



**MAY 11 2016**  
**Legal Advisory Unit**

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Jack Dalrymple, Governor  
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May 11, 2016

Vonette Richter, Assistant Code Revisor  
North Dakota Legislative Council  
State Capitol  
Bismarck, ND 58505

RE: Proposed Amendments to N.D. Admin. Code Chapter 75-03-21  
Licensing of Foster Homes for Adults

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 June 16, 2016, beginning at 10 a.m. and continuing until 11:30 a.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,

A handwritten signature in black ink, appearing to read "Jonathan Alm", is written over a horizontal line.

Jonathan Alm  
Legal Advisory Unit

JA/jgl

cc: Michelle Gayette, Aging Services

Enclosures

NOTICE OF INTENT TO AMEND  
ADMINISTRATIVE RULES RELATING TO  
N.D.A.C. CHAPTER 75-03-21  
LICENSING OF FOSTER HOMES FOR ADULTS

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code chapter 75-03-21 at 10 a.m. on Thursday, June 16, 2016, 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 chapter 75-03-21, Licensing of Foster Homes for Adults, are necessary to comply with the requirements of the Patient Protection and Affordable Care Act of 2010 and Medicaid Program and the State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers final rule.

The proposed changes are as follows:

**Section 75-03-21-01** is amended to add a definition for “home and community based setting experience interview”; to add additional monitoring requirements to the definition of “monitoring”; to add a definition of “person-centered service plan”; and to add N.D.C.C. chapter 12.1-41 to the definition of “sexual abuse”.

**Section 75-03-21-02** is amended to correct a citation.

**Section 75-03-21-04** is amended to ensure the facility is physically accessible for the resident; to ensure privacy in shared bedrooms; to allow the resident a choice of roommate; and to require lockable bedroom and bathroom doors with keys provided to resident and staff with any restrictions to be documented and justified in the person-centered service plan or the service and rental agreement.

**Section 75-03-21-05** is amended to update the citation to the plumbing code.

**Section 75-03-21-09** is amended to clarify language and indicate notification should be provided to the county agency not the department; to add a subsection to assure residents or the resident’s legal representatives the right to manage the resident’s finances; to require notification to the county agency in writing if provider is requested to serve as the representative payee; to amend the twenty-four hour care requirement to allow for less than twenty-four hour care; and to allow choice of respite care provider by resident or resident’s legal representative.



**Section 75-03-21-09.1** is amended to update the citations for North Dakota Century Code chapter 12.1-41, uniform act on prevention of and remedies for human trafficking; North Dakota Century Code sections 14-09-22, abuse of child; and 14-09-22.1, neglect of child.

**Section 75-03-21-10** is amended to clarify language to reflect that substitute caregiver and respite care provider provides resident care on behalf of a facility and that a respite care provider's reimbursement is limited to the funding cap established by the department for each qualifying resident.

**Section 75-03-21-11** is amended to add a subsection to address residents' rights to access food at any time and meal choices unless otherwise documented and justified in the person-centered service plan or the service and rental agreement.

**Section 75-03-21-12** is amended to change the title of the section; to clarify language; to include landlord tenant eviction and appeals process requirements, to include resident's right to telephone access, right to furnish and decorate their bedroom, and to address the resident's right to control their own schedules, activities, and right to have visitors; to clarify language regarding resident expectations to include the identification of whether or not a resident requires twenty-four hour supervision; to include resident's right to be free from coercion and restraint; to add a subsection that states any changes to the agreement must be supported by specific assessed need and documented and justified in the person-centered service plan or the service and rental agreement; and to add subsections that states all agreement modifications must be in writing and signed, furnished to the resident or the resident's legal representative, and kept in the resident's records.

**Section 75-03-21-13** is amended to clarify language regarding the resident's legal representative; to require the provider to comply with the provider's service and rental agreement and landlord tenant eviction laws; and to reflect the department staff responsible for licensing must be contacted by the county agency prior to the department making the decision to waive the thirty-day requirement.

**Section 75-03-21-19** is amended to clarify language.

**Section 75-03-21-21** is amended to correct citations and to reflect additional subsection violations subject to penalties.

**Section 75-03-21-23** is created to add monitoring requirements.

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 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, June 27, 2016.

**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 11<sup>th</sup> day of May, 2016.