

## **CHAPTER 33-03-29**

### **RESIDENTIAL CARE FACILITIES FOR CHILDREN WITH AUTISM**

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#### **33-03-29-01. Definitions.**

1. "Abuse" includes mental, physical, sexual, and verbal abuse. Mental abuse includes humiliation, harassment, threats of punishment, or deprivation. Physical abuse includes hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment. Sexual abuse includes sexual harassment, sexual coercion, sexual contact, or sexual assault. Verbal abuse includes any use of oral, written, or gestured language that includes disparaging and derogatory terms to residents or their families, or within their hearing distance, to describe residents, regardless of their age, ability to comprehend, or disability.
2. "Administrator" means the individual person who is in general administrative charge of the facility.
3. "Autism" has the same meaning as in North Dakota Century Code chapter 23-09.4.
4. "Children with autism" means individuals up to the age of twenty-two who have a medical diagnosis of autism or autistic-like characteristics.
5. "Direct supervision" means the provision of guidance by a superior who is on the premises, for the accomplishment of an assigned task.
6. "Mental health professional" means:
  - a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
  - b. A social worker with a master's degree in social work from an accredited program.
  - c. A registered nurse with a master's degree in psychiatric nursing from an accredited program.
  - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as identified in subsection 3.
7. "Neglect" includes failure to carry out resident services as directed or ordered by the physician or other authorized personnel in the facility, failure to give proper attention to facility residents, or failure to carry out services for residents of the facility as through careless oversight.

8. "Resident" means an individual up to the age of twenty-two who lives and receives services in a residential care facility for children with autism.

**History:** Effective February 1, 1992.

**General Authority:** NDCC 23-09.4-02, 23-09.4-07

**Law Implemented:** NDCC 23-09.4-01, 23-09.4-02

### **33-03-29-02. General licensing provision.**

1. No person or entity may establish, maintain, or operate a residential care facility for children with autism without first having obtained a license from the department. Any person or entity who owns or leases a residential care facility for children with autism and desires to maintain or operate it shall apply to the department for a license on the form prescribed and shall obtain a license before accepting children for care or treatment.
2. Each residential care facility for children with autism applying for licensure must be designated by a distinctive name consistent with the services offered to avoid public confusion or misrepresentation. The name may not be changed without department approval.
3. Upon receipt of a completed license application, the department shall review the residential care facility for children with autism, including architectural plans submitted by the facility, to determine compliance with this chapter, including onsite inspections, as appropriate.
4. Once received, the license must be displayed in a conspicuous place. Each license is valid only in the hands of the person or entity to whom it is issued and is not subject to sale, assignment, or other transfer, voluntary or involuntary.
5. The department may require submission of periodic reports including, but not limited to, staffing reports, census data, statistical information, and such business records as the department may reasonably require for the performance of its licensure functions.
6. The department and any duly authorized representative thereof has the right to enter upon and into the premises of any residential care facility for children with autism or facility providing services consistent with this chapter or the North Dakota statutory definition for residential care facility for children with autism.
7. An initial or renewal license is valid for one year from the date of issuance.
8. If a facility holds a current license from the department or another appropriate state agency and appropriately responds to the population served, then additional licensure under this chapter is not required.

**History:** Effective February 1, 1992.

**General Authority:** NDCC 23-09.4-02, 23-09.4-07

**Law Implemented:** NDCC 23-09.4-02, 23-09.4-03

### **33-03-29-03. Unrestricted license.**

An unrestricted license is valid for a period not to exceed one year from the date of issuance and must state the maximum number of persons who may reside in the residential care facility for children with autism.

**History:** Effective February 1, 1992.

**General Authority:** NDCC 23-09.4-02, 23-09.4-07

**Law Implemented:** NDCC 23-09.4-02, 23-09.4-03

### **33-03-29-04. Provisional license.**

1. A provisional license may be issued to a residential care facility for children with autism which does not comply with this chapter if practices in the facility do not pose a danger to the health or safety of the residents as determined by the department.
2. A provisional license must be prominently stamped and state that the residential care facility for children with autism has failed to comply with applicable rules of the department and must be accompanied by a written statement of the specific rule or statute violated and the factual basis of the violation. The provisional license must expire at a set date, not to exceed ninety days from the date of issuance.
3. A provisional license will be revoked by the department on the ninetieth day from the date of issuance, or sooner if applicable, if compliance is not achieved or a department-approved, acceptable plan of correction is not received. If compliance is achieved, the provisional license will be exchanged for an unrestricted license which will bear the same date as the date on which the facility was found by the department to be in compliance with the licensure rules.

**History:** Effective February 1, 1992.

**General Authority:** NDCC 23-09.4-02, 23-09.4-07

**Law Implemented:** NDCC 23-09.4-02, 23-09.4-03

### **33-03-29-05. Denial or revocation of license.**

1. Application for renewal of a license for a residential care facility for children with autism must be denied and the license will be terminated or allowed to expire when the department finds that a condition, occurrence, or situation in the facility is a threat to the health or safety of the residents.
2. When the department decides that an application for renewal is to be denied, or that a license is to be revoked, the department shall notify the residential care facility for children with autism. The notice to the facility must include:
  - a. A clear and concise statement of the denial or revocation. The statement must include a citation to the provisions of this chapter on which the application for renewal is being denied, or the process for licensure revocation is being implemented.
  - b. A statement of the date on which the current license of the residential care facility for children with autism will expire must be included.
  - c. A description of the right of the applicant to appeal the denial or revocation of the application for the renewal of the license and the right to a hearing must be mailed to the licensee.
3. The current license of the residential care facility for children with autism may be extended by the department when it finds that such extension is necessary to assist relocation of residents.

**History:** Effective February 1, 1992.

**General Authority:** NDCC 23-09.4-02, 23-09.4-07

**Law Implemented:** NDCC 23-09.4-03, 23-09.4-08

### **33-03-29-06. Denial of initial license.**

1. A suitability review by the department must be completed prior to approval of a licensure application.

2. A determination by the department through a suitability review to deny the issuance of a license must be based on a finding that one or more of the following criteria are met:
  - a. The applicant, any member of the firm, partnership, or association which is the applicant, any officer or stockholder of the corporation which is the applicant, or the person designated to manage or supervise the residential care facility for children with autism has been convicted of, or had probation for, a crime within the past five years that would impact the suitability of the applicant specific to operation of the facility. Probation or a conviction must be verified by a certified copy of the court record.
  - b. The applicant has had a prior license revocation in the past five years and both of the following conditions are met:
    - (1) The residential care facility for children with autism in question was owned or operated by the applicant, by a controlling owner of the applicant, by a combination of owners of the applicant, or by an affiliate who is a controlling owner of the applicant. Operated for purposes of this section means exercising overall management, direction, or supervision of the residential care facility for children with autism; and
    - (2) The basis of the prior revocation renders the applicant unqualified or incapable of operating a residential care facility for children with autism in accordance with the standards set forth in this chapter. This determination will be based on the applicant's qualifications and ability to meet the criteria outlined in this section as evidenced by the application and the applicant's prior history.

**History:** Effective February 1, 1992.

**General Authority:** NDCC 23-09.4-02, 23-09.4-07

**Law Implemented:** NDCC 23-09.4-02

### **33-03-29-07. Criteria for adverse licensure actions.**

1. Adverse licensure actions include determinations to deny the issuance of an initial license, or to deny the issuance of a renewal of a license of a residential care facility for children with autism.
2. A determination by the department to take adverse licensure action against a residential care facility for children with autism may be based on a finding that one or more of the following criteria are met:
  - a. The residential care facility for children with autism has failed to meet the standards specified in this chapter.
  - b. The existing residential care facility for children with autism is operating, or the applicant intends to operate, with personnel which are insufficient in number or unqualified by training or experience to properly care for the number and type of residents in the facility.
  - c. The residential care facility for children with autism is not under direct supervision of an administrator or an individual assigned to carry out the administrative responsibilities.
  - d. The residential care facility for children with autism has committed either of the following actions:
    - (1) The residential care facility for children with autism has inappropriately converted for its own use the property of a resident.

- (2) The residential care facility for children with autism has secured property, or a bequest of property, from a resident or family by undue influence.
- e. The residential care facility for children with autism submitted false information either on the licensure or renewal application forms or during the course of an inspection or survey of the residential care facility for children with autism.
- f. The residential care facility for children with autism has refused to allow an inspection or survey of the facility by agents of the department.
- g. The facility employs personnel, has practices or procedures, or construction hazards which would be detrimental to the health, safety, or well-being of residents.
3. The department shall consider all available evidence at the time of the determination, including the history of the residential care facility for children with autism and the applicant in complying with this chapter, notices of violations which have been issued to the residential care facility for children with autism and the applicant, findings of surveys and inspections, and evidence provided by the residential care facility for children with autism, residents, law enforcement officials, and other interested individuals.

**History:** Effective February 1, 1992.

**General Authority:** NDCC 23-09.4-02, 23-09.4-07

**Law Implemented:** NDCC 23-09.4-02, 28-32-05.1

### **33-03-29-08. Restriction or limitation of admissions.**

1. The department reserves the right to restrict or limit admissions to a residential care facility for children with autism under the following conditions:
  - a. One or more complaints of resident abuse in the residential care facility for children with autism have been reported, investigated, and substantiated by the department. The restriction will be in effect for six months or until the conditions leading to the abuse have been corrected as substantiated by the department.
  - b. The department has surveyed the facility and found rules related to health or safety are not being met or the facility is in the process of correction and placing additional residents in the facility would adversely affect the health or safety of a resident. The restriction will be in effect for six months or until the facility demonstrates to the department's satisfaction that the corrections have been made and the facility is in compliance with the licensure rules.
2. The department shall notify the facility in writing when a decision is made to restrict or limit admissions. The restriction or limitation takes effect ninety days from the date on which the onsite survey or complaint investigation visit was completed.
  - a. The notice must include the basis of the department's decision and must advise the facility of the right to request review through an onsite revisit by the department. The request must be made in writing within forty-five days of the survey or complaint investigation completion date.
  - b. If a request for review is made, the department will review all material relating to the allegation and to the limitation and restriction on admissions. The department shall determine, based on review of the material and an onsite revisit, if requested, whether or not to sustain the decision to limit or restrict placement of residents and shall notify the facility in writing of the decision within ten days of the completion of the onsite revisit.

- c. If the department determined not to sustain the decision, the limitation or restriction may not be implemented. The restriction or limitation on admissions, if the department sustains the decision, will remain in effect until the department determines that the conditions leading to the restriction or limitation have been corrected.
- d. When the department sustains the decision, a public notice must be published by the department in the local newspaper fifteen days prior to the imposition of the restriction or limitation stating the name of the facility, the restriction or limitation to be imposed, the date on which the limitation or restriction will be effective, and the length of time for which it will be imposed. Upon rescinding a restriction, the department will publish a notice in the local newspaper stating the date upon which the restriction was rescinded.
  - (1) The department of human services, developmental disabilities division, as well as the department of public instruction, special education division, must be notified in writing by the department regarding the restriction or limitation of admissions.
  - (2) Information regarding residential care facilities for children with autism is public information and is available upon request through this department.
- e. A department decision may be appealed to the district court under North Dakota Century Code chapter 28-32.

**History:** Effective February 1, 1992.

**General Authority:** NDCC 23-09.4-02, 23-09.4-07

**Law Implemented:** NDCC 23-09.4-02, 23-09.4-03, 28-32-05.1

### **33-03-29-09. Enforcement - Penalties.**

The purpose of enforcement actions is to protect residents. Enforcement actions by the department against a residential care facility for children with autism may include monetary penalties against a residential care facility for children with autism for failure to correct a violation or failure to comply with a department-approved plan of correction for such violation as follows:

- 1. Not less than five dollars per resident per day for each day the violation remains uncorrected if the area of noncompliance relates primarily to administrative tasks within the facility.
- 2. Not less than eight dollars per resident per day for each day the violation remains uncorrected if the noncompliance relates primarily to provisions dealing with the rights of residents as described in North Dakota Century Code chapter 50-10.2.
- 3. Not less than ten dollars per resident per day for each day the violation remains uncorrected for noncompliance relating primarily to provisions adopted to protect the health or safety of residents.
- 4. For purposes of department-imposed penalties under this section, a noncompliance issue or violation must be deemed to have first occurred as of the date of the department determination of noncompliance or the date of the onsite investigation completion, whichever is later.

**History:** Effective February 1, 1992.

**General Authority:** NDCC 23-09.4-02, 23-09.4-07

**Law Implemented:** NDCC 23-09.4-06, 23-09.4-08

### **33-03-29-10. Accreditation.**

- 1. The residential care facility for children with autism shall provide services to assist children with a medical diagnosis of autism or autistic-like characteristics gain or regain their highest

practicable level of mental, physical, and emotional functioning including the capacity to function adaptively in their environment, to care for themselves, and be accepted by society. In achieving this goal, residential care facilities for children with autism shall attain and maintain accreditation by the commission on accreditation of rehabilitation facilities standards for organizations serving people with disabilities in the categories of integrated living programs and infant and early childhood developmental programs or accreditation by the accreditation council on services for people with developmental disabilities.

2. The residential care facility for children with autism shall provide, through an interdisciplinary assessment and approach, at a minimum, services including:
  - a. Twenty-four-hour assistance with activities of daily living in a homelike environment which includes dietary, laundry, housekeeping, and janitorial services.
  - b. Provision of or arrangement for diagnostic and treatment services specific to the individual needs of children with autism including, but not limited to, medical, dental, nursing or physician services, audiology and speech services, physical and occupational therapy and orthotics services, and psychiatric services.
  - c. Behavioral management services provided by or under the direction of a qualified mental health professional.
  - d. Educational and special education services provided by certified personnel in accordance with North Dakota Century Code chapters 15-47 and 15-59.
3. As a result of interdisciplinary assessments, an individualized program plan for the resident must be established which describes specific needs, services, and time frames for implementation and evaluation.
4. The residential care facility for children with autism shall comply with all applicable federal, state, and local laws, rules, regulations, and requirements.

**History:** Effective February 1, 1992.

**General Authority:** NDCC 23-09.4-02, 23-09.4-07

**Law Implemented:** NDCC 23-09.4-02, 23-09.4-04, 23-09.4-05

### **33-03-29-11. Submission and availability of accreditation documents.**

1. The residential care facility for children with autism, upon receipt, shall submit all accreditation survey results, recommendations, and plans of correction to the department.
2. The department may, based on the accreditation survey results, require changes or additions, or both, to recommendations or plans of corrections, or both, in instances where endangerment to the health, well-being, or safety of residents is involved.
3. In addition to department involvement with plans of correction, the department may impose enforcement sanctions including restriction or limitation of admissions, or monetary penalties.
4. Onsite review must be conducted by the department to assess compliance with licensure requirements not included in the accreditation process.

**History:** Effective February 1, 1992.

**General Authority:** NDCC 23-09.4-02, 23-09.4-07

**Law Implemented:** NDCC 23-09.4-02

### **33-03-29-12. Provision for becoming accredited.**

1. Residential care facilities for children with autism not having attained accreditation by the commission on accreditation of rehabilitation facilities in the categories of integrated living facility and infant and early childhood development programs or the accreditation council on services for people with developmental disabilities shall attain accreditation within twelve months of February 1, 1992.
2. Residential care facilities for children with autism requesting licensure after January 1, 1992, will be required to be accredited prior to licensure as a facility for children with autism.

**History:** Effective February 1, 1992.

**General Authority:** NDCC 23-09.4-02, 23-09.4-07

**Law Implemented:** NDCC 23-09.4-02

### **33-03-29-13. Complaints.**

1. No residential care facilities for children with autism or persons therein may violate resident rights as defined in North Dakota Century Code chapter 50-10.2.
2. Any person may register a complaint with the department alleging violation of applicable laws, rules, requirements, or allegations of abuse, neglect, or theft of resident funds by a facility or other persons in the residential care facility for children with autism. Individuals alleging abuse shall report to other entities as required by North Dakota Century Code section 50-25.1-03.
3. If a complaint becomes the subject of a formal administrative or judicial proceeding, nothing in this subsection may be construed to prohibit the disclosure of information which would otherwise be disclosed in a judicial or administrative proceeding.
4. The department shall have the authority to conduct unannounced inspections of the residential care facility for children with autism involved in a complaint and any other investigations necessary to determine the validity of the complaint.
5. The department or the department's representative shall notify the facility's administrator or person in charge of the facility involved in the complaint of the substance of the complaint for the first time at the time of the investigation.
6. No later than ten days after the completion of the investigation, the department shall prepare a written report of the results of the investigation and shall notify the complainant and the facility in writing of the results of the investigation.
7. Residential care facilities for children with autism are prohibited from discharging or discriminating in any way against a resident by whom or on whose behalf a complaint has been submitted to the department or who has participated in a complaint investigation process. Facilities are prohibited from discharging or discriminating against any employee who has submitted a complaint or who has assisted the department or any other legal authority in a complaint-related investigation for reason of such submission or assistance. Violation of prohibitions in this item is grounds for suspending or revoking a facility license.

**History:** Effective February 1, 1992.

**General Authority:** NDCC 23-09.4-02, 23-09.4-07

**Law Implemented:** NDCC 23-09.4-02, 23-09.4-06, 28-32-05.1