

HOUSE BILL NO. 1091
with Senate Amendments
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Introduced by

Human Services Committee

(At the request of the Department of Health and Human Services)

1 A BILL for an Act to amend and reenact sections 50-11-00.1, 50-11-01, 50-11-01.5, 50-11-01.6,
2 50-11-02, 50-11-02.1, 50-11-02.2, 50-11-03, 50-11-03.2, 50-11-03.3, 50-11-03.4, 50-11-03.5,
3 50-11-04, 50-11-04.2, 50-11-05, 50-11-06.7, 50-11-07, 50-11-08, and 50-11-09 of the North
4 Dakota Century Code, relating to family foster care for children licenses, certifications, and
5 approvals, and identified and kinship relatives; and to provide for a report to legislative
6 management.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 50-11-00.1 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **50-11-00.1. Definitions.**

11 As used in this chapter:

- 12 1. "Agency foster home for adults" means a residential home in which foster care for
13 adults is regularly provided by professional staff trained to provide services to older
14 adults or adults with a disability, to four or fewer adults who are not related by blood or
15 marriage to the owner or lessee, for hire or compensation.
- 16 2. "Approval" means the approval of tribal foster care facilities by the department, upon
17 submission of tribal licensing standards or in the absence of tribal licensing standards
18 compliance with state standards, of a facility located on or near, as identified by the
19 tribe, a recognized Indian reservation in North Dakota, not subject to the jurisdiction of
20 the state of North Dakota for licensing purposes, to allow the facility to receive title
21 IV-E funding.
- 22 3. "Authorized agent" means the human service zone, unless another entity is
23 designated by the department.

- 1 4. "Certified family foster home for children" means an occupied private residence in
2 which foster care for children is regularly provided by the owner or lessee of the
3 residence to no more than three children, unless the department approves otherwise.
- 4 5. "Department" means the department of health and human services.
- 5 ~~5-6.~~ "Facility" means a foster home for adults, agency foster home for adults, family foster
6 home for children, certified family foster home for children, supervised independent
7 living program, or qualified residential treatment program for children.
- 8 ~~6-7.~~ "Family foster home for children" means an occupied private residence in which foster
9 care for children is regularly provided by the owner or lessee of the residence to no
10 more than six children, unless the department approves otherwise.
- 11 ~~7-8.~~ "Foster care for adults" means the provision of food, shelter, security and safety,
12 guidance, and comfort on a twenty-four-hour per day basis, in the residential home of
13 a caregiver or agency, to an individual age eighteen or older, who is unable, neglects,
14 or refuses to provide for the individual's own care.
- 15 ~~8-9.~~ "Foster care for children" means the provision of substitute parental child care for
16 those children who are in need of care for which the child's parent, guardian, or
17 custodian is unable, neglects, or refuses to provide, and includes the provision of food,
18 shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one
19 or more children under twenty-one years of age to safeguard the child's growth and
20 development and to minimize and counteract hazards to the child's emotional health
21 inherent in the separation from the child's family. Foster care may be provided in a
22 licensed, certified, or approved family foster home for children, supervised
23 independent living program, or qualified residential treatment program.
- 24 ~~9-10.~~ "Foster home for adults" means an occupied private residence in which foster care for
25 adults is regularly provided by the owner or lessee of the residence, to four or fewer
26 adults who are not related by blood or marriage to the owner or lessee, for hire or
27 compensation.
- 28 ~~10-11.~~ "Identified relative" or "kinship relative" means:
29 a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt,
30 uncle, great-uncle, nephew, niece, or first cousin;

- 1 b. An individual with a relationship to the child, derived through a current or former
2 spouse of the child's parent, similar to a relationship described in subdivision a;
3 c. An individual recognized in the child's community as having a relationship with
4 the child similar to a relationship described in subdivision a; or
5 d. The child's stepparent.

6 ~~41.12.~~ "Qualified residential treatment program" means a licensed or approved residence
7 providing an out-of-home treatment placement for children.

8 ~~42.13.~~ "Supervised independent living program" means a licensed or approved setting
9 providing supervision and service delivery to youth transitioning into adulthood.

10 **SECTION 2. AMENDMENT.** Section 50-11-01 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **50-11-01. Foster care for children - License, certification, or approval required.**

- 13 1. A person may not furnish foster care for children for more than thirty days during a
14 calendar year without first procuring a license, certification, or approval to do so from
15 the department. The mandatory provisions of this section requiring licensure,
16 certification, or approval do not apply when the care is provided in:
17 a. The home of an identified relative.
18 b. The home of a kinship relative.
19 c. A home or institution under the management and control of the state or a political
20 subdivision.
21 e.d. A home or facility furnishing room and board primarily to accommodate the child's
22 educational or career and technical education needs.
23 2. An individual providing care under subdivision a of subsection 1 shall submit to a
24 criminal history record investigation as required under section 50-11-06.8.
25 3. The family foster care for children license, certification, or approval is nontransferable
26 and valid only for the applicants residing at a physical location noted at the time of
27 issuance, unless otherwise approved by the department. Only one family foster home
28 for children license, certification, or approval is permitted for each physical location.

29 **SECTION 3. AMENDMENT.** Section 50-11-01.5 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **50-11-01.5. Fire prevention training.**

2 Before initial licensure, or certification and each renewal under this chapter, each foster-
3 ~~parent~~family foster home for children shall complete a course of instruction related to fire
4 prevention and safety. The state fire marshal shall design the course in cooperation with the
5 department of health and human services. The course must be available ~~on videotape or any~~
6 ~~equivalent medium to the public~~ as designed by the department. The department of health and
7 human services shall offer the course throughout the state.

8 **SECTION 4. AMENDMENT.** Section 50-11-01.6 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **50-11-01.6. Self-declaration form.**

11 The department of health and human services shall prescribe self-declaration forms to be
12 completed and signed by each foster ~~parent~~family foster home for children provider before initial
13 licensure or certification and each renewal under this chapter. The self-declaration forms must
14 include references to smoke detectors, fire extinguishers, fire escape plans, and inspections of
15 appliances, electrical systems, and heating systems.

16 **SECTION 5. AMENDMENT.** Section 50-11-02 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **50-11-02. License or certification granted - Term - Conditions.**

- 19 1. The department shall grant a license or certification for the operation of a facility
20 receiving persons for foster care, for a period of not more than two years, to reputable
21 and responsible persons upon showing that:
- 22 a. The premises to be used are in fit sanitary condition and properly equipped to
23 provide good care for all persons who may be received;
 - 24 b. The persons in active charge of the facility are properly qualified to carry on
25 efficiently the duties required of them;
 - 26 c. The facility is likely to be conducted for the public good in accordance with sound
27 social policy and with due regard to the health, morality, and well-being of all
28 persons cared for in the facility;
 - 29 d. The facility will be maintained according to the standards prescribed for its
30 conduct by the rules of the department;

- 1 e. The applicant has not had a previous facility license, certification, or approval
2 denied within two years of the date of the current application, unless waived by
3 the department after the department considers the health and safety of children
4 and the licensing, certification, or approval history of the applicant; and
- 5 f. The applicant has not had a previous facility license, certification, or approval
6 revoked within five years of the date of the current application, unless waived by
7 the department after the department considers the health and safety of children
8 and the licensing, certification, or approval history of the applicant.
- 9 2. Before licensing, certifying, or approving a facility providing foster care for children or
10 adults, the department shall seek a criminal history record when required by this
11 chapter. The department shall consider any criminal history record information
12 available at the time a licensing license, certification, or approval decision is made.
- 13 3. The department shall determine, in accordance with rules of the department, whether
14 a license, certification, or approval may be issued to a facility that houses or employs
15 any individual who has a criminal record.

16 **SECTION 6. AMENDMENT.** Section 50-11-02.1 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **50-11-02.1. Conviction not bar to licensure - Exceptions.**

19 Conviction of an offense does not disqualify a person from licensure, certification, or
20 approval under this chapter unless the department determines that the offense has a direct
21 bearing upon that person's ability to serve the public as the operator of a facility or that,
22 following conviction of any offense, the person is not sufficiently rehabilitated under section
23 12.1-33-02.1.

24 **SECTION 7. AMENDMENT.** Section 50-11-02.2 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **50-11-02.2. Provisional license, certification, or approval.**

27 At the discretion of the department, a provisional license, certification, or approval may be
28 issued to an applicant who, or whose facility, fails to conform in all respects to this chapter and
29 the rules of the department. The department may set conditions under which a provisional
30 license, certification, or approval may be issued, and may issue such a license, certification, or
31 approval for any period of time, not to exceed two years, as the department may deem

1 reasonable or appropriate to the circumstances of the case. The department may not be
2 compelled to issue a provisional license, certification, or approval.

3 **SECTION 8. AMENDMENT.** Section 50-11-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **50-11-03. Department to make rules - Records kept by facility.**

6 A record of all children and adults cared for in any facility licensed, certified, or approved
7 under this chapter must be maintained ~~at the facility~~ in the manner and form prescribed by the
8 department. The department shall establish reasonable minimum standards, and shall make
9 such reasonable rules for the conduct of such place as are necessary to carry out the purposes
10 of this chapter.

11 **SECTION 9. AMENDMENT.** Section 50-11-03.2 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **50-11-03.2. Use of public funds.**

14 1. Public funds for the purchase of foster care for children or adults may be used only in
15 facilities licensed, certified, or approved by the department. No person acting on behalf
16 of any state, county, or local governmental entity may arrange for or promote care
17 provided in a facility that does not have a license, certification, or approval issued by
18 the department. This section does not apply to any home or institution under the
19 management and control of the state.

20 2. Nonfederal funds may be used to reimburse the costs of shelter care placements for
21 no more than seven days if the shelter care services are certified by the department. If
22 the entity has diligently pursued other placement, the department may grant an
23 extension for the health and safety of the child or due to unforeseeable circumstances.

24 3. Nonfederal funds may be used for maintenance payments to unlicensed identified
25 relatives or unlicensed kinship relatives for no more than six months.

26 **SECTION 10. AMENDMENT.** Section 50-11-03.3 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **50-11-03.3. Department to provide liability coverage to foster homes for children.**

29 1. The department shall provide liability coverage for acts or omissions of foster children
30 placed in the care of ~~foster families~~ licensed, certified, or approved family foster homes
31 for children. The department may provide this liability coverage through self-insurance.

- 1 2. The liability coverage under this section:
- 2 a. Must provide coverage for damage to property which is caused by the act of a
- 3 foster child. This coverage must be for the lesser of the reasonable cost to repair
- 4 or to replace the damaged property.
- 5 b. Is secondary to any other coverage.
- 6 c. Except as provided in subdivision d, may not exceed five thousand dollars per
- 7 claim, with an annual maximum of ten thousand dollars per year per claimant.
- 8 The coverage under this subsection must include a deductible not to exceed one
- 9 hundred dollars per claim.
- 10 d. In cases in which the property damage per event total exceeds twenty-five
- 11 thousand dollars, the department may further review the claim. The department
- 12 may cover twenty-five percent of the remaining property damage after any
- 13 insurance reimbursement, not to exceed ten thousand dollars.
- 14 3. The department may provide for exclusions from liability coverage provided under this
- 15 section.

16 **SECTION 11. AMENDMENT.** Section 50-11-03.4 of the North Dakota Century Code is

17 amended and reenacted as follows:

18 **50-11-03.4. Immunity for a person providing foster care.**

19 A person providing foster care for children in a licensed, certified, or approved facility is

20 immune from civil liability for any act or omission resulting in damage or injury to or by a child in

21 foster care if, at the time of the act or omission, the person providing foster care for children

22 applied the reasonable and prudent parent standard in a manner that protects child safety, while

23 also allowing the child in foster care to experience age or developmentally appropriate activities.

24 **SECTION 12. AMENDMENT.** Section 50-11-03.5 of the North Dakota Century Code is

25 amended and reenacted as follows:

26 **50-11-03.5. Automated clearinghouse payments.**

27 The department shall provide payment to family foster home for children, supervised

28 independent living program, certified family foster home for children, and qualified residential

29 treatment program for children providers using an automated clearinghouse to provide for

30 electronic fund transfers. To receive payment, family foster home for children, supervised

31 independent living program, certified family foster home for children, and qualified residential

1 treatment program for children providers and applicants shall provide sufficient documentation
2 to enable the department to provide electronic funds transfers through an automated
3 clearinghouse. No other forms of payment are permitted, unless approved by the department.

4 **SECTION 13. AMENDMENT.** Section 50-11-04 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **50-11-04. Inspection by the department - Inspection and report by the department or**
7 **its authorized agent.**

8 The department and its authorized agents at any time may inspect any facility licensed,
9 certified, or approved under the provisions of this chapter or with respect to which a license,
10 certification, or approval application has been made, except for approved family foster homes
11 for children. The department and its authorized agents shall have full and free access to every
12 part of the facility. The department may require, on a case-by-case basis, prior to or after
13 licensure, certification, or approval, that a facility undergo a fire inspection, inspection of the
14 heating system or the electrical system, or any other type of inspection that the department
15 deems necessary to carry out the purposes of this chapter. All records of the facility must be
16 open for the inspection of the department or its authorized agents and they may see and
17 interview all children and adults cared for therein. Upon the request of the department, the
18 department or its authorized agent shall inspect any facility for which a license, certification, or
19 approval is applied or issued, with the exception of approved family foster homes for children,
20 and shall report the results of the inspection to the department.

21 **SECTION 14. AMENDMENT.** Section 50-11-04.2 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **50-11-04.2. Correction order - Contents.**

24 Whenever the department determines that the facility is not in compliance with this chapter,
25 or the rules adopted thereunder, a notice of license, certification, or approval denial or
26 revocation or a correction order must be issued to the facility, except for approved family foster
27 home for children. A correction order must cite the statute or rule violated, state the factual basis
28 of the violation, specify the time allowed for correction, and specify the amount of any fiscal
29 sanction to be assessed if the correction order is not complied with in a timely fashion. A
30 correction order may also state a suggested method of correction or require the submission of a
31 corrective action plan by the facility. If a correction order requires the submission of a corrective

1 action plan, it must also specify a date by which the corrective action plan must be submitted.
2 The department shall, by rule, establish a schedule of allowable times for correction of
3 deficiencies.

4 **SECTION 15. AMENDMENT.** Section 50-11-05 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **50-11-05. Contents of records not disclosed - Exception.**

7 The records of facilities licensed, certified, or approved under this chapter and the records
8 of the department and its authorized agents, pertaining to the children or adults receiving care,
9 are confidential but may be disclosed:

- 10 1. In a judicial proceeding;
- 11 2. To officers of the law or other legally constituted boards or agencies; or
- 12 3. To persons who have a definite interest in the well-being of the adults or children
13 concerned, who are in a position to serve their interests, and who need to know the
14 contents of the records in order to assure their well-being and interests.

15 **SECTION 16. AMENDMENT.** Section 50-11-06.7 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **50-11-06.7. License, approval, certification approval or denial - Time requirements.**

18 Except as otherwise provided in this section, an application to the department for a license,
19 certification, or approval required by this chapter to provide foster care to adults or children
20 must be approved or denied within sixty days of its receipt by the department. The department
21 has an additional forty-five days to grant or deny a license, certification, or approval required by
22 this chapter if the department notifies the applicant that the additional time is necessary.

23 **SECTION 17. AMENDMENT.** Section 50-11-07 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **50-11-07. Denial or revocation of license or certification.**

26 The department may deny or revoke the license or certification of any facility upon proper
27 showing of any of the following:

- 28 1. Any of the conditions set forth in section 50-11-02 as prerequisites for the issuance of
29 the license or certification do not exist.
- 30 2. The application contains false or misleading material information or the applicant
31 intentionally withheld material information.

1 3. The license or certification was issued upon false, misleading, or intentionally withheld
2 material information.

3 4. An operator, licensee, certification holder, caregiver, employee, or an agent of the
4 facility has violated a provision of this chapter or any of the rules of the department.

5 5. An applicant, licensee, or certification holder providing family foster care for children
6 has been involved in a court action in which a child in their household is currently
7 removed from the home due to contrary to the welfare findings.

8 6. An operator, applicant, licensee, certification holder, caregiver, employee, or agent of
9 the facility has been convicted of an offense determined by the department to have a
10 direct bearing upon the person's ability to serve the public or residents of the facility, or
11 the department determines, following conviction of any other offense, the person is not
12 sufficiently rehabilitated under section 12.1-33-02.1.

13 **SECTION 18. AMENDMENT.** Section 50-11-08 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **50-11-08. Denial or revocation of license or certification - Hearing - Appeals.**

16 Before any application for a license or certification under the provisions of this chapter is
17 denied or before revocation of any such license or certification takes place, written charges as
18 to the specific reasons therefor, a copy of the statutes and department rules authorizing such
19 action, and notice of the applicant's or licensee's, or certification holder's right to a hearing on
20 the matter before the department must be served upon the applicant or licensee, or certification
21 holder. The applicant or licensee, or certification holder must also be notified in writing of the
22 person's right to be represented at such hearing by counsel, to examine all files and documents
23 in the custody of the department regarding the applicant or licensee, or certification holder, to
24 present witnesses at the hearing on behalf of the applicant or licensee, or certification holder
25 and to present documentary evidence, to present testimony and cross-examine adverse
26 witnesses, and the right to an impartial hearing officer. The applicant or licensee, or certification
27 holder has the right to a hearing before the department if the hearing is requested within twenty
28 days after service of the written charges. The department shall hold the hearing within sixty
29 days after the hearing request unless the applicant or licensee, or certification holder agrees to
30 a later date. At any such hearing, the evidence submitted by the department in support of its
31 denial or revocation of the applicant's or licensee's license, or certification holder's certificate

1 must be limited to supporting only those reasons which were given by the department in its
2 original notice of denial or revocation to the applicant or licensee, or certification holder. An
3 applicant or licensee, or certification holder may appeal under the provisions of chapter 28-32
4 any final decision of the department regarding the application for or issuance of a license or
5 certification required by this chapter.

6 **SECTION 19. AMENDMENT.** Section 50-11-09 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **50-11-09. Appeal from decision of department denying or revoking license or**
9 **certification.**

10 The applicant for a license or certification to operate a facility or a person whose license or
11 certification for a facility has been revoked may appeal the denial or revocation to the district
12 court. An appeal must be taken in the manner provided in chapter 28-32.

13 **SECTION 20. REPORT TO LEGISLATIVE MANAGEMENT - REINSTATEMENT OF**

14 **PARENTAL RIGHTS.** During the 2023-24 interim, the department of health and human
15 services, with assistance from other stakeholders, including the North Dakota supreme court,
16 human service zone directors, and the North Dakota association of counties, shall review the
17 option of reinstating parental rights that have been terminated by a court. Before August 1,
18 2024, the department shall report on the progress of the study to the legislative management.