

February 3, 2020

Vonette Richter, Legal Division Director
North Dakota Legislative Council
State Capitol
Bismarck, ND 58505

RE: Proposed Amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1
In-Home Child Care Early Childhood Services, Self-Declaration Providers Early Childhood Services, Family Child Care Early Childhood Services, Group Child Care Early Childhood Services, Child Care Center Early Childhood Services, Preschool Early Childhood Services, and School-Age Child Care Program Early Childhood Services

Dear Ms. Richter:

Enclosed for filing in the office of the Legislative Council is the Notice of Intent to amend Administrative Rules concerning the above proposed rules as required by N.D.C.C. section 28-32-10. Also enclosed is a copy of the proposed rules.

We have requested publication of an abbreviated newspaper publication notice once in each official county newspaper which will notify the public that an oral hearing on these rules will be held on Wednesday, March 18, 2020, beginning at 11:30 a.m. and continuing until 1:00 p.m. or until no further testimony is offered, whichever occurs first.

If you have any questions or concerns, please contact me at 328-2311. Thank you.

Sincerely,



Jonathan Alm
Legal Advisory Unit

JA/rv

cc: Amanda Carlson, CFS
Cory Pederson, CFS

Enclosures

LEGAL ADVISORY UNIT

NOTICE OF INTENT TO AMEND
ADMINISTRATIVE RULES RELATING TO
N.D.A.C. CHAPTERS 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10,
75-03-11, AND 75-03-11.1
IN-HOME CHILD CARE EARLY CHILDHOOD SERVICES, SELF-DECLARATION
PROVIDERS EARLY CHILDHOOD SERVICES, FAMILY CHILD CARE EARLY
CHILDHOOD SERVICES, GROUP CHILD CARE EARLY CHILDHOOD SERVICES,
CHILD CARE CENTER EARLY CHILDHOOD SERVICES, PRESCHOOL EARLY
CHILDHOOD SERVICES, AND SCHOOL-AGE CHILD CARE PROGRAM EARLY
CHILDHOOD SERVICES

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1 at 11:30 a.m. on Wednesday, March 18, 2020, in Bismarck, N.D. in Room 210, located on the second floor of the Judicial Wing of the State Capitol.

The proposed amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1, In-Home Child Care Early Child Care Services, Self-Declaration Providers Early Childhood Services, Family Child Care Early Childhood Services, Group Child Care Early Childhood Services, Child Care Center Early Childhood Services, Preschool Early Childhood Services, and School-Age Child Care Program Early Childhood Services, are necessary to comply with 2019 Senate Bill No. 2124.

The proposed changes are as follows:

Subsections 1 and 4 of Section 75-03-07-04 are amended to replace county with the department in response to 2019 Senate Bill No. 2124 and to remove “director of a regional human service center or the director’s designee for consideration and action on the in-home registration document” from among the parties to whom the department had to furnish a determination of current ability to provide care that is free of abuse and neglect as the director of a regional human service center is an employee of the department and the department will already have the information.

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Subsections 1 and 2 of Section 75-03-07.1-02 are amended to replace county with the department in response to 2019 Senate Bill No. 2124 and to replace “director of a regional human service center, or the director’s designee, in consultation with the” and “director of the regional human service center or the director’s designee” with the “department”. The director of a regional human service center is an employee of the department and this change will allow the department to determine the most appropriate employee to issue the provisional self-declaration document.

Subsection 6 of Section 75-03-07.1-06 is amended to remove “and to the director of a regional human service center or the director’s designee for consideration and action on the application or self-declaration document” from among the parties to whom the department had to furnish a determination of current ability to provide care that is free of abuse and neglect as the director of a regional human service center is an employee of the department and the department will already have the information. The proposed amendment also inserts the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Subsections 3 and 4 of Section 75-03-07.1-10 are amended to remove “regional supervisor of early childhood services” and replace with “department”, as the regional supervisor is an employee of the department and this change will allow the department to determine the most appropriate employee to grant an extension of additional time to correct violations. The proposed amendment also inserts the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Subsections 1 and 4 of Section 75-03-08-06 are amended to remove the “director of a regional human service center, or the director’s designee, in consultation with the” and “director of the regional human service center or the regional director’s designee” with the “department”. The director of a regional human service center is an employee of the

department and this change will allow the department to determine the most appropriate employee to issue the provisional license.

Section 75-03-08-07 is amended to insert the “department or its” and remove “in the county” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Subsection 4 of Section 75-03-08-08.1 and Subsection 15 of Section 75-03-08-14 are amended to insert the “department or its” or “its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Subsection 15 of Section 75-03-08-14 is amended to insert the “department or its” and “its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Subsection 6 of Section 75-03-08-21 is amended for consistency purposes with other early childhood services licensing rules, to require that medication required by a child in care, that medication prescribed by a medical provider must be accompanied by the provider’s written instructions as to dosage and storage and labeled with the child’s name and the date.

Section 75-03-08-28 is amended to remove “and to the director of the regional service center or the director’s designee for consideration and action on the application or license” from among the parties to whom the department had to furnish a determination of current ability to provide care that is free of abuse and neglect, as the director of a regional human service center is an employee of the department and the department will already have the information. The proposed amendment also inserts the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Section 75-03-08-29 is amended to replace “regional supervisor of early childhood services” with “department” as the regional supervisor is an employee of the department and this change will allow the department to determine the most appropriate employee to grant an extension of

additional time to correct violations. The proposed amendment also inserts the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Subsections 1 and 4 of Section 75-03-09-06 are amended to replace “director of a regional human service center, or the director’s designee, in consultation with the” and “director of the regional human service center or the director’s designee” with “department”. The director of a regional human service center is an employee of the department and this change will allow the department to determine the most appropriate employee to issue the provisional license.

Sections 75-03-09-07 and 75-03-09-08, Subsection 1 of Section 75-03-09-14, Section 75-03-09-17, and Subsection 1 of Section 75-03-09-18 are amended to insert the “department or its” or “its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Section 75-03-09-28 is amended to remove “and to the regional director of the regional human service center or the director’s designee for consideration and action on the group child care application license” from among the parties to whom the department had to furnish a determination of current ability to provide care that is free of abuse and neglect as the director of a regional human service center is an employee of the department and the department will already have the information. The proposed amendment also inserts the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Section 75-03-09-29 is amended to replace “regional supervisor of early childhood services” with “department”, as the regional supervisor is an employee of the department and this change will allow the department to determine the most appropriate employee to grant an extension of additional time to correct violations. The proposed amendment also inserts the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Subsections 1 and 4 of Section 75-03-10-06 are amended to remove the “director of a regional human service center, or the director’s designee, in consultation with the” and “director of the regional human service center or the regional director’s designee” with the “department”. The director of a regional human service center is an employee of the department and this change will allow the department to determine the most appropriate employee to issue the provisional license.

Section 75-03-10-07, Subsections 4 and 20 of Section 75-03-10-09, and Section 75-03-10-17 are amended to insert the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Subsection 1 of Section 75-03-10-18 is amended to provide that the operator shall ensure that in child care centers, other than an occupied private residence, where meals are prepared, the state department of health conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The proposed amendment also inserts the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Subsection 6 of Section 75-03-10-21 is amended to insert the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Section 75-03-10-28 is amended to remove “and to the director of a regional human service center or the director’s designee for consideration and action on the application or license” from among the parties to whom the department had to furnish a determination of current ability to provide care that is free of abuse and neglect as the director of a regional human service center is an employee of the department and the department will already have the information. The proposed amendment also inserts the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Section 75-03-10-29 is amended to replace “regional supervisor of early childhood services” with “department” as the regional supervisor is an employee of the department and this change will allow the department to determine the most appropriate employee to grant an extension of additional time to correct violations. The proposed amendment also inserts the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Subsections 1 and 4 of Section 75-03-11-06 are amended to remove the “director of a regional human service center, or the director’s designee, in consultation with the” and “director of the regional human service center or the director’s designee” with the “department”. The director of a regional human service center is an employee of the department and this change will allow the department to determine the most appropriate employee to issue the provisional license.

Section 75-03-11-07, Subsections 4 and 17 of Section 75-03-11-08, Section 75-03-11-17, and Subsection 3 of Section 75-03-11-18 are amended to insert the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Section 75-03-11-28 is amended to remove the “and to the director of the regional service center or the director’s designee for consideration and action on the preschool application or license” from among the parties to whom the department had to furnish a determination of current ability to provide care that is free of abuse and neglect as the director of a regional human service center is an employee of the department and the department will already have the information. The proposed amendment also inserts the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Subsections 4 and 5 of Section 75-03-11-29 are amended to replace “regional supervisor of early childhood services” with “department” as the regional supervisor is an employee of the department and this change will allow the department to determine the most appropriate employee to grant an extension of additional time to correct violations. The proposed amendment also inserts the “department or its” in

response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Subsections 1 and 4 of Section 75-03-11.1-06 are amended to remove the “director of a regional human service center, or the director’s designee, in consultation with the” and “director of the regional human service center or the regional director’s designee” with the “department”. The director of a regional human service center is an employee of the department and this change will allow the department to determine the most appropriate employee to issue the provisional license.

Section 75-03-11.1-07, Subsections 4 and 23 of Section 75-03-11.1-08, Section 75-03-11.1-17, Subsection 1 of Section 75-03-11.1-18, and Subsection 4 of Section 75-03-11.1-21 are amended to insert the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Section 75-03-11.1-28 is amended to remove the “and to the director of the regional service center or the director’s designee for consideration and action on the application or license” from among the parties to whom the department had to furnish a determination of current ability to provide care that is free of abuse and neglect as the director of a regional human service center is an employee of the department and the department will already have the information. The proposed amendment also inserts the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

Subsections 4 and 5 of Section 75-03-11.1-29 are amended to replace “regional supervisor of early childhood services” with “department” as the regional supervisor is an employee of the department and this change will allow the department to determine the most appropriate employee to grant an extension of additional time to correct violations. The proposed amendment also inserts the “department or its” in response to 2019 Senate Bill No. 2124 as the department is fully responsible for licensing.

The proposed amendments are not anticipated to have an impact on the regulated community in excess of \$50,000. No taking of real property is involved in this rulemaking action.

Copies of the proposed rules are available for review at the human service zones (formally known as county social services) offices and at human service centers. Copies of the proposed rules and the regulatory analysis relating to these rules may be requested by telephoning (701) 328-2311. Written or oral data, views, or arguments may be entered at the hearing or sent to: Rules Administrator, North Dakota Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Dept. 325, Bismarck, ND 58505-0250. Written data, views, or arguments on the proposed rules must be received no later than 5:00 p.m. on Monday, March 30, 2020.

ATTENTION PERSONS WITH DISABILITIES: If you plan to attend the hearing and will need special facilities or assistance relating to a disability, please contact the Department of Human Services at the above telephone number or address at least two weeks prior to the hearing.

Dated this 3rd day of February, 2020.

**CHAPTER 75-03-07
IN-HOME CHILD CARE EARLY CHILDHOOD SERVICES**

Section

75-03-07-01	Purpose [Repealed]
75-03-07-02	Objective of Rules [Repealed]
75-03-07-03	Definitions
75-03-07-04	In-Home Registration and Standards
75-03-07-05	Minimum Requirements for Care of Children With Special Needs
75-03-07-06	Denial or Revocation of In-Home Registration
75-03-07-07	Appeals

SECTION 1: Subsections 1 and 4 of section 75-03-07-04 are amended as follows:

1. An application for a registration document must be submitted to the department or its authorized agent ~~in the county wherein the applicant proposes to provide in-home services.~~ Application must be made in the form and manner prescribed by the department.

4. In-home providers shall ensure safe care for the children receiving services in their care. If a services-required decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by the applicant or in-home provider, that decision has a direct bearing on the applicant's or in-home provider's ability to serve the public in a capacity involving the provision of child care and the application or in-home registration may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant or in-home provider, the applicant or in-home provider shall furnish information, satisfactory to the department, from which the department can determine the applicant's or in-home provider's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of current ability to the applicant or in-home provider ~~and to the director of the regional human service center or the director's designee for consideration and action on the in-home registration document.~~ Each applicant shall complete a department-approved authorization for background check form no later than the first day of employment.

History: Effective December 1, 1981; amended effective January 1, 1987; January 1, 2011; April 1, 2016; April 1, 2018; July 1, 2020.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-02, 50-11.1-06, 50-11.1-07, 50-11.1-08

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February 3, 2020

RE: Proposed amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1
In-Home Child Care Early Childhood Services, Self-Declaration Providers Early Childhood Services, Family Child Care Early Childhood Services, Group Child Care Early Childhood Services, Child Care Center Early Childhood Services, Preschool Early Childhood Services, and School-Age Child Care Program Early Childhood Services

TO WHOM IT MAY CONCERN:

The Department of Human Services is proposing amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1. The department has adopted procedures to assure public input into the formulation of the rules prior to adoption.

In conformity with those procedures, we are providing you with a copy of the proposed rules and are requesting that you provide any written data, views, or arguments no later than 5:00 p.m. on Monday, March 30, 2020.

The department has scheduled an oral hearing for Wednesday, March 18, 2020. Further information concerning the public hearing is included in the attached notice of proposed rulemaking and public hearing.

Your participation is welcomed, as are your suggestions. Please send all written data, views, or arguments to: Rules Administrator, Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Bismarck, ND 58505-0250.

Sincerely,



Christopher Jones,
Executive Director

Enclosures

cc: Vonette Richter, Legislative Council
Amanda Carlson, CFS
Cory Pederson, CFS

EXECUTIVE OFFICE

GOVERNOR
Doug Burgum

EXECUTIVE DIRECTOR
Christopher Jones