use;
2. The number of times ~~isolation~~separation or restraint was used and the duration of each use;
3. A complete description of the type of ~~isolation~~separation or restraint used;
4. The names of ~~staff~~employees who applied the restraint;
5. A complete description of the injuries sustained by children or ~~staff~~employees involved and the medical treatment provided; and
6. Documentation that information concerning the incident was communicated to the child's ~~custodian, parent, or guardian, legal custodian, or placing agency.~~custodian, parent, or guardian, legal custodian, or placing agency.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 43. Section 75-03-16-26.2 is amended as follows:

75-03-16-26.2. Use of mechanical restraints - Limitations.

Notwithstanding the provisions of section 75-03-16-26, a facility may use permissible mechanical restraints to contain the behavior of ~~a child~~children in placement in transit from the facility if ~~the child has~~children in placement have clearly indicated the intent to inflict serious physical injury upon ~~that child~~themselves or others and the facility is unable to get assistance from law enforcement.

1. Permissible mechanical restraints consist solely of handcuffs and foot cuffs which may be used only when ~~a child is~~children in placement are transported from the facility by vehicle.
2. The term "mechanical restraint" does not include seatbelts, shoulder harnesses, or wheelchair locks used in vehicular transportation.
3. The facility shall provide the department with a list of ~~staff members~~employees trained to use mechanical restraints prior to the institution of a

transportation mechanical restraint program. Training for use of mechanical restraint devices must be documented in the staff professional development and training record.

4. ~~Placing entities shall be informed~~ A facility shall inform referring agencies that the facility may use mechanical restraints as a behavior containment measure in transporting a ~~child~~ children in placement from the facility.
5. A facility shall report each incident of any use of mechanical restraints to the ~~regional supervisor department~~ within three days. The report must include the affidavit of the ~~individual~~ employee applying the mechanical restraint that sets forth:
 - a. A statement that the use of mechanical restraints was a last resort measure and all less restrictive measures failed;
 - b. The less restrictive restraint measures tried as alternatives to mechanical restraints;
 - c. The name of the law enforcement unit called, the time that law enforcement was called and was unable to respond, and the time ~~that the child was transported~~ of transport; and
 - d. The name of the ~~staff member~~ employee applying the mechanical restraints and a statement that the ~~staff member~~ employee using the mechanical restraints has been properly trained ~~in the use of mechanical restraints~~.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 44. Section 75-03-16-27 is amended as follows:

75-03-16-27. Confidentiality.

1. For purposes of this section, "persons who have a definite interest in the well-being of children in placement" include:
 - a. The ~~parents and legal guardian or child's custodian, parent, or guardian if any, of a child~~, except to the extent the parental rights have been removed or limited by court order;
 - b. The ~~individual or entity~~ referring agency that placed a child in the facility; and

- c. ~~An individual or entity identified in a child's written individualized plan of care as a provider of services, located in the home community of the child's family of the child in placement, for the purposes of reunification of the child and the child's family.~~
2. Except as otherwise provided in this section, facility records concerning children in placement that have received, are receiving, or seek to receive facility services must be safeguarded and may be made available only:
- a. To ~~staff employees and nonemployees~~ of the facility, to the extent reasonably necessary for the performance of their duties;
 - b. To persons authorized by a custodian, parent, or guardian, ~~or custodian~~ who may lawfully review a child's records, to review or receive copies of that child's records;
 - c. In a judicial proceeding;
 - d. To officers of the law or other legally constituted boards and agencies; or
 - e. To persons who have a definite interest in the well-being of the children in placement concerned, who are in a position to serve their interests, and who need to know the contents of the records in order to assure the children's their well-being and interests.
3. A facility may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any child in placement or member of a ~~child's the~~ immediate family of a child in placement, without first securing the written consent of the ~~child's~~ custodian, parent, or guardian, ~~or legal custodian of the child in placement~~, or the written consent of an adult who was a former resident of the facility ~~as a child~~.
- a. Written consent must be ~~informed~~ informative, including full disclosure of how the image or information will be used, including any future use, and must specifically identify the image or information which may be disclosed by reference to dates, locations, and other event-specific information. Consent documents which do not identify a specific event are invalid to confer consent for fundraising, publicity, or illustrative purposes;
 - b. The facility must inform the person signing that the individual is free to either grant or refuse to grant consent;

- c. The facility must provide a seven-day waiting period during which the consent can be withdrawn by the signing party; and
- d. The consent must be time-limited. Open-ended consents are not valid. The written consent must apply to an event that occurs no later than one year from the date the consent was signed.

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-06-15, 50-11-02, 50-11-05