

**CHAPTER 75-03-14
FAMILY FOSTER HOME FOR CHILDREN**

Section	
75-03-14-01	Definitions
75-03-14-02	License
75-03-14-03	Minimum Physical Standards for the Family Foster Home for Children
75-03-14-04	Qualifications of Persons Residing in the Family Foster Home for Children
75-03-14-04.1	Criminal Conviction - Effect on Licensure
75-03-14-05	Operation of the Family Foster Home for Children
75-03-14-06	Permanency Planning-Child and Family Team Meeting
75-03-14-07	Background Checks Required
75-03-14-08	Fingerprints Excused
75-03-14-09	Relative Licensing Waiver

Section 1. Section 75-03-14-01 is amended as follows:

75-03-14-01. Definitions.

Those definitions set forth in North Dakota Century Code section 50-11-00.1 are applicable to this chapter. Additionally, in this chapter, unless the context or subject matter requires otherwise:

1. ~~"Adult" means a person twenty one years of age or older.~~
2. ~~_____~~ "Background check" means a child protection services fingerprint based criminal history record investigation inclusive of a child abuse and neglect index check in each state or tribal jurisdiction that the individual has resided in the previous five years ~~and a criminal history record investigation.~~
3. ~~2.~~ "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child participating in extracurricular, enrichment, cultural, and social activities.
4. ~~3.~~ "Regional center" means the regional human service center.
5. ~~4.~~ "Supervising agency" means the agency or person having care, custody, and control of the foster child as ordered by a court of competent jurisdiction or the designee of that agency or person.

History: Effective December 1, 1984; amended effective January 1, 2014; April 1, 2016; October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-00.1, 50-11-06.8

Section 2. Section 75-03-14-02 is amended as follows:

75-03-14-02. License.

1. Application for a family foster home for children license must be made as prescribed by the department.
2. The family foster home for children licensing process requires completion and documentation of the following items, which must be received by the department for the application to be considered complete:
 - a. Application form;
 - b. Compliance with fire and safety requirements;
 - c. Reference letters;
 - d. Medical history self-declaration;
 - e. Background check;
 - f. Home visits; and
 - g. Home study assessment, including interviews with each member of the household as determined age appropriate.
3. The license is issued to the applicant for a specific number of children, a specified age group of the children, and the sex of the child or children. The duration of the license is not to exceed one year.
4. The department may issue a license with stated limitations, restrictions, and conditions.
5. The license is not transferable and is valid only for the physical location of the family foster home for children at the time the license is issued, or at another location for a period not to exceed sixty days as approved by the department, provided that the authorized agent performs an onsite visit within seven days of the move, and thereafter approves the temporary location.
6. After reviewing an individual's application for licensure, the department may deny a license:
 - a. If the application contains fraudulent information, an untrue representation, or is incomplete;

- b. If the family foster home for children is in an unsanitary condition;
 - c. If the family foster home for children is not properly equipped to provide for the health and safety of the children served; or
 - d. If the applicant is not in compliance with the regulations prescribed by the department for the operation of a family foster home for children.
7. ~~If the home of a Native American family~~ facility located on or near, as defined by the tribe, a recognized Indian reservation in this state is identified as a family foster home for children, and is not subject to the jurisdiction of the state of North Dakota for family foster home for children licensing purposes, the department shall accept an affidavit from an agent of the tribal child welfare agency or an appropriate tribal officer in lieu of completing the licensing procedure. The department shall issue an approval of the foster home for children if the affidavit represents the following:
- a. ~~An investigation~~ A home study of the family foster home for children was completed by the tribe's child welfare agency or tribal council; and
 - b. The prospective family foster home for children is in compliance with the standards adopted by the tribe for family licensing; or
 - c. The prospective family foster home for children is in compliance with the standards required by North Dakota Century Code section 50-11-02.

History: Effective December 1, 1984; amended effective April 1, 2004; January 1, 2014; October 1, 2019.

General Authority: NDCC 50-11-03

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

Section 3. Section 75-03-14-03 is amended as follows:

75-03-14-03. Minimum physical standards for the family foster home for children.

- 1. The family foster home for children must be a dwelling, mobile home, housing unit, or apartment occupied by an individual or a single family.
- 2. The family foster home for children must have an operational telecommunications device, and residents of the home must have

~~available~~access to it ~~some means~~ to make immediate contact with authorities in emergencies.

3. a. The family foster home for children must have adequate sleeping rooms ~~adequate for the foster care family and the foster children to~~ accommodate the size of the household including an individual bed and bedding for each foster child to sleep comfortably.
 - b. All sleeping rooms must ~~be outside rooms and have ample~~ an accessible window space to exit and to allow for proper light and ventilation and appropriate fire alarms or smoke detectors as recommended by local fire department, state fire marshal, or local building codes.
 - c. Basement sleeping rooms must be equipped ~~with the appropriate fire alarms and smoke detectors as recommended by the local fire department or state fire marshal. A basement which will be used for the care of foster children must be equipped with more than one exit. One exit may be an accessible window. Children~~ Foster children in basement sleeping rooms must be able to demonstrate their ability to depart from all exits.
 - d. Co-sleeping or bed sharing with a foster child is prohibited.
4. Exterior doors must be maintained to permit easy exit.
 5. Interior doors must prevent children from being trapped.
 - ~~5-6.~~ Every closet door must be one that can be opened from the inside. Bathroom doors must be installed so the door, when locked, may be opened from the outside in an emergency.
 - ~~6-7.~~ The ~~house~~family foster home for children and premises must be clean, neat, and free from hazards that jeopardize health and safety. The family foster home for children shall engage in proper trash disposal and be free from rodent and insect infestation.
 8. Firearms must be kept in locked storage or trigger locks must be used, and ammunition must be kept separate from firearms. A household member with a concealed weapons permit shall follow the regulations set forth in state law.
 - ~~7-9.~~ The family foster home for children must be equipped with adequate light, heat, ventilation, and plumbing for safe and comfortable occupancy. The family foster home for children shall have a properly operating sink,

refrigerator, stove, and oven in the kitchen and at least one sink, toilet, and bathtub or shower in the bathroom.

10. The housefamily foster home for children and grounds must be in compliance with any applicable state and local zoning requirements.
- ~~8-11.~~ Any source other thanThe water supply must be from an approved municipal water supply must be tested annually for compliance for approved drinking water standards. The sample must be sent to the North Dakota department of health or a United States system where available. Where a municipal system is not available, a water sample must pass the approved drinking water standard bacteriological water analysis testing. The family foster home for children shall obtain results from an environmental protection agency approved laboratory for testing and approval. The results must be submitted to the department through licensing with the department of environmental quality. In addition, the family foster home for children shall ensure the water temperature is monitored for safety.
- ~~9-12~~ The milk supply consumed in the family foster home for children must be obtained from a department-approved source.
- ~~10-13.~~ If required by the department, the family foster home for children must satisfactorily complete a fire inspection by the local fire inspector or, in the absence of a local fire inspector, the state fire marshal. The adult in charge of the family foster home for children shall ensure all deficiencies noted during the inspection are remedied.
- ~~11-14.~~ The family foster home for children must be equipped with the approved Underwriters' Laboratories fire extinguishers, smoke detectors, and smoke alarms as recommended by the local fire inspector or state fire marshal, or building code. The fire extinguishers, smoke detectors, and smoke alarms must be in working condition at all times. In an apartment building, the fire extinguisher, smoke detectors, and smoke alarms must be inside the apartment unit.
15. The family foster home for children shall have reliable, legal, and safe transportation available to transport children in placement.
16. The family foster home for children shall be equipped with a carbon monoxide detector.
17. The family foster home for children shall develop a written emergency preparedness plan, maintain and post a list of emergency contacts, including poison control, and have first aid supplies on hand while a foster child is in placement.

18. The family foster home for children shall properly store medications, alcohol, poisonous materials, cleaning supplies, and other hazardous materials to prevent access to children, as appropriate for age and development of the children in placement.
19. Pets belonging to the foster family must be properly vaccinated as per veterinary guidelines.
20. Swimming pools in the ground or an above ground pool with a depth of four feet or greater must have a barrier on all sides to minimize unsupervised access. The barrier must be equipped with a safety lock. If the pool cannot be drained, the swimming pool must have a working pump and filtering system. The pool area must have a life saving device available in the event of an emergency. This standard does not apply to a small wading pool.
21. Hot tubs on the premises of a foster home for children must have safety code covers that are locked when not in use.

History: Effective December 1, 1984; amended effective July 1, 1993; April 1, 2004; January 1, 2014; April 1, 2016; October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 4. Section 75-03-14-04 is amended as follows:

75-03-14-04. Qualifications of persons residing in the family foster home for children.

1. An applicant for licensure must:
 - (a) Be age twenty-one years or greater;
 - (b) Be financially stable with reasonable income or resources available to the home in order to properly care for children; and
 - (c) Have functional literacy, demonstrating their ability to read licensing policy, handbook, child care plans, and medication labels.
2. A person residing in the family foster home for children, except a foster child or ward of the court, may not have a present condition of substance abuse or emotional instability.
- ~~2-3.~~ No person may smoke or vape in the family foster home for children, in circumstances which present a hazard to the health of the foster child, or in an enclosed area when the foster child is present. All foster parents

must be aware of the potential hazards of smoking in the presence of children, particularly infants and children with respiratory or allergic sensitivity.

- ~~3-4.~~ If a condition of substance abuse or emotional instability occurs in a family foster home for children at a time when a foster child is in placement, every effort should be made to keep the placement intact if the resident of the family foster home for children who is suffering from substance abuse or emotional instability is seeking treatment for the condition. The supervising agency may make no further placements in that family foster home for children until the resident suffering from the condition successfully completes treatment for the condition. A resident of a family foster home for children, who has a past condition of substance abuse or emotional instability, may have had no incidents of substance abuse or emotional instability for a period of at least twelve months prior to an applicant obtaining licensure.
- ~~4-5.~~ A resident of the family foster home for children, except a foster child, may not have been the subject of a child abuse or neglect assessment where a services-required decision was made unless the ~~director or foster care supervisor of the regional center department~~, after making appropriate consultation with persons qualified to evaluate the capabilities of the resident, documenting criteria used in making the decision, and imposing any restrictions deemed necessary, approves the issuance of a license; and
- a. The resident can demonstrate the successful completion of an appropriate therapy; or
 - b. The resident can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.
- ~~5-6.~~ Prior to department approving a license, the applicant shall submit the results of a physical examination dated within twelve months of the date of application. All foster parents, ~~prior to licensing and annually thereafter,~~ shall submit a declaration of good health, including all residents of the family foster home for children, except any foster child, in a manner and form required by the department. ~~The department may require a physical examination or psychological testing of any resident of the family foster home for children as the department determines necessary.~~ The cost of any physical examinations required pursuant to this subsection is the responsibility of the authorized agent. ~~The cost of any psychological testing required pursuant to this subsection is the responsibility of the department.~~

7. The department may require proof of immunizations for all residents living in the family foster home for children, except any foster child. It is recommended all members of the household be up to date on immunizations as recommended by a health care professional, unless the immunization is contrary to the person's health as documented by a licensed health care professional or the person provides written documentation that immunizations are against the person's religious, philosophical, or moral beliefs.
8. The department may require foster parents specializing in the care of medically fragile infants and children to receive specific vaccines if the needs of the child require such precaution, such as the influenza or pertussis.
9. The department may require psychological testing of any resident of the family foster home for children as determined necessary. The cost of any psychological testing required pursuant to this subsection is the responsibility of the department.
- ~~6-10.~~ Physical disabilities or age of foster parents do not affect licensing of the family foster home for children provided that the applicant can show that these factors do not significantly inhibit the ability of the foster parents to efficiently carry on the duties required of them.
- ~~7-11.~~ All foster parents or potential parents must demonstrate a working knowledge and comply with the department's approved family foster home for children preservice training competencies.
- ~~8-12.~~ All foster parents or potential parents must demonstrate a working knowledge of the reasonable and prudent parent standard by allowing foster children the opportunity to participate in developmentally and age appropriate activities. All foster parents must engage in the reasonable and prudent parent standard.
- ~~9-13.~~ Initial and annual fire safety training hours will not be counted toward the minimum number of training hours required for initial or annual licensing. Fire safety training is required annually.

History: Effective December 1, 1984; amended effective April 1, 2004; July 1, 2006; January 1, 2014; April 1, 2016; October 1, 2019.

General Authority: NDCC 50-11-03, 50-11-03.4

Law Implemented: NDCC 50-11-02

Section 5. Subsection 1 of section 75-03-14-04.1 is amended as follows:

1. A family foster home for children applicant, family foster home for children provider, or adult members residing in the family foster home for children

must not be known to have been found guilty of, pled guilty to, or pled no contest to:

- a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or ~~12.1-40, human trafficking~~ 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; Section 1 of 2019 Senate Bill No. 2273, sexual extortion; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; ~~or~~ 12.1-31-07, endangering an eligible adult – penalty; 12.1-31-07.1, exploitation of an eligible adult – penalty; 14-09-22, ~~abuse or neglect of a child~~; or 14-09-22.1, neglect of child;
- b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
- c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.
 - (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without a subsequent charge or conviction, has elapsed.
 - (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

History: Effective April 1, 2004; amended effective January 1, 2014; April 1, 2016; October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 6. Section 75-03-14-05 is amended as follows:

75-03-14-05. Operation of the family foster home for children.

1. The foster parents shall ~~admit~~allow public officials to enter the family foster home for children, ~~public officials, such as fire and building inspectors, for the purpose of determining fire and building~~ as determined necessary by the public official to ensure safety.
2. The foster parents shall ~~admit~~allow entry to the family foster home for children, at any reasonable time, personnel of the supervising agency. For the purposes of this subsection, "any reasonable time" means a time mutually convenient to the foster parents and the supervising agency's personnel or any time the supervising agency determines that a foster child's health, safety, or welfare require the admittance.
3. The foster parents shall cooperate with the supervising agency in that agency's efforts to develop plans for the child, implement those plans, and meet the needs of the child and the child's family. The foster parents shall cooperate with the supervising agency in developing plans for the child to visit with the child's parents or guardian. If the foster parents agree, and it is appropriate, these visits may take place in the family foster home for children. Visits between the foster child and the child's parents or guardian must be arranged within a plan approved by the agency, foster child where appropriate, foster parents, and the foster child's parents or guardian. The foster parents ~~need not admit~~do not have to allow entry to any individual who has been using alcohol, drugs, or any other intoxicating substance, or who attempts a visit in a manner that is not in accordance with the approved visitation plan.
4. The foster parents may not accept other foster children or special education boarding care children, foreign exchange students, or ~~accept~~ children for supplemental parental care into their family foster home for children without the prior approval of the authorized ~~agency~~agent. All changes in the number of persons living in the foster home must be immediately reported to the authorized ~~agency~~agent.
5. When a foster child is placed in substitute care during the absence of the foster parents, prior approval of the substitute care must be given by the supervising agency. Prior approval is not required for short periods of substitute care such as a portion of one day. A foster child may not be removed from this state without the prior approval of the supervising agency.
6. The foster parents must make opportunities available for a foster child to attend religious ceremonies chosen by the foster child, or that child's parents, within the community in which the foster family resides. The

foster parents must respect and not interfere with the religious belief of the foster child and the foster child's family.

7. Discipline must be constructive or educational in nature and may include diversion, separation from problem situation, talk with the foster child about the situation, praise for appropriate behavior, and gentle physical restraint such as holding.
 - a. No foster child may be kicked, bitten, punched, spanked, shaken, pinched, roughly handled, or struck with an inanimate object by foster parents or any other ~~adult~~resident living in the family foster home for children.
 - b. Cruel and unusual punishments are prohibited.
 - c. Authority to discipline may not be delegated to or be accomplished by children.
 - d. Separation, when used as discipline, must be brief and appropriate to the foster child's age and circumstances, and when used to discipline a foster child, must be within hearing of an adult in a safe, lighted, well-ventilated room. A foster child may not be isolated in a locked room or closet.
 - e. A foster child may not be physically disciplined for lapses in toilet training.
 - f. Verbal abuse or derogatory remarks about a foster child, the foster child's family, race, religion, sexual orientation, gender identity, or cultural background may not be used and are not permitted.
 - g. A foster child may not be force fed unless medically prescribed and administered under a physician's care.
 - h. Deprivation of means, including food, clothing, shelter, hygiene, and medical care, may not be used as a form of discipline.
8. All information given to the foster parents by the supervising agency or the foster child's family concerning the foster child must remain confidential and may not be disclosed to any person without prior approval of the supervising agency.
9. All family foster care for children maintenance payments must be used to meet the needs of the foster child.

History: Effective December 1, 1984; amended effective April 1, 2004; January 1, 2014; October 1, 2019.

General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

Section 7. Section 75-03-14-06 is amended as follows:

75-03-14-06. ~~Permanency planning child~~Child and family team meeting.

1. Every ~~county social service board~~foster child shall have a county permanency ~~planning plan reviewed by a~~ child and family team that meets not less than once each quarter in which the county social service board, human service zone, division of juvenile services, or tribe acts as a supervising agency ~~to any~~to the foster child. If the county social service board acts as supervising agency for five or more children in foster care, the county permanency ~~planning child and family team must meet at least once each month.~~ The permanency ~~planning child and family team will be cochaired by the regional supervisor~~department and the ~~county~~supervising agency director or their designee.
2. The supervising agency shall invite the foster child's parents, the foster parents, and the guardian ad litem to participate in the ~~permanency planning child and family team~~ for the foster child unless good cause exists to exclude any person from the planning meeting. The supervising agency shall determine the good cause basis and shall document the basis in the foster child's file.
3. The foster parents shall participate in the ~~permanency planning child and family team~~ meetings for the foster child. The foster parents shall cooperate in carrying out the objectives and goals of the plan for the foster child in their care. Foster parents may be considered, but are not guaranteed, to be a permanency option for the child. Foster parents shall sign an acknowledgment that federal law establishes a permanency preference for a relative of the foster child.
4. The foster parents, when requested by the supervising agency or the juvenile court, shall provide ~~requested~~ information concerning the foster child and the child's family.
5. The foster parents and the supervising agency, working in cooperation, must attempt to maintain and improve the relationships between the foster child and the child's family whenever appropriate and possible. The foster parents may not attempt to diminish the relationship between the foster child and the child's parents or between supervising agency ~~staff~~ and the foster child.

History: Effective December 1, 1984; amended effective April 1, 2004; July 1, 2006; January 1, 2014; October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 8. Section 75-03-14-07 is amended as follows:

75-03-14-07. Background checks required.

Background checks are required for all adults ~~living~~residing in the family foster home for children:

1. Prior to initial licensure or approval to provide a family foster home for children~~licensure or approval~~;
2. If there is a lapse of license or approved status of the family foster home for children; or
3. In the case of a foster parent grandfathered in as of August 1, 1999, or after the initial background check was completed, whenever a licensed or approved foster care parent or other adult living in the family foster home for children is known to have been involved in, charged with, or convicted of an offense.
4. Annually, a child abuse and neglect index check must be completed as part of the licensing renewal process.

History: Effective April 1, 2004; amended effective January 1, 2014; October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-06.8

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

Section

75-03-15-01	Definitions
75-03-15-02	Financial Reporting Requirements
75-03-15-03	Child 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 Costs
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 9. 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 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 qualified residential child care facility or group home treatment program.
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 residential care.
9. "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.
11. "Qualified residential treatment program" means a licensed or approved residence providing an out-of-home treatment placement for children.
12. "Rate year" means the twelve-month period beginning the seventh month after the end of a facility's fiscal year.
- ~~12-13.~~ "Reasonable cost" means the cost of providing food, clothing, shelter, daily supervision, school supplies, and personal incidentals for children in placement, employee liability insurance with respect to children in placement, travel of 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.
- ~~13-14.~~ "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.

14-15. "Report year" means the facility's fiscal year.

15-16. "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; October 1, 2019.

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

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

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

75-03-15-03. Child census.

1. A facility shall maintain a daily child census record. The facility shall count any day for which services are provided or payment is ordinarily sought for an available bed, including the day of discharge, as a one day for the child census. The day of admission or death must be counted.
2. A facility shall prepare and maintain child census records on a daily basis to allow for proper audit of the child census data. The daily child census records must include:
 - a. Identification of the child in placement;
 - b. Entries for all days a child is in placement;
 - c. Identification of type of day: general facility programming, shelter care, or ~~out-based program~~respite care; and
 - d. Monthly totals by child in placement and by type of day.

History: Effective November 1, 1985; amended effective March 1, 1999; July 1, 2014; October 1, 2019.

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

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

Section 11. Section 75-03-15-04 is amended as follows:

75-03-15-04. Ratesetting.

1. The department shall base the established rate 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.

The department may not make retroactive settlements for actual costs incurred during the rate year which exceed the final rate unless specifically authorized in this chapter.

2. Desk audit rate.

- a. The department shall establish desk audit rates for maintenance, 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 taking into consideration the prior year's adjustments. 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. 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 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 maintenance will be effective beginning the first day of the month in which notification of the rate is given to the facility.
- c. 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.
- d. 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) The department shall establish rates for a facility which is providing services which are purchased by the department 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 shall submit a budget for the first twelve months of operation. The department shall establish a final rate 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 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 to establish a rate for the remainder of the second rate year. The department shall use appropriate adjustment factors to establish the rate.
 - (2) The facility shall submit a cost report that the department will 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 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 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 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 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 to include projected property costs. The department shall calculate the adjusted rate 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 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 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 employees.
 - (1) The department may provide for an increase in the established rate for additional costs that are necessary to add services or employees to the existing program.
 - (2) The facility shall submit information to the department supporting the request for the increase in the rate. Information must include a detailed listing of new or

additional 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. 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 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 child in placement whose rate is paid in whole or in part by the department, the facility may not solicit or receive payment from the 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 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. A facility may request any adjustments to provide appropriate compensation if major unforeseeable expenses are incurred. A facility shall make any request for rate adjustment to the department, which shall determine if the expense is child-related.
8. Limitations.
 - a. The department may accumulate and analyze statistics on costs incurred by the facilities. The department may use these statistics 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. The

department may establish these limitations and incentives on the basis of the cost of comparable facilities and services and the department may 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 shall maintain an average annual occupancy rate of seventy-five percent. Shelter and respite care beds designated by the facility and approved by the department are exempt from the occupancy rate percentage requirement. The computed 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.~~ The department may waive the minimum bed occupancy allowance for 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 costs must be limited to the percent of total allowable costs exclusive of administrative costs, authorized by the department.

9. Rate adjustments.

- a. The department may apply adjustment factors to adjust historical costs. The department shall annually determine an appropriate adjustment factor to be applied to allowable costs exclusive of property costs.
- b. The department may make rate adjustments to correct departmental errors subsequently identified.

- c. The department shall make an adjustment for those facilities which have terminated participation in the program, disposed of depreciable assets, or changed ownership.

10. The department shall continue to pay the established rate of a facility previously licensed as residential child care facility prior to October 1, 2019, upon the facility's licensure as a qualified residential treatment program. The department may adjust the rate in accordance with this section.

History: Effective November 1, 1985; amended effective July 1, 1993; March 1, 1999; August 1, 2002; June 1, 2004; July 1, 2014; October 1, 2019.

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

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

Section 12. Section 75-03-15-07 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 employees, which must be limited to:
 - (1) The ~~child~~direct care workers' supervisor;
 - (2) ~~Child~~Direct care workers;
 - (3) Relief ~~child~~direct care workers;
 - (4) Cooks;
 - (5) Janitors and housekeepers;
 - (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.

History: Effective November 1, 1985; amended effective March 1, 1999; June 1, 2004; July 1, 2014; October 1, 2019.

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

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

Section 13. Section 75-03-15-12.1 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 children prior to admission. Employees are obtained and organized, and other operating costs are incurred during this time of preparation which cannot be allocated to facility direct care during that period because there are no 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 child is admitted. This section does not apply to a facility transitioning from a residential child care facility on October 1, 2019, to a qualified residential treatment program.

History: Effective March 1, 1999; amended effective July 1, 2014; October 1, 2019.

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

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

Section 14. Chapter 75-03-16 is repealed.

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

[Repealed effective October 1, 2019]

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~~ Employee and Nonemployee Files
- ~~75-03-16-06~~ Facility Administrator
- ~~75-03-16-07~~ Program Director
- ~~75-03-16-08~~ Social Service Employees
- ~~75-03-16-09~~ Social Service Employee Supervision
- ~~75-03-16-10~~ Direct Care Employees
- ~~75-03-16-10.1~~ Nursing Services
- ~~75-03-16-11~~ Nonemployees
- ~~75-03-16-12~~ Employment Policies
- ~~75-03-16-12.1~~ Criminal Conviction—Effect on Operation of Facility or Employment by Facility
- ~~75-03-16-12.2~~ Employee and Nonemployee Background Checks
- ~~75-03-16-12.3~~ Employee and Nonemployee Health Requirements
- ~~75-03-16-13~~ Minimum Employee Requirements
- ~~75-03-16-14~~ Employee Professional Development
- ~~75-03-16-15~~ Child Abuse and Neglect
- ~~75-03-16-16~~ Preadmission, Admission, and Discharge
- ~~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 Separation From General Facility Population 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 — Normalcy Activities~~
~~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

~~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.~~
- ~~3. "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.~~
- ~~4. "Facility" means a residential child care facility providing foster care to thirteen or more unrelated children or group home providing foster care regularly to at least four and no more than twelve unrelated children.~~
- ~~5. "Nonemployee" means an individual who is not compensated by the facility, such as a volunteer or student intern.~~
- ~~6. "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.~~~~

7. ~~"Overnight hours" means from eleven p.m. until seven a.m.~~
8. ~~"Participant" means a child participating in an out-based program.~~
9. ~~"Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child participating in extracurricular, enrichment, cultural, and social activities.~~
10. ~~"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.~~
11. ~~"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; April 1, 2016.~~

General Authority: ~~NDCC 50-11-03~~

Law Implemented: ~~NDCC 50-11-03~~

~~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 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~~

~~75-03-16-02.1. Application for license.~~

1. ~~An application for a facility license must be submitted to the department. Application must be made in the form and manner prescribed by the department. The department may require such information or documentation, or both, as it deems necessary or appropriate.~~
2. ~~For purposes of time limits for approval or denial, an application is received by the department when all required information and documents have been received by the department. The department shall notify an applicant if an application is incomplete.~~
3. ~~The department may declare an application withdrawn if an applicant fails to submit all required documentation within sixty days of notification of incompleteness.~~

~~History: Effective March 1, 1999.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-01, 50-11-02, 50-11-03~~

~~75-03-16-02.2. Provisional license.~~

1. ~~A provisional license must:
 - a. ~~Prominently state that the facility has failed to comply with applicable standards and regulations of the department;~~
 - b. ~~State that the items of noncompliance are set forth on a document available upon request from the facility's operator or supervisor; and~~
 - c. ~~Expire at a set date not to exceed one year from the date of issuance.~~~~

2. ~~The department shall exchange a provisional license for an unrestricted license, which bears the exchange date, upon the facility's demonstration of compliance, satisfactory to the department, with all applicable standards and regulations.~~
3. ~~A provisional license may be issued only to an applicant who has acknowledged, in writing, the factual and legal basis for the violation.~~
4. ~~Any provisional license must be accompanied by a written statement of violation signed by the director of the division of children and family services, or the department's designee.~~
5. ~~Subject to the exceptions contained in this section, a provisional license entitles its holder to all the rights and privileges afforded the holder of an unrestricted license.~~

History: Effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02.2

~~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 75-03-16-29, 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 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

~~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 children in placement, a maximum of twenty five dollars per day;~~
 - ~~b. For violations of minimum 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

~~75-03-16-02.5. Denial or revocation of license or endorsement.~~

- ~~1. A facility license or an endorsement to operate an out-based program may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11-02, 50-11-07, and 50-11-08.~~
- ~~2. A facility whose application for license or an endorsement has been denied or revoked may submit a new application no sooner than one hundred eighty days after the date of denial or revocation. A facility is bound by the denial or revocation of a predecessor facility's application or endorsement, unless the facility shows substantial change in the facility's administration, statement of purpose, and program.~~

History: Effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

~~75-03-16-02.6. Residential bed conversion.~~

- ~~1. A facility may not increase or decrease bed capacity without approval of the department.~~
- ~~2. To qualify for an increase, a facility must:
 - ~~a. Be in compliance with this chapter;~~
 - ~~b. Submit a plan for the use of its beds; and~~
 - ~~c. Submit a projected twelve-month budget based on predictable funds for the forthcoming year of operation as required by subsection 3 of section 75-03-16-04.~~~~
- ~~3. The department shall review the facility's request and may approve or deny the request considering the programming need for the beds and the number of beds available.~~

History: Effective April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 25-03.2-03.1

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

- ~~1. Each facility 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;~~
 - ~~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 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, buildings and grounds, and program services.~~
 - 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 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, 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 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 with the department at least annually to discuss the facility operations, programming, and any other pertinent issues that concern the needs of children 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~~

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

1. ~~If a facility is owned by a corporation, the certificate of incorporation must be 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. The facility shall submit a copy of the accountant's most recent annual report with the facility's license application. The facility shall make the annual audit report 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 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~~

~~75-03-16-05. Employee and nonemployee files.~~

1. ~~The facility shall maintain an individual file on each employee. The 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. ~~Annual professional development and training 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) ~~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. ~~The facility shall maintain an individual file on each nonemployee. The 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.~~
3. ~~The facility shall adopt a policy regarding the retention of employee and nonemployee files.~~

~~History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02~~

~~**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. 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 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 adequate supervision is provided to all employees and nonemployees working in the facility.~~
- ~~4. The administrator shall designate at least one employee, with respect to any child in placement, who is authorized to apply the reasonable and prudent parent standard to decisions involving the participation of the child in age or developmentally appropriate activities. The designated employee must receive department-approved training on how to use and apply the reasonable and prudent parent standard.~~

~~History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02~~

~~**75-03-16-07. Program director.**~~

~~The 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. 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 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.~~

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

~~75-03-16-08. Social service employees.~~

~~The facility shall hire or designate social service employees.~~

- 1. ~~—A facility must have sufficient social service employees to meet minimum employee to child ratios required by this chapter.~~
- 2. ~~—The facility shall clearly define, in writing, the duties and responsibilities of the social service employees.~~
- 3. ~~—A social service employee responsible for the supervision of other employees or nonemployees must be allowed sufficient time to perform supervision tasks.~~
- 4. ~~—A social service employee must have, 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. ~~—A social service 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 professional development and training records must document that the employee has had appropriate training to provide the specific training method.~~
- 7. ~~—A social service employee must have achieved the competencies necessary to implement any item of care or service which the employee is~~

~~designated to perform in 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~~

~~75-03-16-09. Social service employee supervision.~~

- ~~1. The program director or assigned social service supervisor shall provide and document a minimum of one hour of individual supervision per week for each social service employee.~~
- ~~2. Each full-time social service supervisor may not supervise more than six social service employees, treatment employees, or direct care supervisors. Social service supervisors may not supervise other positions.~~
- ~~3. The facility shall document annual training for supervisors to maintain and improve competence in the supervisory role and in facility social service 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~~

~~75-03-16-10. Direct care employees.~~

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

~~75-03-16-10.1. Nursing services.~~

- ~~1. A residential child care facility shall provide for a licensed nurse to accommodate the medical needs of children in placement onsite.~~
- ~~2. The residential child care facility shall clearly define, in writing, the duties and responsibilities of the licensed nurse which must be within the scope of nursing practice.~~

History: Effective April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

~~75-03-16-11. Nonemployees.~~

- ~~1. A facility which uses nonemployees shall:
 - a. Develop and provide a copy of a description of duties and specified responsibilities;
 - b. Designate an employee to supervise and evaluate nonemployees; and
 - c. Develop a plan for the orientation and training of nonemployees to include the philosophy of the facility and the needs of the children in placement and their families.~~
- ~~2. Nonemployees may provide services in support of, but not in substitution for, employees. Nonemployees may not be counted as an employee for purposes of employee to child ratio requirements imposed by this chapter.~~
- ~~3. 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

~~75-03-16-12. Employment policies.~~

~~A facility must have clearly written employment policies. The facility shall make the policies available to each employee. The policies must include:~~

- ~~1. An annual professional training and development plan for all employee positions;~~
- ~~2. Procedures for reporting suspected child abuse and neglect;~~
- ~~3. Procedures for employee evaluation, disciplinary actions, and terminations;~~

4. ~~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 employees and at least annually thereafter; and~~
7. ~~A plan for review of the personnel policies and practices with 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

~~75-03-16-12.1. Criminal conviction – Effect on operation of facility or employment by facility.~~

1. ~~A facility operator may not be, and a facility may not employ, in any capacity that involves or permits contact between the employee and any child cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:

 - a. ~~An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults—threats—coercion—harassment; 12.1-18, kidnapping; 12.1-27-2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 14-09-22, abuse or neglect of a child;~~
 - b. ~~An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or~~
 - c. ~~An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.~~~~

- ~~(1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, has elapsed.~~
 - ~~(2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.~~
- ~~2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of foster care to children.~~
- ~~3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction. The department may not be compelled to make such determination.~~
- ~~4. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.~~
- ~~5. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - ~~a. Common knowledge in the community;~~
 - ~~b. Acknowledged by the individual; or~~
 - ~~c. Discovered by the facility, authorized agent, or department as result of a background check.~~~~
- ~~6. A facility shall establish written policies and engage in practices that conform to those policies, to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.~~

7. ~~A facility shall establish written policies specific to how the facility will proceed if a current employee or nonemployee is known to have been found guilty of, pled guilty to, or pled no contest to an offense.~~
8. ~~The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.~~

History: Effective March 1, 1999; amended effective April 1, 2004; April 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

~~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 individual's consent to and the results of background checks concerning:
 - a. ~~Criminal conviction record; and~~
 - b. ~~Child abuse or neglect record.~~~~
2. ~~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.~~

5. ~~A facility shall submit proper paperwork to the department 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

~~75-03-16-12.3. Employee and nonemployee health requirements.~~

1. ~~All employees and nonemployees must be capable of performing assigned tasks.~~
2. ~~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 professional performing the screening shall sign a report indicating the presence of any health condition that would create a hazard to 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 children in placement who have not been infected.~~
5. ~~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 the employee or nonemployee files. Medical information of employees and nonemployees must be treated as a confidential medical record available only to the employee, the nonemployee, the facility, or official regulating authorities, including the department.~~
6. ~~The facility shall develop a policy regarding health requirements for employees and nonemployee, 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

~~75-03-16-13. Minimum employee requirements.~~

- ~~1. For purposes of this section:
 - ~~a. "Reside" means to sleep and keep personal effects; and~~
 - ~~b. "Structure" means a building that is or may be free standing. The existence of a walkway, tunnel, or other connecting device on, above, or below ground is not effective to make one structure from two or more component structures.~~~~
- ~~2. For purposes of this section, social service, program director, and administrator positions are expressed in full-time equivalents.~~
- ~~3. Each facility shall adopt a policy declaring employee coverage for overnight hours in the facility.~~
- ~~4. Each facility shall comply with the following minimum employee to child ratio requirements for social service employees, program director, nurse, and administrator:
 - ~~a. One social service employee and a half-time administrator for a facility providing services for one to nine children;~~
 - ~~b. No less than one social service employee for each twelve children, one program director, and one administrator for a facility providing services for ten or more children;~~
 - ~~c. A residential child care facility shall provide onsite nursing services to accommodate the medical needs of children in placement; and~~
 - ~~d. A facility shall notify the department, in writing, if the minimum employee to child ratios are not met based on position vacancies. An interim plan to cover the position duties must be approved by the department.~~~~
- ~~5. During awake hours each facility shall have no less than one direct care employee on duty for each six children present in the facility.~~
- ~~6. During overnight hours each facility shall have:
 - ~~a. Awake direct care employees;~~
 - ~~b. No less than one direct care employee on duty for each twelve children present in the facility; and~~~~

- ~~6. — A policy that includes a requirement that an employee will check on children in placement during overnight hours at a minimum of every thirty minutes.~~
- ~~7. — During overnight hours each facility structure in which children reside must meet the employee to child ratio requirements.~~
- ~~8. — A facility which operates more than one structure in which children reside shall count the children in all structures collectively for purposes of determining the number of children for which the facility provides services, the need to employ a program director, the required number of social service employees, and to determine the appropriate employee to child ratios.~~
- ~~9. — Educational program employees may not be counted as direct care employees, social service employees, an administrator, or a program director during any time educational services are provided.~~

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

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

- ~~1. — Each facility shall ensure that all employees in contact with children in placement receive at least twenty hours of annual training to assist in the overall quality of care provided to children in placement.~~
- ~~2. — Required training to prepare employees to meet the needs of the children served includes:
 - ~~a. — Certified first aid;~~
 - ~~b. — Certified cardiopulmonary resuscitation and automated external defibrillator training;~~
 - ~~c. — Certified nonviolent crisis intervention training;~~
 - ~~d. — Child abuse and neglect mandated report training;~~
 - ~~e. — Training addressing children's emotional needs; and~~
 - ~~f. — Suicide prevention training.~~~~
- ~~3. — A certified instructor shall provide classroom, hands-on training for nonviolent crisis intervention, first aid, cardiopulmonary resuscitation, and automated external defibrillator. A certificate must be provided to each~~

employee or nonemployee demonstrating their competencies in the specific training area. A copy of the certificate must be placed in the employee or nonemployee file.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

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

1. ~~All facility employees and nonemployees 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 employees and nonemployees to report cases of suspected child abuse or neglect. The procedures must include the following statement: 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 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 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 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; and~~
 - e. ~~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 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 employees, nonemployees, and children in placement. Internal facility interviews and investigations are not permitted to occur concurrent with a department or law enforcement investigation.

5. The facility shall notify the department licensing administrator, in writing, of the corrective action the facility has taken or plans to take to comply with the recommendations based on an "indicated" finding. The facility must respond within thirty days of receiving written notification of the finding.
6. A facility shall establish written policies specific to how the facility will proceed when a current employee or nonemployee is known to be:
 - a. Involved in any capacity in a reported incident of institutional child abuse or neglect; or
 - b. The subject of a services required decision in a child abuse or neglect report that occurred outside of the facility.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

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

~~75-03-16-16. Preadmission, admission, and discharge.~~

1. A facility shall adopt written preadmission, admission, and discharge policies including age, sex, and characteristics of children eligible for admission.
2. A facility must have an admission committee and a discharge committee. The committees may have the same members.
 - a. The admission and discharge committees may include the program director, a social service employee, a direct care employee, and such additional members as the facility determines appropriate.
 - b. The program director or a social service employee shall chair each committee.
3. No child may be denied admission on the basis of race, color, creed, religion, or national origin.
4. Preadmission procedures.
 - a. The admission committee shall screen applications and decide which children are admitted to the facility for care. The admission

~~committee shall make admissions decisions within thirty days of the receipt of sufficient information or a completed application.~~

~~b. To determine if it is appropriate to admit a child, the facility shall 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 custodian, parent, or guardian, if any, and copies of the documents which establish the authority of the legal custodian or guardianship; and~~

~~(7) The 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 has determined that admission is appropriate; or~~

~~(2) The child's circumstances require immediate placement and the facility 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. ~~If a private placement is made by a parent or guardian, rather than a court-appointed custodian, the parent or guardian making the placement is the referring agency.~~
 - f. ~~If a child is not admitted, the facility shall indicate to the referring agency the reason the child was not admitted.~~
5. ~~Admission procedures. The facility shall:~~
- a. ~~Develop an intake screening process to determine the treatment needs for the child in placement;~~
 - b. ~~Request documentation of the services the family of a child in placement will receive in the home community while the child is receiving services in the facility; and~~
 - c. ~~Request quarterly child and family team meeting progress reports from the referring agency.~~
6. ~~Discharge procedures~~
- a. ~~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:~~
 - (1) ~~A facility progress report 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;~~
 - (2) ~~The reason for discharge;~~
 - (3) ~~The immediate and future services recommended for the child and the child's family, if appropriate, to remain successful;~~
 - (4) ~~A statement regarding the potential need for the child to return to the facility, if needed in the future;~~
 - (5) ~~The facility's reason for not involving the family in discharge planning, if the family has not been included under subdivisions a and c; and~~
 - b. ~~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 custodian, parent, or guardian of a child in placement.~~

~~History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-02~~

~~75-03-16-17. Case plan.~~

- ~~1. A social service 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:~~
 - ~~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 employees within the facility, the referring agency, custodian, parents, or guardians, courts, schools, or any other appropriate individuals or agencies;~~
 - ~~c. Be based on a thorough assessment of the situation and circumstances of the child and the child's family's needs, strengths, and weaknesses;~~
 - ~~d. 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. Be reviewed for appropriateness and effectiveness at least every thirty days by the responsible social service employee. Changes and modifications must be made and documented in writing as needed, but no less than quarterly.~~
- ~~2. The written, individualized plan of care for a child in placement must include a description of the services that will be provided 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. ~~The facility as a formal plan for visitation from the custodian, parent, or guardian to the facility and opportunities for the child to engage in home visits.~~
3. ~~The written, individualized plan of care must include an indication of 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 records 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, and 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~~

~~75-03-16-18. Interstate compact on the placement of children.~~

1. ~~All placements of children made from any state which is a member of the interstate compact on the placement of children or the interstate compact on juveniles must be made in compliance with the appropriate compact. It is the responsibility of the facility to ensure that, prior to the placement in the facility, all necessary procedures pursuant to the interstate compact on the placement of children or the interstate compact on juveniles have been completed.~~
2. ~~All placements from any state which has not adopted the interstate compact on the placement of children or the interstate compact on juveniles shall comply with all North Dakota laws and regulations prior to the arrival of a child into a facility.~~
3. ~~Before admitting a child placed by any individual or entity that is not a court with jurisdiction in North Dakota, or an individual residing in North Dakota, a facility shall make arrangements with the placing authority sufficient to assure a lawful return of the child to the sending state without regard to the circumstance under which the child is discharged.~~

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

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 14-13, 27-22~~

~~75-03-16-19. Law enforcement notification.~~

~~A facility shall notify law enforcement officials immediately after it is confirmed that the whereabouts of the child in placement are unknown. The facility shall notify the child's custodian, parent, or guardian 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 custodian, parent, or guardian.~~

~~**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~~

~~75-03-16-19.1. Sentinel event reporting.~~

- ~~1. Facilities shall immediately notify the child's custodian, parent, or guardian and the human service center regional child welfare supervisor of a sentinel event.~~
- ~~2. A sentinel event is an unexpected occurrence involving death or serious physical or psychological injury that is not related to the natural course of a child in placement's illness or underlying condition, including any process variation for which a recurrence would carry a significant chance of a serious adverse outcome. Serious injury includes inappropriate sexual contact.~~

~~**History:** Effective April 1, 2014.~~

~~**General Authority:** NDCC 50-11-03~~

~~**Law Implemented:** NDCC 50-11-02~~

~~75-03-16-19.2. Suicide prevention.~~

~~The facility shall develop a suicide prevention plan that addresses several key components, including:~~

- ~~1. Employee training;~~
- ~~2. Initial and ongoing child assessments;~~
- ~~3. Levels of supervision for children in placement;~~
- ~~4. Intervention options;~~
- ~~5. Facility communication, notification, and referral procedures;~~
- ~~6. Reporting and documentation; and~~

~~7. Sentinel event debriefing procedures.~~

~~History: Effective April 1, 2014.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-02~~

~~**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 a child in placement;~~
- ~~b. Characteristics of 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~~

~~**75-03-16-21. Case file.**~~

~~Within thirty days after placement, the facility shall establish and 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 current court order establishing the facility's authority to accept and care for 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 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 plan for discharge;~~
- ~~8. Child and family team meeting quarterly reports or equivalent documentation created by the custodian of the child in placement, if applicable;~~
- ~~9. A copy of the appropriate interstate compact forms, if applicable;~~
- ~~10. A copy of the written individualized plan of care prepared by the facility;~~
- ~~11. Copies of periodic, but not less than quarterly, written reports to the custodian, parent, or guardian of children in placement, developed by the facility's social service employee; and~~
- ~~12. 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~~

~~**75-03-16-22. Religious opportunities.**~~

~~The facility will make a reasonable effort to make opportunities available for the children to attend religious ceremonies within the area in which the facility is located, giving appropriate consideration to any requests by the child and the child's parents. The facility shall respect the religious beliefs of then child and the child's family.~~

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

~~**General Authority:** NDCC 50-11-03~~

~~**Law Implemented:** NDCC 50-11-02~~

~~75-03-16-23. Medical care.~~

- ~~1. The facility shall adopt a comprehensive written plan of preventive, routine, and emergency medical care including first aid, dental care, and administration of prescription and nonprescription medicine.~~
- ~~2. The facility shall maintain first aid supplies, including the red cross first aid manual, in quantities and locations so that they are reasonably accessible at all times.~~
- ~~3. The facility shall have policies governing the use of psychotropic medications. The custodian, parent, or guardian of a child in placement must each be informed of benefits, risks, side effects, and potential effects of psychotropic medications prescribed for the child. Written consent from the legal custodian must be obtained for the use of the medication and must be placed in the child's file. When a psychotropic medication is prescribed or discontinued for a child in placement, the child's medication regime must be reviewed by a psychiatrist or medical doctor as determined medically necessary by the prescribing professional.~~
- ~~4. A record must be kept of prescription and nonprescription medication dispensed to children in placement, including the physician's medication order, the time, means, and frequency of administration, and the individual administering such medication.~~
- ~~5. All prescription and nonprescription medicines must be labeled and stored in a locked storage compartment at the facility and during transport. Medication requiring refrigeration must be properly stored and locked at the proper temperature.~~
- ~~6. Unless effective measures are taken to prevent transmission, any child suffering from a serious communicable disease must be isolated from other children who have not been infected.~~

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

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

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

- ~~1. Food must be in wholesome condition, free from spoilage, filth, or contamination and 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 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. ~~The facility shall provide refrigeration for perishable food and shall maintain perishable food in accordance with standards prescribed by the state department of health for food and beverage establishments.~~
7. ~~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

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. ~~A facility shall assign jobs and household responsibility for children 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 custodians, parents, or guardians, 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 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 offsite 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. ~~The facility shall provide children in placement a bed with a clean mattress and clean bedding. 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.~~
7. ~~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.~~
8. ~~A facility shall ensure that privacy is assured when custodians, guardians, or family members visit children in placement. The facility shall record any reason for restricting communications or visits between a child and the child's custodians, guardians, or family members 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

~~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 employees of the facility may prescribe, administer, or supervise the discipline of children in placement.~~
2. ~~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. ~~Children in placement may not be locked in any room or other enclosure.~~
5. ~~Physical restraint or 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 children in placement and others.~~~~
6. ~~Separation from the general facility population means that a child is removed from peers or programming to regroup when the child's behavior is escalated.
 - a. ~~Separation from the general facility population, when used as discipline, must be brief and appropriate. The child must be in a safe, lighted, well-ventilated room and be observed continuously by an employee. When a child's behavior has deescalated, but the child needs additional separation, an employee shall observe the child and document the observation 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 children in placement, the child's family, religion, or cultural background may not be used or permitted.~~
8. ~~Neither physical restraints nor separation from the general facility population may be used for punishment, for convenience, 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.~~
10. ~~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 the child's custodian, parent, or guardian;~~~~

- 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

75-03-16-26.1. Use of separation from general facility population or physical restraint.

Each time a child in placement is separated from the general facility population or physically restrained, the event must be documented, filed in the 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 separation or restraint was used and the duration of each use;
3. — A complete description of the type of separation or restraint used;
4. — The names of employees who applied the restraint;
5. — A complete description of the injuries sustained by children or 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.

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

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

~~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 children in placement in transit from the facility if children in placement have clearly indicated the intent to inflict serious physical injury upon 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 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 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 professional development and training record.~~
- ~~4. A facility shall inform referring agencies that the facility may use mechanical restraints as a behavior containment measure in transporting children in placement from the facility.~~
- ~~5. A facility shall report each incident of any use of mechanical restraints to the department within three days. The report must include the affidavit of the 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 of transport; and~~
 - ~~d. The name of the employee applying the mechanical restraints and a statement that the employee using the mechanical restraints has been properly trained.~~~~

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

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

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 child's custodian, parent, or guardian, except to the extent the parental rights have been removed or limited by court order;~~
 - b. ~~The referring agency that placed a child in the facility; and~~
 - c. ~~An individual or entity identified as a provider of services, located in the home community of the family of the child in placement, for the purposes of reunification.~~
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 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 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 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 the immediate family of a child in placement, without first securing the written consent of the custodian, parent, or guardian of the child in placement, or the written consent of an adult who was a former resident of the facility.~~
 - a. ~~Written consent must be 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~~

~~75-03-16-28. Education.~~

~~Any primary or secondary program offered by a facility must be in compliance with standards established by the department of public instruction. The facility shall ensure that all children who receive care in the facility comply with all state school attendance laws.~~

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

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-02~~

~~75-03-16-28.1. Water safety.~~

- ~~1. For purposes of this section, "aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, or water slides.~~
- ~~2. The facility shall determine the swimming ability of each child prior to the child engaging in an aquatic activity.~~
- ~~3. The facility may not permit any child to participate in an aquatic activity requiring higher skills than the child's swimming classification, except during formal instruction.~~
- ~~4. The facility may not permit children to engage in an aquatic activity without adult supervision at all times.~~
- ~~5. The facility shall adopt and enforce a method to account for each child's whereabouts during aquatic activities, such as a buddy system.~~

6. ~~The facility shall provide and maintain lifesaving equipment during all aquatic activities. The facility shall maintain all lifesaving equipment in good repair and shall maintain documentation of equipment maintenance. All equipment must be immediately accessible in case of an emergency. At a minimum, the following equipment must be furnished:
 - a. ~~A whistle or other audible signal device;~~
 - b. ~~A first-aid kit;~~
 - c. ~~A ring buoy, rescue tube, lifejacket, or other appropriate flotation device with a rope attached which is of sufficient length for the area in which it may be used; and~~
 - d. ~~A reaching pole.~~~~
7. ~~The facility shall require that all activity participants wear personal flotation devices during all boating activities, including water skiing, tubing, and rafting.~~
8. ~~Prior to any travel in any watercraft, the facility shall provide instruction in boarding, debarking, self-rescue in capsized or swamping situations, and the use of personal flotation devices.~~
9. ~~Water activities are prohibited in waters the facility knows or should know in the exercise of reasonable care to contain health-threatening levels of pollutants.~~
10. ~~The requirements of this section apply to activities wherever the activities take place. Where activities take place off of the facility premises, the facility need not provide facility-owned lifesaving equipment, if equipment which meets the requirements of this section is provided by another entity.~~

History: Effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-29. Buildings, grounds, and equipment.

1. ~~A facility shall comply with all state, county, and local building and zoning codes and ordinances as well as all applicable state, county, and local safety, sanitation laws, codes, and ordinances.~~
2. ~~A facility must be inspected annually by the local fire department or the state fire marshal's office. A facility shall correct any deficiencies found~~

during these inspections. The facility shall keep a written report of the annual inspection and provide a copy to the department.

3. All chimneys, flues, and vent attachments to combustion type devices must be structurally sound, appropriate to the unit or units attached to them, and cleaned and maintained as necessary to provide safe operation. The heating system of each facility, including chimneys and flues, must be inspected at least once each year by a qualified individual.
4. There shall be at least one 2A 10BC fire extinguisher on each floor and in or immediately adjacent to the kitchen, incinerator, and combustion type heating units. Additional fire extinguishers must be provided so it is never necessary to travel more than seventy five feet [22.86 meters] to an extinguisher. Fire extinguishers must be mounted on a wall or a post where they are clearly visible and at a readily accessible height. All required fire extinguishers must be checked once a year and serviced as needed. Each fire extinguisher must have a tag or label securely attached indicating the month and year the maintenance check was performed last and identifying the individual who performed the service.
5. The facility shall provide the following smoke detectors:
 - a. One unit for each bedroom hallway;
 - b. One unit at the top of each interior stairway; and
 - c. One unit for each room with a furnace or other heat source.
6. Battery operated smoke detectors must signal when the battery is exhausted or missing, and be tested at least once a month.
7. A facility shall have written plans and procedures for meeting disasters and emergencies.
 - a. Employees must know all plans and procedures for meeting disasters and emergencies.
 - b. The facility shall advise children in placement of all emergency and evacuation procedures upon admission to the facility. These procedures shall be reviewed every month, including the performance and documentation of fire evacuation drills.
 - c. The facility shall have telephones centrally located and readily available for use in each living unit of the facility. Emergency numbers including the fire department, police, hospital, physician, and ambulance must be written and posted by each telephone.

~~There must be telephone service in all buildings housing children in placement.~~

~~d. There must be at least two independent exits from every floor. The exits must be located so that children in placement can exit from each floor in two separate directions, without going through a furnace room, storage room, or other hazardous area.~~

~~e. Flashlights must be available for emergency purposes.~~

~~8. Any vehicle used by a facility for the transportation of children in placement, employees, or nonemployees must be licensed in accordance with the laws of North Dakota and must be maintained and periodically inspected to ensure its safe operating condition.~~

~~a. Vehicles used to transport children in placement must be covered by liability insurance.~~

~~b. The number of persons in a vehicle used to transport children in placement may not exceed the number of available seats. All individuals shall wear seatbelts in vehicles that are equipped with seatbelts.~~

~~c. Any operator of any vehicle shall hold a valid driver's license of the appropriate class from the operator's jurisdiction of residence.~~

~~9. All buildings must be equipped with furnishings suitable to needs of the children in placement. Recreational space and equipment must be safe, functional, and available for all children in placement.~~

~~10. The facility shall have one centrally located living room for the informal use of children in placement.~~

~~11. The facility shall have a dining room area large enough to accommodate the number of individuals who normally are served.~~

~~12. A facility shall provide space and privacy for individual interviewing and counseling sessions. This space must be separate and apart from rooms used for ongoing program activities.~~

~~13. A facility shall have bedroom accommodations for the children in placement.~~

~~a. The facility shall have at least one bedroom for each four children in placement.~~

- ~~b. The facility may not permit nonambulatory children in placement to sleep above or below the ground floor.~~
 - ~~c. There must be no more than one child in placement per bed. Triple bunks may not be used.~~
 - ~~d. No child in placement six years of age or older may share a bedroom with a child in placement of the opposite sex.~~
 - ~~e. All bedrooms must have at least one window which opens to the outside.~~
 - ~~f. No sleeping room may be in an unfinished attic, hallway, or other room not normally used for sleeping purposes.~~
 - ~~g. A basement which has over half its outside walls below grade and no door opening directly to the outside may not be used for bedrooms.~~
 - ~~h. Furnishings must be safe, attractive, easy to maintain, and selected for suitability to the age and development of the children in placement.~~
 - ~~i. A facility shall have sufficient individual storage areas to accommodate children in placement's clothing and other personal belongings.~~
- ~~14. A facility shall have one complete bathroom for each six children in placement. A complete bathroom includes toilet, washbasin, and a tub or shower.~~
- ~~a. All bathroom facilities must be indoors, equipped with hot and cold running water, and kept clean.~~
 - ~~b. When bathroom units contain more than one toilet, tub, or shower, each must be in a separate compartment.~~
 - ~~c. The facility shall provide bathrooms with nonslip surfaces in showers or tubs.~~
- ~~15. Facilities shall ensure that kitchen equipment and area meet the standards prescribed by the state department of health for food and beverage establishments. Compliance with these standards must be documented annually and inspection documentation shall be provided to the department.~~

- a. ~~Food storage space must be clean and containers must be covered and stored off the floor.~~
 - b. ~~Dishes, cups, and drinking glasses used by the children in placement must be free of chips, cracks, and other defects, and must be sanitized after every use by a washing process, sanitization solution, and air drying or commercial dishwasher.~~
 - c. ~~Kitchen floors must be reasonably impervious to water, slip-resistant, and maintained in a clean and dry condition.~~
16. ~~Laundry facilities must be located in an area separate from areas occupied by children in placement. Space for sorting, drying, and ironing must be made available to children in placement who are capable of handling personal laundry.~~
17. ~~The water supply of a facility must be from an approved municipal system where available. Where a municipal system is not available, the facility shall obtain approval for the water supply from the state department of health. Each water outlet accessible to children in placement must be supplied with safe and potable water.~~
18. ~~All agricultural chemicals, pesticides, and other poisons must be stored in a locked cabinet.~~
19. ~~Firearms are prohibited in program or living areas of a facility premises. Firearms kept at any other location on the facility premises must be stored in a locked and secure area.~~
20. ~~A facility shall have a quiet area to be used for studying and furnished for that purpose.~~
21. ~~All rooms in a facility must have adequate lights, heat, and ventilation. All baths and toilet rooms must have a window which opens to the outside or exhaust ventilation.~~
22. ~~Buildings and grounds of a facility must be maintained in a clean, comfortable, sanitary, and safe condition.~~
- a. ~~The facility may not be located within three hundred feet [91.44 meters] of an aboveground storage tank containing flammable liquids used in connection with a bulk storage or other similar hazards.~~

- b. ~~The grounds must be attractive, well-kept, and spacious enough to accommodate recreational areas that take into consideration the age and interest levels of children in placement.~~
 - c. ~~Rooms, exterior walls, exterior doors, skylights, and windows must be weathertight and watertight.~~
 - d. ~~Stairways, porches, and elevated walks and ramps must have structurally sound and safe handrails.~~
 - e. ~~Buildings must be free of unabated asbestos.~~
 - f. ~~Lead paint may not be used within a building or on the exterior, grounds, or recreational equipment.~~
23. ~~Any nonhousing buildings located on the facility property must be locked when not in use by facility employees, nonemployees, or children in placement. Children in placement must be supervised by an employee when entering a nonhousing building.~~
24. ~~All pet inoculations must comply with the local and state requirements.~~
25. ~~A facility must immediately notify the custodian, parent, or guardian and the department of a fire or other disaster which endangers or requires the removal of children for reasons of health and safety.~~

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

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-02~~

~~75-03-16-30. Variance.~~

~~Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance from the provision of this chapter upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of any child cared for by the facility and no variance may be granted except at the discretion of the department. A refusal to grant a variance is not subject to appeal.~~

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

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-02~~

~~75-03-16-31. Outcomes data collection.~~

~~The department may require a facility to engage in data management practices to collect and report outcomes every six months. Data collection efforts will offer~~

~~facilities a continuous improvement process that measures and monitors the safety, well-being, and service delivery provided to children in placement. Facilities must have written policy to identify a plan to implement, collect, and measure outcomes data requirements. Facilities must respond to the identified data outcomes needing improvement by developing and implementing one or more facility improvement plans.~~

~~History: Effective April 1, 2014; amended effective April 1, 2016.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-02~~

~~**75-03-16-32. Normalcy activities.**~~

~~Each facility shall document the child's normalcy activities and share the information with the child's custodian, parent, or guardian. Each facility shall create a written policy detailing:~~

- ~~1. The employee job description related to carrying out the duties of the reasonable and prudent parent standard;~~
- ~~2. The variety of normalcy activities offered to children in placement; and~~
- ~~3. Procedures identifying supervision, transportation, and offsite activity emergency responses.~~

~~History: Effective April 1, 2016.~~

~~General Authority: NDCC 50-11-03.4~~

~~Law Implemented: NDCC 50-11-02~~

~~**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.**~~

- ~~1. All provisions of this chapter apply to out-based programs unless expressly specified to the contrary or unless specifically superseded by sections applicable only to out-based programs.~~
- ~~2. Sections 75-03-16-41 through 75-03-16-70 apply only to facilities which operate an out-based program.~~

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-42. Participation by foster children in out-based programs – Time limits.~~

- ~~1. A facility may not permit children in foster care to participate in any out-based program other than one operated by a facility that holds a valid endorsement issued pursuant to this chapter.~~
- ~~2. A participant may not spend more than forty-five consecutive days in an out-based program expedition. A participant may not spend more than sixty total days in an out-based program in any calendar year.~~

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-43. Eligibility for endorsement to operate out-based program – Effect of endorsement.~~

- ~~1. An application for an endorsement to operate an out-based program may be made only by a group home or residential child care facility currently licensed under this chapter, and which has been licensed and has actually had children in care for at least one year prior to the date the application for endorsement is received by the department.~~
- ~~2. An endorsement to operate an out-based program may be issued only if:
 - ~~a. The facility declares in its written statement of purpose and philosophy that the out-based program is an integral component of the facility's total program; and~~
 - ~~b. The facility operates the program without subcontracting or otherwise using another entity to supply staff services, physical facilities, or equipment.~~~~
- ~~3. An applicant shall submit an application on the forms and in the manner prescribed by the department.~~

4. ~~The department shall issue an endorsement to operate an out-based program upon a finding that an applicant has complied with the provisions of this chapter. The endorsement must be made in writing in a manner prescribed by the department.~~
5. ~~An endorsement to operate an out-based program is in force and effect for a period of one year, or until the expiration of the facility's license to operate a group home or residential child care facility, whichever is shorter. If the facility's license to operate a group home or residential child care facility is revoked, the endorsement is also revoked as of the date and time of the license revocation.~~

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-44. Contents of application for endorsement.~~

~~A facility that seeks to operate an out-based program shall submit to the department a proposed program description consisting of the following information, with supporting documentation as indicated:~~

1. ~~Specifically identified program objectives and activities;~~
2. ~~Criteria and procedures for admission of participants to the program;~~
3. ~~A description of the number and types of individuals to be served, including age, sex, and significant emotional or behavior characteristics;~~
4. ~~Criteria for assigning participants to a program or grouping them within a program, including age, sex, or other characteristics;~~
5. ~~The number and qualifications of staff responsible for providing program services, including identification of the person responsible for administering the program;~~
6. ~~The degree and method of family involvement in the program;~~
7. ~~Other professional services available to participants, such as psychological or psychiatric services, if any;~~
8. ~~The extent to which services stated to be available are in fact available, including number of staff available to provide the service and time the service is available;~~

- ~~9. Statement of policies regarding supervision of participants and behavior management policies and techniques;~~
- ~~10. Emergency and safety procedures; and~~
- ~~11. A description of staff training to be provided as required by this chapter, including subject matter and time devoted to staff training. The department may require other information or documentation as it deems necessary or appropriate.~~

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-45. Effect of single serious violation.~~

~~Due to the difficulty of monitoring out-based programs and the inherent dangers of the wilderness, a single violation of health or safety standards, as established by this chapter, which creates a serious threat to human life or well-being, may result in any of the following:~~

- ~~1. Immediate revocation of the facility's out-based program endorsement;~~
- ~~2. Immediate revocation of the facility's license to provide foster care;~~
- ~~3. Removal of participants; or~~
- ~~4. Removal of children in foster care.~~

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-46. Out-based program activities.~~

- ~~1. Activities must be led by staff who have demonstrated proficiency in the skills required for the activity, as determined by the facility's governing body and expressed in written policy and procedure.~~
- ~~2. Activities must be conducted in such a manner as to minimize any adverse effect on the environment.~~
- ~~3. Activities requiring or involving firearms are prohibited. No individual may possess a firearm during any out-based program activity.~~
- ~~4. Airborne activities, including bungee jumping, hang gliding, and parachuting are prohibited.~~

5. ~~A facility may not allow children or staff to participate in any test of new products by a manufacturer or other entity.~~
6. ~~Activities must be graduated in the level of difficulty and matched to the level of skills or capabilities of the participants. The facility shall ensure that techniques and skills are taught progressively.~~
7. ~~An activity's pace must be set according to the capabilities of the least able or fit member of the group, take into account previous illness or injury, and be designed to prevent the occurrence of accidents or illness.~~
8. ~~A facility may not conduct any out-based program activity which has not been disclosed to the department in the facility's application for an endorsement.~~

~~History: Effective January 1, 1995; amended effective March 1, 1999.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-03~~

~~75-03-16-47. Voluntary participation.~~

1. ~~A facility may not physically force any child to participate in an out-based program, but may require a child to attend an orientation by means of lecture, video, or other description of the program designed to assist the child in overcoming fear or to foster an interest in participation.~~
2. ~~A facility shall provide safe escort back to the facility for any participant who leaves a program at a location away from the facility. The facility may provide safe escort elsewhere, as appropriate, to meet the personal treatment needs of the participant.~~

~~History: Effective January 1, 1995.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-03~~

~~75-03-16-48. Administration and organization for out-based programs.~~

1. ~~The facility shall maintain a current organization chart showing the administrative structure, including the lines of authority. The facility shall provide the chart to the department upon request.~~
2. ~~Any substantial change of program purpose, philosophy, or policies regarding personnel, admission, or program services may be made only upon thirty days' advance notice to the department and upon departmental approval.~~

- ~~3. The facility shall notify the department within ten days of any change in the identity of the out-based program field director.~~

~~History: Effective January 1, 1995.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-03~~

~~75-03-16-49. Out-based program admission -- Policies on discharge.~~

- ~~1. Eligibility to participate in a facility's out-based program is limited to children who are residents in the facility and who belong to the population for whom the facility is licensed to provide foster care. Activities for children under age thirteen must be adapted to be age appropriate.~~
- ~~2. Notwithstanding any admission criteria established by a facility, participants in an out-based program shall have a physical exam within one hundred twenty days prior to commencement of the program. Documentation of the exam shall be made on a form provided by the facility, signed by a licensed medical professional, and submitted to the facility prior to commencement of participation. The physical exam form must clearly state a description of the physical demands and environment of the program and require a statement of any limitations on a child's participation in the program.~~
- ~~3. Potential participants who have a history of chronic psychological disorders shall undergo a psychological evaluation by a licensed clinical psychologist within ninety days prior to the commencement of a program. Documentation of the evaluation must be made on a form provided by the facility, signed by the evaluator, and submitted to the facility prior to commencement of participation. The evaluation form shall clearly state a description of the physical demands and environment of the program and require a statement of any limitations on a child's participation in the program.~~
- ~~4. The facility shall adopt written policies describing the circumstances under which a participant may withdraw or may be discharged from a program prior to the termination of the program.~~

~~History: Effective January 1, 1995.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-03~~

~~75-03-16-50. Out-based program orientation.~~

- ~~1. Prior to the start of out-based program activities, the facility shall describe to the participant the nature of the program's activities. The facility shall explain the anticipated benefits of the program, describe in an age-~~

appropriate manner the potential risks of activities undertaken in the program, and explain precautions taken to minimize risks. The facility shall document the date and content of orientation in the participant's record. The facility shall make reasonable efforts to describe the nature of program activities to the participant's parent or legal custodian.

2. The facility shall provide to each participant and the participant's parent or legal custodian a written statement of policies governing the care of participants, including rules governing conduct in the field and other discipline policies. The statement must clearly enumerate maximum consequences for violation of the rules. The participant shall sign an acknowledgment that the participant has received the written statement and been informed of its content. If the participant refuses to sign, a representative of the facility may sign the statement, in which case the participant's refusal to sign must be noted on the statement.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-51. Case plan.

For each participant in an out-based program, the facility shall maintain in the participant's case plan documentation of:

1. Any restrictions placed on the participant's communication with family or others during the program, including mail;
2. A plan for staff reporting on the participant's status to the parent or legal custodian;
3. The intended likely benefits to the individual participant, based on the individual's needs;
4. The means by which the program will promote transference of learning by the individual participant to life after the program; and
5. A copy of the court order which establishes the authority of the legal custodian, in cases where such an order has been entered.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-52. Records of participation in out-based program.

1. ~~A facility shall establish and maintain a record of each child who participates in an out-based program. The record must include the:
 - a. ~~Participant's acknowledgment that the participant was given a written statement of program policies, including discipline;~~
 - b. ~~Licensed health professional's report on physical exam for admission to program;~~
 - c. ~~Report on psychological evaluation, if any;~~
 - d. ~~Documentation by staff that participant and parent or custodian were given orientation as to the anticipated benefits, risks, and precautions of program activities;~~
 - e. ~~Dates of participation in program; and~~
 - f. ~~A copy of any documentation made as a result of any incident for which this chapter requires a written report or documentation of an oral report.~~~~
2. ~~The records shall be maintained for a minimum of six years after the child's participation in the program.~~

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-53. Mail to and from participants in out-based programs.~~

1. ~~Incoming mail must be delivered in as prompt a manner as location and circumstances allow.~~
2. ~~Unless contraindicated for treatment purposes, a facility may not withhold, read, censor, or otherwise restrict incoming mail from parents, custodians, or legal representatives of a participant. A facility may restrict other incoming mail only upon written instruction of the participant's parent or legal custodian, except in case of emergency.~~
3. ~~A facility may require that all incoming mail be opened in the presence of staff. Participants are entitled to be present when incoming mail is opened. The facility may not allow participants to take possession of illegal or otherwise prohibited items.~~
4. ~~A facility may not read, censor, or otherwise restrict outgoing mail to a participant's parent, legal guardian, or legal representative. A facility may~~

~~restrict other outgoing mail only upon written instruction by the participant's parent or legal custodian.~~

~~History: Effective January 1, 1995.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-03~~

~~**75-03-16-54. Discipline and behavior management for out-based programs.**~~

- ~~1. The provisions of this section apply to out-based programs in addition to any other provisions of this chapter regarding discipline or behavior management.~~
- ~~2. The facility shall adopt written policies for discipline and behavior management, including definitions of inappropriate behaviors of participants and acceptable staff responses to inappropriate behaviors.~~
- ~~3. The facility shall give all program staff training in behavior management, including review of facility policies, annually or more often as appropriate.~~
- ~~4. No staff member may use or permit the use of any method to control the behavior of participants which a reasonable person would find humiliating, frightening, demeaning, or punitive. Staff may not require extreme physical activities by participants as a method to control behavior. Staff may not deny participants food, clothing, shelter, rest, medical care, prescribed therapeutic activities, or contacts with family or legal representatives as a means to control behavior.~~
- ~~5. Staff may require participants to engage in activities necessary to the health and safety of the group. A participant may bring a grievance based on required participation after the program is completed.~~
- ~~6. If a participant refuses food, clothing, shelter, rest, medical care, prescribed therapeutic activities, contacts with family or legal representatives, or other services, staff shall document the refusal in the daily log and in additional places as the facility deems appropriate.~~

~~History: Effective January 1, 1995.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-03~~

~~**75-03-16-55. Health and medical care – Consent to medical care.**~~

- ~~1. A facility operating an out-based program shall adopt a comprehensive written plan of preventive, routine, emergency, and followup health and medical care for all participants. The plan must include policies and~~

~~procedures designed to prevent infectious and communicable diseases and to address acclimatization of participants and staff.~~

- ~~2. All participants shall have access at all times to a staff member trained to administer first aid and cardiopulmonary resuscitation.~~
- ~~3. Staff shall provide first aid treatment, including first aid for injury, allergic reactions, disease, and venomous bites.~~
- ~~4. The facility shall provide first aid kits during all field activities. Kits must include sufficient supplies appropriate for the activity, location, and environment in which they may be used.~~
- ~~5. The facility shall secure medical treatment by qualified medical personnel as needed for all participants, staff, and volunteers as promptly as circumstances allow.~~
- ~~6. Mobile program expedition groups shall bring executed medical treatment consent forms for all staff and participants on the expedition.~~

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-56. Out-based program staff – Participant ratio.~~

- ~~1. In a program with both male and female participant, there shall be at least one female staff member and one male staff member notwithstanding any other requirements for staff to participant ratios set forth in this chapter.~~
- ~~2. The facility shall provide sufficient staff to meet participant needs under the prevailing conditions of program activities. In any event, all programs shall have at least two staff members on duty at all times. There shall be at least one staff member for every five participants.~~
- ~~3. An expedition group may not exceed fifteen people, including staff, participants, interns, and volunteers.~~
- ~~4. The facility shall identify all skills required by the program's activities and shall identify the staff member who has demonstrated proficiency in that skill. Staff who accompany participants in the field must include at least one staff member who has demonstrated proficiency in each skill required for the program's activities.~~
- ~~5. All staff accompanying participants in the field shall have training as required by this chapter and be at least twenty-one years of age.~~

6. ~~The facility shall maintain documentation of any demonstration of proficiency required by this section in its personnel files.~~
7. ~~A facility which operates an out-based program of more than fourteen consecutive days' duration shall provide the opportunity for participant contact with social service staff a minimum of once every fourteen days. Additional opportunities for contact must be provided on the basis of individual need.~~

~~History: Effective January 1, 1995.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-03~~

~~75-03-16-57. Staff, interns, and volunteers for out-based programs.~~

1. ~~Each program shall designate a staff member as "field director" who coordinates field operations and supervises field staff. The field director shall be at least twenty-five years of age and shall have a minimum of thirty semester or forty-five quarter hours education in recreational therapy or related field, or one year of out-based program field experience.~~
2. ~~A program may have interns who are individuals learning program practices while completing education requirements. Interns must be supervised by program staff.~~
3. ~~A program may have volunteers. Volunteers must be directly supervised by program staff at all times.~~
4. ~~Staff shall meet all applicable local, state, and federal regulations and professional licensing requirements.~~
5. ~~All field staff, interns, and volunteers shall have an annual physical examination by a qualified licensed medical professional. The facility shall maintain documentation of the physical examination in its personnel files.~~

~~History: Effective January 1, 1995.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-03~~

~~75-03-16-58. Staff training for out-based programs.~~

1. ~~The facility shall provide initial staff training consisting of an academic curriculum and practicum or field training.~~
2. ~~The initial staff training and field course training shall be provided by qualified individuals and shall include instruction in the following topics:~~

- a. ~~Water, food, and shelter procurement, preparation, and conservation;~~
 - b. ~~Low impact wilderness expedition and environmental conservation skills and procedures;~~
 - c. ~~Instruction in safety procedures and safe equipment use;~~
 - d. ~~Instruction in emergency procedures;~~
 - e. ~~Sanitation procedures;~~
 - f. ~~Specialty instruction as required;~~
 - g. ~~Navigation skills, including map and compass use, contour, and celestial navigation;~~
 - h. ~~Counseling, teaching, and supervising participants;~~
 - i. ~~Report writing, including development and maintenance of logs and journals;~~
 - j. ~~Federal, state, and local regulations as applicable to the program activity, such as department of human services, bureau of land management, United States forest service, national parks service, North Dakota state game and fish department regulations; and~~
 - k. ~~All written policies a facility is required to adopt under this chapter.~~
3. ~~All out-based program staff must be recertified annually in cardiopulmonary resuscitation and standard first aid.~~
 4. ~~The facility shall maintain documentation of all staff training in its personnel files.~~

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-59. Operation of out-based programs outside North Dakota.~~

1. ~~All mobile program expeditions must originate and terminate in North Dakota. All orientation, emergency instruction, and other activities required under this chapter to take place prior to the program must occur in North Dakota. A facility may not permit participants to join an expedition without receiving orientation, emergency, and other preprogram instruction in North Dakota as required under this chapter. A facility may not permit~~

~~participants to join an expedition after the expedition leaves North Dakota. A facility may not discharge or otherwise separate participants from a program expedition outside North Dakota except in case of emergency, or as provided by the participant's case plan.~~

- ~~2. Out-based programs may not take participants outside the territory of the United States without prior written authorization by the legal custodian.~~
- ~~3. Out-based programs shall follow the standards established by this chapter wherever program activities take place. The facility is responsible for meeting any additional standards imposed by a jurisdiction in which an activity takes place.~~
- ~~4. A facility shall communicate, to the extent required by law, with regulatory agencies in jurisdictions, including county, state and federal, other than North Dakota in which program activities take place.~~
- ~~5. A facility may not take participants outside North Dakota for more than thirty consecutive days.~~

~~History: Effective January 1, 1995.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-03~~

~~75-03-16-60. Daily schedule and log.~~

- ~~1. The facility shall approve and maintain a written description of program activities, including a daily schedule.~~
- ~~2. Field staff shall maintain a common, signed, daily log in a bound volume with preprinted page numbers and lined pages. The log must contain information on accidents, injuries, medications, behavioral problems, and all unusual occurrences. All log entries must be recorded in permanent ink with no lines skipped. The facility shall keep the log as a permanent record.~~
- ~~3. For mobile programs, staff shall record in the log travel times and miles traveled in addition to other information required by this chapter.~~

~~History: Effective January 1, 1995.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-03~~

~~75-03-16-61. Emergency and safety procedures – Communications.~~

- ~~1. The facility shall establish a written emergency plan for responding to potential natural, manmade, and health emergencies, including flood,~~

avalanche, fire, severe weather, loss of water or food supplies, intruders, and lost participants or staff. The plan must include:

- a. Designation of authority and staff assignments;
 - b. Plan for evacuation, including transportation and relocation of participants when necessary and evacuation of injured persons; and
 - c. Supervision of participants after evacuation or relocation.
2. All out based programs shall provide firefighting equipment appropriate to the location and nature of program activities and shall maintain all such equipment in good repair. At a minimum, such equipment must include a shovel and water receptacle.
 3. The facility shall give all program participants training in fire prevention, fire safety, and precautions in case of severe weather. The facility shall give safety training in additional areas as may be applicable to program activities including dehydration, frostbite, heat exhaustion, hyperthermia, hypothermia, poisoning from plants or animals, snow blindness, and drowning.
 4. Any mobile program expedition group shall maintain the capability of contacting the facility at all times by means of a system that includes, at a minimum, reliable two-way radio or telephone communication devices plus a backup means of contact in the event of radio or telephone failure. An expedition group may substitute the capability of contacting a sheriff's office or other emergency response entity only upon prior approval by the department.
 5. A mobile program expedition group shall contact the facility by radio, telephone, or other verbal means at least once every forty-eight hours.

History: Effective January 1, 1995; amended effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-62. Transportation for out-based programs.~~

1. The facility shall adopt written policies for the transportation of participants in an out-based program.
2. Any vehicle used to transport out-based program participants or staff must be equipped with flares, flashlight, jack, spare tire, and fire extinguisher. Any vessel used for water transport of out-based program participants

must be equipped with flares, flashlights, fire extinguishers, and personal flotation devices for all passengers.

3. ~~When transporting one or more program participants, two staff members shall be present at all times, at least one of whom shall be of the same sex as the participant, except in case of emergency.~~
4. ~~All passengers shall wear seatbelts in vehicles so equipped at all times while the vehicle is moving.~~

History: Effective January 1, 1995; amended effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-63. Mobile program travel plan – Predeparture procedures.

1. ~~Prior to the departure of a mobile program expedition group, the facility shall develop a travel plan which includes an itinerary and a preestablished check in time. The facility shall keep a copy of the travel plan at the facility.~~
2. ~~For mobile programs, the facility shall file a copy of the program's itinerary with the sheriff of every county in which program activities take place.~~
3. ~~The facility shall initiate its preestablished emergency and safety plan as provided for in section 75-03-16-61 upon the failure of a traveling group to check in on time.~~
4. ~~The travel plan must:~~
 - a. ~~Include a map of all activity areas;~~
 - b. ~~Identify appropriate sources or locations of water, food, laundry facilities, bathing, and liquid and solid waste and garbage disposal;~~
 - c. ~~Provide daily periodic rest stops and opportunities for relaxation, exercise, and personal time;~~
 - d. ~~Provide that vehicle travel not exceed five consecutive days of eight or more hours without a minimum of one intervening nontravel day, except in case of emergency travel; and~~
 - e. ~~Specify routes to be traveled, including daily mileage, dates and times of departure and arrival, location of overnight stops, and planned activities.~~

5. ~~Prior to departure, all participants and staff shall receive instruction in the proper and safe use of vehicles and equipment, in safety and emergency procedures, and in transportation to emergency facilities.~~
6. ~~When a program's itinerary includes use of land regulated by a public agency, the facility shall comply with all regulations of the public agency, including the obtaining of permits.~~

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-64. Out-based program participants' clothing and personal needs.~~

1. ~~Participants shall have their own clothing, which shall meet the participant's needs and be of proper size.~~
2. ~~Clothing shall be suited to the existing climate and seasonal conditions. Participants shall have regular clean clothing changes at least twice weekly.~~
3. ~~Each participant shall be provided adequate protective equipment to afford reasonable insulation from insects, effects of weather, and irritating plant life. Equipment must include, as conditions require, rain gear, footwear, insect repellent, and sun screen. Staff shall ensure appropriate usage of protective equipment by participants.~~
4. ~~Participants shall be allowed reasonable personal grooming items and supplies, including feminine hygiene supplies, which the participant may keep in the participant's personal possession.~~
5. ~~Each participant shall have time during each day for the purpose of rest and reflection.~~
6. ~~If program activities cause a participant to be absent from regular schooling more than fourteen days in a school year, the facility shall provide the means to continue the participant's individual education plan during the program.~~

History: Effective January 1, 1995; amended effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-65. Out-based program toilet facilities – Bathing.~~

1. ~~When program activities are conducted away from a permanent site, the facility shall provide instruction in sanitary practices that respect individual privacy as well as health and environmental concerns.~~
2. ~~The following requirements apply to permanent program sites:~~
 - a. ~~The program shall provide outdoor toilet facilities that allow for individual privacy. Toilet facilities shall be constructed, located, and maintained in compliance with any existing codes or health regulations, and in any event so as to prevent any nuisance, noxious odors, or public health hazard.~~
 - b. ~~Toilets, outhouses, and portable toilets must be cleaned and disinfected at least daily. Portable toilets must be emptied daily in an approved dump station.~~
 - c. ~~Handwashing facilities must be located adjacent to the toilet area and must be separate and apart from sinks and areas used for food preparation and dishwashing. Soap and handdrying devices must be made available.~~
 - d. ~~The facility shall provide at least one warm shower or warm water for full body sponge bath to each participant no less than every other day.~~

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-66. Water and nutritional requirements for out-based programs.~~

1. ~~The facility shall make available a minimum of six quarts [5.68 liters] of potable water per day per person for drinking, personal hygiene, and cooking, plus one additional quart for each five miles [8.05 kilometers] hiked.~~
2. ~~The facility shall make available to all participants a means for electrolyte replacement.~~
3. ~~All water from natural sources shall be treated for sanitation to eliminate health hazards.~~
4. ~~The facility shall maintain a written menu describing food supplied to the participants to ensure that the nutritional requirements of each participant are met by means of balanced meals. The menu must adjust to meet increased dietary needs as exercise or weather conditions dictate.~~

5. ~~A facility may use foraging as a program activity if the facility provides nonforaged food in compliance with nutritional requirements stated in this chapter. Forage items may not be included in determining whether nutritional requirements are being met. A facility may not use fasting as a program activity.~~
6. ~~Food storage practices must meet standards established by state or local health authorities.~~

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-67. Program and campsites - Permits - Sleeping shelters and equipment.~~

1. ~~The facility shall conduct out-based programs on sites appropriate to the participants' health, safety, case plans, and program goals.~~
2. ~~Campsites must be located on land that is drained sufficiently for participant health and safety. Campsites may not be located in a riverbed or desert washes, or other areas where flash flooding may occur.~~
3. ~~Any tent or other shelter used for sleeping and living purposes, which remains in one location for more than two weeks, must have a floor that is smooth, in clean condition, and in good repair.~~
4. ~~All tents, tepees, or other sleeping shelters made of cloth must be fire retardant, of the fiber impregnated flame retardant variety. A facility may not use plastic sleeping enclosures of any type.~~
5. ~~Sleeping shelters must be easily cleanable and in good repair, must be put up and maintained in safe condition, and must afford adequate protection against inclement weather.~~
6. ~~Tents or other temporary shelters must provide sleeping space of not less than fifteen square feet [1.39 square meters] per person.~~
7. ~~A facility may not permit campfires or open flames of any type in or within forty feet [12.19 meters] of any sleeping shelter. Tent heaters may be used only if they are of a type intended for use in tents and are adequately vented.~~
8. ~~The facility may not permit smoking within any sleeping shelter.~~
9. ~~Sleeping shelters must have an unobstructed exit at all times.~~

10. — Sleeping equipment must be clean, nontoxic, and fire retardant.
11. — Sleeping equipment must provide reasonable insulation from cold and dampness. The facility shall provide insulation from the ground such as a waterproof ground cloth or air or foam mattress in addition to sleeping bag or blankets.
12. — All sleeping equipment must be laundered, drycleaned, or otherwise sanitized between assignment to different participants or staff. All sleeping equipment must be aired at least once every two days and laundered, drycleaned, or sanitized at least once every thirty days of use. Cleaning of sleep equipment must not affect the equipment's fire retardant features.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-68. Sanitation for out-based programs.~~

1. — When program activities are conducted away from a permanent site, the facility shall provide for solid and liquid waste disposal in a manner which promotes health and minimizes impact on the environment.
2. — Personal hygiene supplies must be made of biodegradable materials.
3. — At permanent sites, garbage and rubbish must be stored securely in durable, noncombustible, leakproof, nonabsorbent containers covered with tight-fitting lids. Containers must be lined with a waterproof liner or thoroughly cleaned after each emptying. Garbage and rubbish storage must be away from living and sleeping areas. Solid wastes must be disposed of regularly in an approved sanitary landfill or similar disposal facility.
4. — The facility shall provide for the timely control of insects and rodents in a safe manner which avoids harmful effects to human beings and to the environment.
5. — If any temporary shelter for animals, corral, tie-rail, or hitching post is used, it must be located more than fifty feet [15.24 meters] from any area where food is prepared, cooked, or served. Preventive measures such as insect repellent and daily removal of manure must be used to prevent such a location from becoming an attraction for or breeding place for flies or other insects.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

~~75-03-16-69. Hiking and backpacking.~~

- ~~1. Hiking shall not exceed the physical capability of the weakest member of the group. Hiking is prohibited when conditions pose a threat to the health of the participants. Staff shall monitor hikers at frequent regular intervals when the outdoor temperature is ninety-five degrees Fahrenheit [35 degrees Celsius] or higher, or is minus ten degrees Fahrenheit [-23.33 degrees Celsius] or lower, and shall adjust activities accordingly to ensure each participant's health and safety.~~
- ~~2. The facility shall furnish a frame backpack to participants when the weight to be carried by any participant exceeds twenty percent of the participant's body weight. The facility may not require participants to carry a load that is excessive given the participant's experience and the terrain, duration, and environmental conditions of the trip.~~

~~History: Effective January 1, 1995.~~

~~General Authority: NDCC 50-11-03~~

~~Law Implemented: NDCC 50-11-03~~

~~75-03-16-70. Solo activities.~~

- ~~1. Solo activities may not exceed seventy-two consecutive hours' duration, exclusive of preparation time.~~
- ~~2. Only individuals in good physical and mental condition and who are able to care for themselves without assistance, which has been determined prior to the individual's departure from the facility as provided for in subsections 2 and 3 of section 75-03-16-49, may participate in solo activities.~~
- ~~3. Prior to any solo activity, the facility shall instruct participants in safety and emergency procedures and in the boundaries of the solo activity location.~~
- ~~4. The facility shall furnish each solo activity participant with the following equipment and supplies: whistle, shelter, water, and food as required by this chapter; and at least one change of clothing appropriate to weather conditions.~~
- ~~5. Solo activities are prohibited in areas containing moving water with a strong current.~~
- ~~6. Staff shall observe a solo activity participant at least every two hours during the solo activity. Staff shall adjust the duration of proximity of supervision to the participant's needs, the terrain, and environmental~~

~~conditions. Staff must be available for sight or sound contact by the participant at all times.~~

~~**History:** Effective January 1, 1995.~~

~~**General Authority:** NDCC 50-11-03~~

~~**Law Implemented:** NDCC 50-11-03~~

Section 15. Chapter 75-03-40 is created as follows:

CHAPTER 75-03-40
LICENSING OF QUALIFIED RESIDENTIAL TREATMENT PROGRAM
PROVIDERS

Section

<u>75-03-40-01</u>	<u>Definitions</u>
<u>75-03-40-02</u>	<u>Effect of License</u>
<u>75-03-40-03</u>	<u>Application for License</u>
<u>75-03-40-04</u>	<u>Correction Orders</u>
<u>75-03-40-05</u>	<u>Fiscal Sanctions</u>
<u>75-03-40-06</u>	<u>Provisional License</u>
<u>75-03-40-07</u>	<u>Denial or Revocation</u>
<u>75-03-40-08</u>	<u>Residential Bed Capacity</u>
<u>75-03-40-09</u>	<u>Facility Closure</u>
<u>75-03-40-10</u>	<u>Governance</u>
<u>75-03-40-11</u>	<u>Disaster Plan</u>
<u>75-03-40-12</u>	<u>Performance and Quality Improvement</u>
<u>75-03-40-13</u>	<u>Personnel Files</u>
<u>75-03-40-14</u>	<u>Facility Administrator</u>
<u>75-03-40-15</u>	<u>Clinical Director</u>
<u>75-03-40-16</u>	<u>Treatment Coordinator</u>
<u>75-03-40-17</u>	<u>Direct Care Employees</u>
<u>75-03-40-18</u>	<u>Nurse</u>
<u>75-03-40-19</u>	<u>Family Engagement Specialist</u>
<u>75-03-40-20</u>	<u>Contracted Service Providers</u>
<u>75-03-40-21</u>	<u>Nonemployees</u>
<u>75-03-40-22</u>	<u>Personnel Policies</u>
<u>75-03-40-23</u>	<u>Confidentiality</u>
<u>75-03-40-24</u>	<u>Child Abuse and Neglect</u>
<u>75-03-40-25</u>	<u>Criminal Conviction - Effect on Operation of Facility or Employment by</u> <u>Facility</u>
<u>75-03-40-26</u>	<u>Background Checks</u>
<u>75-03-40-27</u>	<u>Personnel Health Requirements</u>
<u>75-03-40-28</u>	<u>Minimum Employee Requirements</u>
<u>75-03-40-29</u>	<u>Employee Professional Development</u>
<u>75-03-40-30</u>	<u>Resident File</u>
<u>75-03-40-31</u>	<u>Programs and Services</u>
<u>75-03-40-32</u>	<u>Respite</u>
<u>75-03-40-33</u>	<u>Admissions and Assessment</u>
<u>75-03-40-34</u>	<u>Interstate Compact on the Placement of Children</u>
<u>75-03-40-35</u>	<u>Treatment Plan</u>
<u>75-03-40-36</u>	<u>Discharge Plan</u>
<u>75-03-40-37</u>	<u>Resident and Family Engagement</u>
<u>75-03-40-38</u>	<u>Aftercare</u>
<u>75-03-40-39</u>	<u>Runaway Notification</u>
<u>75-03-40-40</u>	<u>Incident and Sentinel Event Reporting</u>
<u>75-03-40-41</u>	<u>Suicide Prevention</u>

<u>75-03-40-42</u>	<u>Medical</u>
<u>75-03-40-43</u>	<u>Medication Management</u>
<u>75-03-40-44</u>	<u>Behavior Management</u>
<u>75-03-40-45</u>	<u>Seclusion</u>
<u>75-03-40-46</u>	<u>Use of Mechanical Restraints – Limitations</u>
<u>75-03-40-47</u>	<u>Buildings, Grounds, and Equipment</u>
<u>75-03-40-48</u>	<u>Food and Nutrition</u>
<u>75-03-40-49</u>	<u>Resident Accommodations</u>
<u>75-03-40-50</u>	<u>Transportation</u>
<u>75-03-40-51</u>	<u>Water Safety</u>
<u>75-03-40-52</u>	<u>Variance</u>

75-03-40-01. Definitions.

As used in this chapter:

1. “Accredited” means to be accredited and in good standing by an independent, not-for-profit organization, approved by the department including the commission on accreditation of rehabilitation facilities, the joint commission, or the council on accreditation.
2. “Aftercare” means followup support and services provided to a resident and family after discharge from a facility.
3. “Assessment” means the ongoing process of identifying and reviewing a resident and the resident’s family’s strengths and needs based upon input from the resident, the resident’s family, and others, including community members and health professionals.
4. “Behavior management” means techniques, measures, interventions, and procedures applied in a systematic fashion to prevent or interrupt a resident’s behavior and promotes positive behavioral or functional change fostering resident self-control.
5. “Care plan or case plan” means the plan developed by the child and family team that incorporates formal and informal services and supports into a comprehensive, integrated plan that, using the identified strengths of the resident and the resident’s family, addresses the needs of the resident and the resident’s family across life domains in order to support the resident and the resident’s family to remain in or return to the community.
6. “Child and family team” means an advisory or recommending posture in relation to the resident’s case plan. The custodial agency and child and family team, led by the resident and the resident’s family, shall work cooperatively through multi-agency and multidisciplinary approaches to provide a wider variety of support services to the resident, the resident’s family, and foster care provider to carry out the permanency goals for the case plan.

7. "Contracted service providers" means a person or entity under contract or agreement with the facility to provide services and supports to residents.
8. "Custodian" means a person, other than a parent or guardian, to whom legal custody of the resident has been given by court order.
9. "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.
10. "Facility" means a qualified residential treatment program.
11. "Guardian" means a person who stands in loco parentis to a resident or court appointed pursuant to North Dakota Century Code chapters 30.1-27 or 30.1-28.
12. "License" means a facility that is either licensed by the department or approved by the department if the facility is located within a tribal jurisdiction.
13. "Mechanical restraint" means any device attached or adjacent to the resident's body that the resident may not easily remove that restricts freedom of movement or normal access to the resident's body.
14. "Nonemployee" means an individual who is not compensated by the facility, such as a volunteer or student intern providing a specific service under the supervision of an employee.
15. "Normalcy" means a resident's ability to easily engage in healthy and age or developmentally appropriate activities that promote the resident's well-being, such as participation in social, scholastic, and enrichment activities.
16. "Nurse" means a nurse licensed in accordance with North Dakota Century Code chapter 43-12.1.
17. "Outcomes" means the results to which all performance targets must contribute, describing specific states or conditions that change, and that are influenced by the achievement of performance targets.
18. "Overnight hours" means a consecutive eight-hour period of time designated as resident sleep hours defined by the facility.
19. "Personnel" means employees hired and nonemployees placed with or

present in the facility.

20. “Qualified individual” means a trained professional or licensed clinician designated by the department to complete the assessment, which will assist in determining the resident’s appropriate level of care.
21. “Reasonable and prudent parent standard” means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a resident while at the same time encouraging the emotional and developmental growth of the resident participating in extracurricular, enrichment, cultural, and social activities.
22. “Resident” means an individual under the age of twenty-one admitted to and residing in the facility.
23. “Restraint” means a physical restraint, mechanical restraint, or medication used as a restraint.
24. “Seclusion” means a room or separate space in the facility designated as a protective environment in which treatment and services are provided, which is secured by means of a lock in a manner that prevents residents from leaving the unit at will.
25. “Trauma informed treatment” means a treatment model designed to address the identified needs, including clinical needs as appropriate, of the resident and the resident’s family.
26. “Treatment” means the use of interventions that prevent or cure disease, reducing symptoms, and restoring the resident to the highest practical functional level.
27. “Treatment plan” means a plan created by the facility which delineates goals, objectives, and therapeutic interventions regarding the appropriate level of care based on the uniqueness of each resident, which considers the perspectives of the resident, the resident’s clinical treatment team, family and significant others, which builds on the resident’s strengths and incorporates a discharge focus.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03, 50-11-00.1

75-03-40-02. Effect of license.

1. A facility license must state the effective date. A license is effective for a maximum period of two years. A facility license is nontransferable and is

valid only on the premises and for the number of residents indicated on the license.

2. For a licensed facility that changes its ownership or for a provisionally licensed facility upon issuance of an unrestricted license:
 - a. The initial period of licensure is one year; and
 - b. The licensing period thereafter may be renewed for a two year period if the facility successfully remains in compliance with all licensing rules and requirements.
3. The department may 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 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 October 1, 2019.

General Authority: NDCC 50-11-03

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

75-03-40-03. Application for license.

1. Applicants must be accredited and in good standing with one of the department approved national accreditation bodies.
2. No person may apply for a license to operate a facility under this chapter until the department has reviewed the need for the additional residential placement resources. To enable the department to make a determination of need for a new qualified residential treatment program facility, the potential applicant shall submit an initial request for application including the following documentation and information to the department:
 - a. A detailed plan for the operation of the proposed qualified residential treatment program which includes:
 - (1) The number, sex, and age range of the residents to be served;
 - (2) The needs or disabilities of residents to be served;
 - (3) The employee staffing, including a list of full-time and part-

time positions by job titles and description;

(4) A description of the proposed program and treatment goals;

(5) A proposed budget; and

(6) The location of the facility and a drawing of the layout of the physical plant.

b. A detailed written description of the methodology and findings which document the reasons why the unserved children under subsection a may not be served satisfactorily in a less restrictive settings.

c. Data to support that existing qualified residential treatment program placement resources are not adequate to meet the needs of children who require the type or types of care, are North Dakota residents, and require the treatment services the applicant proposes to provide.

3. Upon receipt of initial request for application, the department shall:

a. Review the potential applicant's information and may ask for additional materials or information necessary for evaluation of need purposes;

b. Respond in writing within ninety days of receipt of all required information from the potential applicant;

c. Send written notice of determination of need. The notice must state the specific reason for the determination. If the department determines that there is need for additional qualified residential treatment program beds, the notice must be accompanied by an authorization for the person to apply for a license to operate a new qualified residential treatment program; and

d. Inform the potential applicant of what is required to move forward with the application process.

4. An application for a facility license must be submitted to the department annually in the form and manner prescribed by the department.

5. The applicant shall carry general comprehensive liability insurance.

6. For purposes of time limits for approval or denial, an application is received by the department when all required information and

documents have been received by the department. The department shall notify an applicant if an application is incomplete.

7. The department may declare an application withdrawn if an applicant fails to submit all required documentation within sixty days of notification.
8. An applicant currently holding a residential child care facilities license is exempt from compliance with subsection 1.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-01, 50-11-02, 50-11-03

75-03-40-04. 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, 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.
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 documentation that the facility has diligently pursued correction of the violation, the department may grant extensions of time to correct violations.
5. The department may inform the public of facility correction order status.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-04.2

75-03-40-05. Fiscal sanctions.

1. The department may assess a fiscal sanction of twenty-five dollars per day for each day the facility remains out of compliance with a correction order.
2. The issuance of a fiscal sanction does not preclude the department's pursuit of other actions, including provisional licensure, injunction, and license revocation.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-04.4, 50-11-04.5

75-03-40-06. Provisional license.

1. A provisional license must state:
 - a. The facility has failed to comply with applicable standards and regulations of the department;
 - b. The areas of noncompliance noted by the department in a written document; and
 - c. An expiration date not to exceed one year from the date of issuance.
2. The department shall exchange a provisional license for an unrestricted license, upon the facility's demonstration of compliance, satisfactory to the department, with all applicable standards and regulations.
3. A provisional license may be issued only to a facility who has acknowledged, in writing, the factual and legal basis for the violation. If not acknowledged by the facility, the department may revoke a license.
4. Any provisional license must be accompanied by a written statement of violation signed by a designee of the department.
5. A facility with a provisional license is not eligible for foster care maintenance payments. The facility shall be eligible to receive foster care maintenance payments for only the period after which the department determines the facility is in full compliance with the applicable licensing standards and regulations.
6. Subject to the exceptions contained in this section, a provisional license entitles the facility to all the rights and privileges afforded a facility

operating under an unrestricted license.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02.2

75-03-40-07. Denial or revocation.

1. A facility license may be denied or revoked under the terms and conditions of North Dakota Century Code chapter 50-11 or if the applicant or facility has violated any provision of North Dakota chapter 50-11 or fails to meet the minimum requirements of this chapter.
2. If the department decides to revoke a license, the department shall notify the facility in writing of its decision and the reasons for revocation. Revocation of a license must take effect immediately upon receipt and arrangements shall be made by the facility in cooperation with each resident's custodian and parent or guardian for alternative placement.
3. A facility whose application for licensure has been revoked or denied, may appeal to the department under the provisions of North Dakota Century Code sections 50-11-08 and 50-11-09. During an appeal, the facility may not have residents.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-07, 50-11-08, 50-11-09

75-03-40-08. Residential bed capacity.

1. A facility may not receive a licensing amendment to increase or decrease facility bed capacity without approval of the department.
2. To qualify for an increase or decrease, a facility shall:
 - a. Submit a written request;
 - b. Provide a rationale for bed capacity change; and
 - c. Be in compliance with North Dakota Century Code chapter 50-11 and this chapter.
3. The department shall review the facility's request and may approve or deny the request within fifteen working days after considering the need for the beds and the number of beds available. If accepted, the facility will receive an amended license.

4. The department has the authority to conduct a needs assessment at any time to determine the maximum number of licensed qualified residential treatment program beds required to meet the treatment needs of North Dakota children statewide. The needs assessment will allow the department to license facility beds accordingly. The department shall notify facility providers with a sixty-day notice of intent to increase or decrease bed capacity.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03, NDCC 50-11-02 and 50-11-09

Law Implemented: NDCC 25-03.2-03.1, 50-11-02.3

75-03-40-09. Facility closure.

The facility shall have policy to ensure proper and efficient procedure in the event a facility would close. Prior to closing, the facility administrator is required to provide at least sixty days written notice to the department:

1. Detailing a plan for closure, including:
 - a. Date of closure;
 - b. Plan to notify resident's custodian and parent or guardian;
 - c. Identification of a North Dakota depository to maintain the facility's case, fiscal, employee, and nonemployee records; and
 - d. Retention of all fiscal records for a period of seven years following account settlement.
2. Written notification must be given at least forty-five days prior to closure for each resident's custodian and parent or guardian. Notification shall also be given to all former residents currently receiving aftercare services.
3. A facility that does not follow the closure standards may be subject to fiscal sanctions.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-10. Governance.

1. Each facility shall have a governing body that is responsible for the operation, policies, activities, practice, and overall operations of the facility. The governing body shall:
 - a. Be composed of at least five members. A list of the names and contact information of members of the governing body must be maintained and submitted to the department annually. Each board member shall annually disclose conflict of interests. Members of the board may not be family or have conflicts of interest with the facility administrator or employees with budget or accounting duties;
 - b. Meet at least every six months;
 - c. Maintain records of the governing body's meetings;
 - d. Develop and review policies for member selection and rotation;
 - e. Ensure each member understands the facility operation and program goals;
 - f. Ensure that the facility is funded, housed, staffed, and equipped in a manner required for the provision of services;
 - g. Provide financial statements and audits to the department for reimbursement purposes, upon request;
 - h. Ensure the facility has an active strategic plan with a schedule to review annually;
 - i. Employ a qualified facility administrator and delegate responsibility to that facility administrator for the administration of the facility;
 - j. Evaluate the performance of the facility administrator at least annually;
 - k. Adopt a written statement of the purpose and philosophy of the facility; and
 - l. Adopt written policies for the facility regarding administration, personnel, buildings, grounds, and program services. Personnel policies for the recruitment and retention of employees necessary to operate the facility must indicate expectations of employees and nonemployees, detail job descriptions for each position, and ensure a process to review policies and procedures with employee

participation at least every three years.

2. All statements and policies required by this chapter must be in writing to demonstrate the intent of the standards are integrated into facility practice. The facility policy must be up to date.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-11. Disaster plan.

A facility shall have a written disaster plan to accommodate emergencies. The disaster plan must allow the department or custodial agency to identify, locate, and ensure continuity of services to residents who are displaced or adversely affected by a disaster. The facility shall ensure the disaster plan specifies:

1. Where employees, nonemployees, and residents would go in an evacuation, including one location in the nearby area and one location out of the area;
2. Contact information inclusive of phone numbers and email addresses for facility administration;
3. A list of items the facility will take if evacuated, including any demographic and emergency contact information for each resident and medication and medical equipment to meet the needs of residents;
4. Process the facility will use to inform the department and resident's custodian and parent or guardian if the resident is displaced or adversely affected by a disaster;
5. Employee training on the disaster plan must detail procedures for meeting disaster emergencies. The review of the disaster plan must occur with employees on an annual basis to ensure it is current, accurate, and employees understand their role. The facility shall document the annual review and provide the documentation to the department upon request;
6. Resident training on the disaster plan ensuring awareness of all emergency and evacuation procedures upon admission to the facility. These procedures must be reviewed upon intake into the facility and every quarter. Resident training must include the performance and documentation of fire evacuation drills;

7. The facility has telephones centrally located and readily available for use in each living unit of the facility. Emergency numbers must be written and posted by each telephone;
8. There must be at least two independent exits from every floor. The exits must be located so that residents can exit from each floor in two separate directions, without going through a furnace room, storage room, or other hazardous area; and
9. Flashlights must be available for emergency purposes.

History: Effective October 1, 2019.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-11

75-03-40-12. Performance and quality improvement.

A facility shall have a performance and quality improvement plan which advances efficient, effective service delivery, effective management practices, and the achievement of strategic and treatment program goals and outcomes.

1. A facility shall have a written performance and quality improvement plan, which operationalizes the organization's performance and quality improvement system, and:
 - a. Defines the organization's approach to quality improvement;
 - b. Defines employee roles and responsibility for implementing and coordinating the performance and quality improvement plan;
 - c. Identifies what is being measured;
 - d. Defines data collection processes and applicable timeframes;
 - e. Outlines processes for reporting findings and monitoring results; and
 - f. Provides a document or chart that describes the organization's performance and quality improvement plan including committees and members, as appropriate.
2. A facility performance and quality improvement plan must include guidelines for performance and outcomes which identify measures to build organizational capacity, improve services, and meet licensing, contracting, and reporting requirements, by evaluating the:

- a. Impact of services on a resident;
 - b. Quality of service delivery; and
 - c. Management and operations performance.
3. A facility shall use a standardized tool to measure resident outcomes, including at least two of the following areas:
- a. Change in clinical status;
 - b. Change in functional status;
 - c. Health, welfare, and safety;
 - d. Permanency goal achievement;
 - e. Quality of life;
 - f. Achievement of individual service goals; or
 - g. Other outcomes as appropriate to the program or service population.
4. Facility shall conduct the post residential, department approved, outcomes survey at the conclusion of the six-month required followup aftercare period.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-13. Personnel files.

1. The facility shall maintain an individual file on each employee. The file must include:
- a. File inventory detailing first and last date of employment, reason employment ended, training totals per year, and performance evaluation dates due;
 - b. The application for employment including a record of previous employment;
 - c. A job description specifying the employee's roles and responsibilities;

- d. A statement signed by the employee acknowledging the confidentiality policy;
 - e. Documentation of information obtained from an employee's references if previously employed at another residential facility;
 - f. Annual performance evaluations;
 - g. Professional development and training records consisting of the name of presenter, date of presentation, topic of presentation, and length of presentation. The following training must be completed and required training certificates placed in the employee file:
 - (1) First-aid training;
 - (2) Cardiopulmonary resuscitation and automated external defibrillator; and
 - (3) Nonviolent crisis intervention;
 - h. 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;
 - i. Results of fingerprint based criminal background checks, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
 - j. Any other evaluation or background check deemed necessary by the facility administrator of the facility; and
 - k. Verification of any required license or qualification for the position or tasks assigned to the employee.
2. The facility shall maintain an individual file on each nonemployee. The file must include:
- a. Personal identification information;
 - b. Results of fingerprint based criminal background checks, 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.
3. The facility shall adopt a policy regarding the retention of employee and nonemployee files.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-14. Facility administrator.

The governing body of the facility shall designate a facility administrator for the facility.

1. The governing body of the facility shall clearly define, in writing, the responsibilities of the facility administrator. If the facility is licensed for ten or more residents, the facility shall employ a full-time onsite facility administrator. A facility may not employ a facility administrator less than half-time.
2. The facility administrator must have a bachelor's degree in business or public administration, social work, behavioral science, or a human services field and have four years of related work experience in administration or must be an individual otherwise qualified and employed as a residential child care facility administrator prior to October 1, 2019.
3. The facility administrator shall assure that adequate supervision is provided to all employees and nonemployees working or placed in the facility.
4. The facility administrator shall designate and provide evidence of the designation in the employee's file, at least one employee authorized to apply the reasonable and prudent parent standard. The designated employee shall receive training on how to use and apply the reasonable and prudent parent standard.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-15. Clinical director.

1. The facility shall clearly define, in writing, the responsibilities of the clinical director. The duties of the clinical director must be devoted to the provision of clinical services.
2. The clinical director must have a master's degree in a behavioral science field and must be licensed as required by the field of practice, with three years of work experience in a clinical setting, have experience working with children in need of treatment, and provide evidence of supervisory knowledge and skills, or must be an individual otherwise qualified and employed as a residential child care facility program director prior to October 1, 2019.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-16. Treatment coordinator.

1. The facility shall clearly define, in writing, the responsibilities of the treatment coordinator employees. The duties of a treatment coordinator employee must be devoted to the coordination of treatment services and overall case management of treatment planning for residents. A treatment coordinator employee must have achieved the competencies necessary to implement an individualized plan of care for each resident.
2. The treatment coordinator employee must have a bachelor's degree in a behavioral science field and must be licensed as required by the field of practice, and two years previous paid or unpaid work experience with children or families or be an individual otherwise qualified and employed as a residential child care facility social service employee prior to October 1, 2019.
3. A facility shall have sufficient treatment coordinator employees employed to meet minimum employee-to-resident ratios required by this chapter.
4. A treatment coordinator employee is responsible for the supervision of other employees or nonemployees must be allowed reasonable time to perform supervision tasks.

5. The professional development and training records must document the treatment coordinator employee has had appropriate training to coordinate treatment services, including wraparound certification, when applicable, and trauma informed care.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-17. Direct care employees.

1. The facility shall clearly define, in writing, the duties and responsibilities of the direct care employees.
2. All direct care employees must:
 - a. Be at least twenty-one years of age;
 - b. Have a high school diploma or equivalent;
 - c. Have at least one year of experience working with children or families. If a prospective direct care employee does not have one year of experience working with children or families, the facility may choose to hire, but then shall provide shadowing and supervision to the direct care employee for up to one year or until direct care employee has successfully completed all required training noted in 75-03-40-30; or
 - d. An individual otherwise qualified and employed as a residential child care facility direct care employee prior to October 1, 2019.
3. A direct care employee supervising other direct care employees must have a bachelor's degree in behavioral science field or two years previous work experience with children or families.
4. A facility shall always have direct care employees working to meet the minimum employee-to-resident ratios required by this chapter.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-18. Nurse.

1. The facility shall clearly define, in writing, the duties and responsibilities

of the nurse which must be within the scope of North Dakota Century Code chapter 43-12.1.

2. A facility shall provide for an onsite nurse to accommodate the medical needs of residents.
3. The nursing employee may be an employee of the facility or a contracted provider available to provide onsite nursing services to residents.

Effective: October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-19. Family engagement specialist.

1. The facility shall clearly define, in writing, the responsibilities of family engagement specialists. The duties of the family engagement specialist must be devoted to the provision of family engagement and aftercare service supports to best meet the needs of the resident and the resident's family. The family engagement specialist shall maintain ongoing contact with the resident's family as a liaison to the resident's treatment in the facility. Tasks may include:
 - a. Communicating with the resident's family throughout the week to update the family on the resident's day, treatment progress, and challenges;
 - b. Offering support to the treatment coordinator employee and the resident's treatment plan; and
 - c. Providing or coordinating aftercare services and supports.
2. A family engagement specialist must have achieved the competencies necessary to implement family engagement strategies while the resident is in placement and coordinate an aftercare plan for no less than six months post discharge.
3. The family engagement specialists must have a bachelor's degree in a behavioral science field and must be licensed as required by the field of practice, and two years previous paid or unpaid work experience with children or families or be an individual otherwise qualified and employed as a residential child care facility social service employee prior to October 1,

2019. A higher degree may substitute for years of experience or the prospective family engagement specialist shall achieve the certification in either peer or family support and have the competencies to engage with families.

4. A facility shall have sufficient family engagement specialists to meet the needs of the residents and family during placement and for no less than six months post-discharge.
5. The professional development and training records must document the family engagement specialist has had appropriate training to coordinate treatment services, including family engagement and trauma informed treatment.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-20. Contracted service providers.

A facility may contract for or otherwise arrange professional services not provided by the facility when necessary for implementation of a resident's treatment plan. If a facility does contract for professional service providers to offer treatment onsite, the facility shall:

1. Maintain a list of all contracted service providers offering services onsite;
2. Require that each contracted service provider have the appropriate North Dakota license or certification; and
3. Require that each contracted service provider submit written reports to the facility on the resident's treatment progress.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-21. Nonemployees.

1. A facility which uses nonemployees shall:
 - a. Develop and provide a copy of a description of duties and specified responsibilities;

- b. Designate an employee to supervise and evaluate nonemployees; and
 - c. Develop a plan for the orientation and training of nonemployees to include the philosophy of the facility and the needs of the residents and the residents' families.
2. Nonemployees may provide services in support of, but not in substitution for, employees. Nonemployees may not be counted as an employee for purposes of employee-to-resident ratio requirements imposed by this chapter.
 3. 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 comply with section 75-03-40-23.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-22. Personnel policies.

The 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. The facility shall have clearly written personnel policies for employees and when applicable, nonemployees. The facility shall make the policies available to each employee and nonemployee. The policies must include:

1. An annual professional training and development plan for all positions;
2. Procedures for reporting suspected child abuse and neglect;
3. Procedures detailing employee supervision and the number of employees one supervisor can supervise. The facility shall require and document annual training for supervisors to maintain and improve competence in the supervisory role and in facility treatment practices;
4. Procedures for employee annual written evaluation;
5. Procedures for employee and nonemployee disciplinary actions and terminations;

6. Procedures for storing personal belongings which may include car keys, cell phones, and employee or nonemployee medication while on duty;
7. Procedures for personnel grievances;
8. Each facility shall implement policy and procedure to address:
 - a. Zero tolerance policies, which must include zero tolerance for sexual abuse and sexual harassment by employees and nonemployees to others in the facility;
 - b. Non-discrimination against an employee or nonemployee; and
 - c. Steps taken when an employee or nonemployee violates policy, procedures, or licensing standards that affects the mental or physical well-being of a resident; and
9. A plan for review of the personnel policies and practices with 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 October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-23. Confidentiality.

1. For purposes of this section, "persons who have a definite interest in the well-being of the residents" include:
 - a. The resident's custodian, parent, or guardian, except to the extent the parental rights have been terminated or limited by court order;
 - b. The referring agency that placed a resident in the facility; and
 - c. An individual or entity identified as a provider of services, as determined by the department, located in the home community of the resident's family, for the purposes of reunification.
2. Except as otherwise provided in this section, facility records concerning residents that have received, are receiving, or seek to receive facility services must be safeguarded and may be made available only:
 - a. To 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 who may lawfully review a resident's records, to review or receive copies of that resident'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 residents concerned, who are in a position to serve their interests, and who need to know the contents of the records in order to assure 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 current resident or former resident receiving aftercare services or the family of the resident, without first securing the written consent of the custodian and parent or guardian of the resident, or the written consent of an adult who was a former resident of the facility. The facility shall:
- a. Ensure the written consent is 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;
 - b. Inform the person signing that the individual is free to either grant or refuse to grant consent;
 - c. Provide a seven-day waiting period during which the consent can be withdrawn by the signing party; and
 - d. Ensure the consent is time-limited. The written consent must apply to an event that occurs no later than one year from the date the consent was signed.
4. A facility shall disclose its records to the department as requested.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

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

75-03-40-24. Child abuse and neglect.

1. All employees and nonemployees 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 employees and nonemployees to report cases of suspected child abuse or neglect. The procedures must include the following statement: "All 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 current resident or former resident receiving aftercare services whose health or welfare has been, or appears to have been, harmed as a result of abuse or neglect, that employee or nonemployee shall immediately report this information to the department. Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment or placement of nonemployee 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 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 and discipline of an employee or nonemployee who fails to report suspected child abuse or neglect; and
 - f. The status of the employee or nonemployee while the report is being assessed; if they are the subject of the report.
4. The facility shall cooperate fully with the department throughout the course of any assessment of any allegation of child abuse or neglect made concerning care furnished to a resident. The facility shall, at a minimum, provide the assessors with all documents and records available to the facility and reasonably relevant to the assessment and permit confidential interviews with employees, nonemployees, and residents. Internal facility interviews and investigations are not permitted to occur concurrent with a department assessment or law enforcement investigation.
5. In the case of an indicated determination, the facility shall notify the department licensing administrator, in writing, of the corrective action the facility has taken, or plans to take, to comply with any resulting recommendations from the institutional child protection team. The facility shall make assurances that revised facility practice will reduce the risk of

the incident reoccurring. The facility shall respond within thirty days of receiving written notification of the finding.

6. A facility shall establish written policies specific to how the facility will proceed when a current or former employee or nonemployee is known to be:
 - a. Involved in any capacity in a reported incident of institutional child abuse or neglect; or
 - b. The subject of a services required decision in a child abuse or neglect report that occurred outside of the facility.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

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

75-03-40-25. Criminal conviction - Effect on operation of facility or employment by facility.

1. A facility administrator may not be, and a facility may not employ or place, in any capacity that involves or permits contact between an employee or nonemployee and any resident cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; Section 1 of 2019 Senate Bill No. 2273, sexual extortion; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult – penalty; 12.1-31-07.1, exploitation of an eligible adult – penalty; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or

- c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.
- (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, has elapsed.
- (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of care to children.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction. The department may not be compelled to make such determination.
4. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.
5. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
- a. Common knowledge in the community;
- b. Acknowledged by the individual; or
- c. Discovered by the facility, authorized agent, or department as a result of a background check.
6. A facility shall establish written policies and engage in practices that

conform to those policies, to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.

7. A facility shall establish written policies specific to how the facility shall proceed if a current employee or nonemployee is known to have been found guilty of, pled guilty to, or pled no contest to an offense.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-06.8

75-03-40-26. Background checks.

1. The facility shall require a fingerprint based criminal background check and child abuse and neglect index check be completed for each prospective employee and nonemployee.
2. The facility shall make an offer of employment to a prospective employee or an offer of placement to a nonemployee conditional upon the individual's consent to complete required background checks. While awaiting the results of the required background check, a facility may choose to provide training and orientation to a prospective employee or nonemployee. However, until the approved background check results are placed in the employee or nonemployee file, the prospective employee or nonemployee may only have supervised interaction with residents.
3. 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 subject. The facility shall place a copy of the reference check in each employee file.
4. The facility shall submit proper paperwork for the department to perform an annual child abuse and neglect index check on every employee and nonemployee. The facility shall place a copy of the results in each employee or nonemployee file.
5. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the

background check.

6. The facility previously licensed as a residential child care facility until September 30, 2019, may use the current employee's or nonemployee's fingerprint based criminal background check results in the personnel file previously completed by the residential child care facility to comply with this section.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-06.8

75-03-40-27. Personnel health requirements.

1. All employees and nonemployees shall be capable of performing assigned tasks.
2. 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 professional performing the screening shall sign a report indicating the presence of any health condition that would create a hazard to others in the facility.
3. All employees and nonemployees shall undergo an initial test or screening for tuberculosis, within thirty days after employment or placement, and test results placed in employee and nonemployee files within thirty days of employment.
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 who have not been infected.
5. 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 the employee or nonemployee files. Medical information of employees and nonemployees must be treated as a confidential medical record available only to the employee, the nonemployee, the facility, or official regulating authorities, including the department.
6. The facility shall develop a policy regarding health requirements for employees and nonemployee, including how often health screenings and tuberculosis testing will be required by the facility following the initial

screening requirements.

7. The facility shall develop a policy requiring all employees and nonemployees to have the ability to carry out their assigned functions and duties. Employees or nonemployees whose condition gives reasonable concern for safety of residents may not be in contact with residents in placement.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-28. Minimum employee requirements.

1. For purposes of this section:
 - a. "Reside" means to sleep and keep personal belongings; and
 - b. "Structure" means a building that is or may be free standing. The existence of a walkway, tunnel, or other connecting device on, above, or below ground is not effective to make one structure from two or more component structures.
2. Each facility shall adopt policy specific to employee coverage for facility operations including holidays, weekends, on-call clinical team rotations, daytime and overnight hours. Policy must address:
 - a. Designated employees required for the facility on-call clinical team;
 - b. Number of qualified employees onsite to sufficiently meet the needs of residents and respond to emergency situations;
 - c. Evaluation of the number of employees necessary to meet the age, developmental level, length of treatment, and the service needs of the resident population;
 - d. Ability to schedule same gender or cross gender supervision if indicated by resident treatment needs; and
 - e. Employees hired specific to the onsite educational program may not be counted as direct care employees, treatment coordinator employee, family engagement specialist, facility administrator, or a clinical director during any time educational services are provided.

3. Each facility which operates more than one structure in which residents reside shall count the total number of residents admitted to the facility, residing in all structures collectively for purposes of determining the required number of clinical and treatment employees to meet employee-to-resident ratios.
4. Each facility shall comply with the following minimum employee-to-resident ratio requirements:
 - a. A rotating on-call clinical team must be available twenty-four hours a day, seven days a week to meet the needs of resident emergency and crisis situations. The on-call clinical team must include at a minimum; one nurse and one clinical employee;
 - b. No less than one half-time facility administrator for a facility providing treatment for up to nine residents;
 - c. No less than one full-time facility administrator for a facility providing treatment for ten or more residents;
 - d. No less than one full-time clinical director;
 - e. No less than one full-time nurse;
 - f. No less than one full-time treatment coordinator employee for each nine residents; and
 - g. No less than one full-time family engagement specialist for each eighteen residents or aftercare clients.
5. During awake hours each facility shall have no less than two employees qualified to provide direct care working on the property with at least one direct care employee on duty for each six residents.
6. During overnight hours each facility shall have:
 - a. Awake employees at all times;
 - b. No less than two employees qualified to provide direct care working on the property with at least one direct care employee on duty for each ten residents; and
 - c. A policy that includes a requirement that an employee will check on residents during overnight hours at a minimum of every fifteen minutes, and more frequently if the acuity of the resident demands greater supervision.

7. The facility shall notify the department, in writing, if the minimum employee-to-resident ratios are not met based on position vacancies. An interim plan to cover the employee duties must be approved by the department.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-29. Employee professional development.

1. All employees in contact with residents shall receive at least twenty hours of training per year, with evidence of completion in the employee file.
2. Required trainings to prepare employees to meet the needs of residents served by the facility include:
 - a. Certified first aid;
 - b. Certified cardiopulmonary resuscitation and automated external defibrillator training;
 - c. Certified nonviolent crisis intervention training;
 - d. Facility trauma informed treatment curriculum;
 - e. Child abuse and neglect mandated reporter training;
 - f. Children's emotional needs; and
 - g. Suicide prevention training, including identification of signs and facility response measures.
3. A certified instructor shall provide training for nonviolent crisis intervention, first aid, cardiopulmonary resuscitation, and automated external defibrillator. A formal certificate must be provided to each employee demonstrating their competencies in the specific training area. A copy of the certificate must be placed in the employee file. Until a new employee has completed these required trainings, the facility administrator shall ensure that another employee, current in the required trainings, is scheduled to work on the same shift as the new employee pending training.
4. Prior to a new employee working independently with residents, the facility shall provide orientation training to the employee covering all of the

following areas, with evidence of completion present in the employee file:

- a. Overall facility philosophy and program goals;
- b. Review of administrative procedures, policy, and protocols;
- c. Review of personnel policies;
- d. Review of programs and services, policy, and protocols;
- e. Discuss the nature of residents' emotional and physical needs;
- f. Discuss the expected employee conduct toward residents, expected resident conduct, and the facility's behavior management techniques;
- g. Provide an overview of trauma and facility trauma informed treatment;
- h. Require wraparound certification, if applicable;
- i. Review protocol for observing and reporting resident behavior;
- j. Review resident rights and grievance procedures;
- k. Identification and reporting of child abuse and neglect;
- l. Review suicide prevention;
- m. Review disaster planning and evacuation procedures;
- n. Resident search procedures and policies;
- o. Review confidentiality standards;
- p. Review facility procedures for reporting a runaway;
- q. Fire safety and evacuation procedures;
- r. Emergency medical procedures and facility emergency security measures and procedures;
- s. Discuss interest in becoming certified for medication distribution; and
- t. Review facility daily routine, activities, cleaning, transportation,

treatment group schedules, and meals.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-30. Resident file.

1. Upon placement, a resident's case record is confidential and must be protected from unauthorized examination unless permitted or required by law or regulation. The facility shall adopt a policy regarding the retention of resident records.

2. The resident record must include on file:
 - a. A file inventory with dates of admission, discharge, aftercare, referral source, and emergency contact information;

 - b. The resident's full name, birthdate, and other identifying information;

 - c. A photo of the resident;

 - d. The name and contact information of a resident's custodian and parent or guardian at the time of admission, as well as contact information of additional family members approved to engage in visitation and maintain family connections;

 - e. The date the resident was admitted and the referral source;

 - f. Signed care agreement or contract, including financial responsibility and expectations of all parties. The placement agreement must indicate a clear division of responsibility and authority between the facility and the custodian and parent or guardian;

 - g. Signed written consents including consent to non-emergency use of psychotropic medication and consent for use of locked seclusion, if applicable;

 - h. A copy of the initial and all ongoing assessment reports completed by the department approved qualified individual or if the resident is

placed for thirty-day assessment period, documentation indicating the resident is placed for assessment must be on file;

- i. A copy of required interstate compact forms, as applicable;
- j. If the resident is in public custody, a current court order establishing the placement authority of a public agency;
- k. If the resident is in public custody, a copy of initial and any ongoing judicial reviews granting approval for the qualified residential treatment program placement;
- l. If the resident is in public custody, a copy of the most recent permanency case plan and all updates to the case plan, at least quarterly;
- m. Within thirty days of determination of appropriate placement, the facility shall establish and maintain a treatment plan for each resident. A copy of the treatment plan prepared by the facility must include a list of facility-based and community-based services and supports the resident and their family are currently receiving or will receive while the resident is in treatment, the family engagement plan, the discharge plan, and the aftercare plan. If the resident is placed for less than thirty days, an abbreviated treatment plan must be prepared by the facility;
- n. If the resident is placed for a thirty-day assessment period by the qualified individual, the facility shall establish an abbreviated treatment plan;
- o. Progress reports, no less than quarterly, must be provided to the resident, custodian and parent or guardian. The treatment plan may serve as the progress report as long as it details the progress the resident has made in achieving their treatment goals;
- p. Progress reports on residents receiving professional services outside of the facility;
- q. Ongoing documentation and case activity logs detailing progress of the treatment plan;

- r. Documentation of discharge planning;
 - s. Visitation records. The facility shall have a formal plan for visitation signed by the custodian and parent or guardian detailing opportunities for the resident to engage in onsite visitation and home visits with family;
 - t. Education records;
 - u. All incident reports involving the resident; and
 - v. Documentation the clinical director, facility administrator, or designated employee has reviewed the resident case record monthly.
3. The resident record must include aftercare supports for six months post discharge. Information to include:
- a. Contact information for the custodian and parent or guardian and others determined necessary for aftercare;
 - b. Date of discharge and six-month aftercare date of completion;
 - c. Documentation from the family engagement specialist detailing the aftercare or family treatment plan progress;
 - d. Documentation of ongoing communication with the resident, resident's custodian and parent or guardian and local providers; and
 - e. Upon six-month completion of aftercare, the resident file must include:
 - (1) Summary of the six-month aftercare services provided; and
 - (2) A copy of the department approved outcomes survey.
4. A separate health care file must be maintained as part of each resident's case record. The health care record must include all of the following:

- a. Consent for medical care. The facility has obtained written, signed informed consent that gives the facility, resident's physician or health care consultant the following authority to:
- (1) Provide or order routine medical services and procedures, including scheduled immunizations, dental services, and non-prescription and prescription medications;
 - (2) Delegate and supervise administration of medications by authorized employees and for such employees to handle, provide the medication to the resident, and provide monitoring of resident self-administration;
 - (3) Obtain medical information, as needed, on the resident; and
 - (4) Provide or obtain an order for medical services and procedures when there is a life-threatening situation, emergency medical procedures, including surgery, when it is not possible to immediately reach the person or authority authorized to give signed written specific informed consent;
- b. Documentation about any special nutritional or dietary needs identified;
- c. Documentation of health history;
- d. Documentation of any medical treatments received while residing in the facility, including:
- (1) Dates and person administering medical treatment;
 - (2) Immunizations;
 - (3) Laboratory tests;
 - (4) Routine and emergency health care examinations;
 - (5) Dental examinations and treatment; and
 - (6) Eye exams and treatment; and

e. Medication administration records.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

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

75-03-40-31. Programs and services.

Facility shall utilize trauma informed treatment and shall adopt a plan for the model which must include a description of treatment offered to residents and their families. The facility shall 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, nursing, psychological, psychiatric, clinical services, and other appropriate services.

1. The facility shall have the ability to provide resource information for referral sources; including:
 - a. Identification of the treatment services provided;
 - b. Characteristics, including specific diagnoses, of children appropriate for referral and admission to the facility;
 - c. Trauma informed care model used;
 - d. The process by which the facility intends to achieve its goals;
 - e. Treatment orientation of the facility;
 - f. Information required with the referral;
 - g. Specialty programs offered by the facility;
 - h. Performance quality improvement data;
 - i. Education options available to residents;
 - j. Exclusions of residents the facility is unable to serve, if applicable; and
 - k. Other information as needed to assist with determining appropriate level of care for a resident to be placed in the facility.
2. Education. Any primary or secondary education program offered by a

facility must be in compliance with standards established by the department of public instruction. The facility shall ensure that all residents who receive care in the facility comply with all state school attendance laws.

3. Religious opportunities. The facility shall make a reasonable effort to make opportunities available for residents to attend religious ceremonies within the area in which the facility is located, giving appropriate consideration to any requests by the resident and the resident's family. The facility shall respect the religious beliefs of the resident and the resident's family.
4. Normalcy activities. The facility shall document the resident's normalcy activities and share the information with the resident's custodian and parent or guardian. Each facility shall create a written policy detailing:
 - a. The employee job description related to carrying out the duties of the reasonable and prudent parent standard;
 - b. The variety of normalcy activities offered on and offsite to residents; and
 - c. Procedures identifying supervision, transportation, and offsite activity emergency responses.
5. The facility shall develop policy specific to grievance procedures to allow residents and their families, referral sources, and stakeholders to submit complaints and grievances to the facility regarding programs and services. The facility shall have policy in place to review and respond to the complaints and grievances. The facility shall maintain an annual record of complaints, grievances, and resolutions.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-32. Respite.

A facility may operate an optional respite care program with approval of the department. Respite care is defined as temporary relief care for a child with special medical, emotional, or behavioral needs, which requires time-limited supervision and care by a licensed foster care provider. A respite care episode is a specified period of time during which respite care is provided by a licensed provider.

1. Eligibility. Residents eligible for respite care offered by an approved facility include a foster child in public custody and a former qualified residential treatment program resident engaged in the six-month aftercare.
2. Admission and discharge. A facility operating a respite care program shall have the written policies and procedures for admissions and discharge for respite care including, eligibility into the respite program, admissions criteria, required belongings, and medications needed upon admission, required identification documentation, authorizations needed, written consents for emergency medical care, medications, and discharge planning.
3. Staffing. A facility shall assign an employee to have primary responsibility for the facility's respite care program. Employee-to-resident ratios must, at a minimum, meet the ratio as described in this chapter for direct care.
4. Program and services. A facility respite program must be developed that allows for a short-term refocus of service delivery and supports for a community placement. Respite care placements are exempt from the medical examination requirements due to the short period of stay.
5. Respite care plan. A facility shall develop an abbreviated plan for each resident admitted to the facility for respite care. The abbreviated plan must provide for services to meet social, emotional, medical, and dietary needs. The respite plan must address daily routine, engagement in recreational activities, ongoing education, and discharge planning. The respite plan may include a list of facility-based and community-based services and supports the resident and family is currently receiving or will receive upon discharge.
6. Length of stay. A respite care placement may not extend beyond seven days per episode.
7. Discharge. When a resident is discharged from respite care, the facility shall document in the resident's respite file the dates of the resident's stay, a summary of the resident's stay, the name of the person to whom the resident was discharged, and a list of all personal belongings and medications that went with the resident upon discharge. A final plan must be provided to the custodian and parent or guardian upon discharge.

8. Respite resident file. A facility with a respite care program shall include:
- a. The resident's full name, birthdate, and other identifying information;
 - b. The contact information of the resident's custodian and parent or guardian at the time of admission;
 - c. The date the resident was admitted and discharged;
 - d. Signed respite care agreement;
 - e. Signed written consents including consent to non-emergency use of psychotropic medication and consent for use of secured unit, if applicable;
 - f. If the child is in public custody, a current court order establishing the facility's authority to accept and care for any resident under the custody of a public agency;
 - g. Copy of the abbreviated plan prepared by the facility; and
 - h. Medication administration records, if applicable.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-33. Admissions and assessment.

- 1. Admissions policies and procedures. A facility shall have written resident admission policies and procedures that describe the primary treatment offered onsite, range of presenting behaviors the facility shall treat, and procedures for admitting a resident.
- 2. Admissions and discharge committee. A facility shall have an admissions and discharge committee with written policy specific to employees on the committee, how often the committee meets, and the timeliness the committee has in responding to referrals. The committee shall meet on at least a weekly basis. Before a prospective resident is admitted to the facility, the committee shall evaluate the needs of the prospective resident using information and procedures described in policy and

determine whether the facility can meet the identified needs of the prospective resident.

3. Admission determination. Admissions committee shall complete a written, dated, and signed admission determination on a prospective resident which includes a preadmission review and identification of the prospective resident's primary presenting needs. The committee shall provide a written statement recommending reasons for or against admission based on the ability of the facility to meet the prospective resident's needs. The facility shall provide the determination and decision to the referral within seven days of receipt of the completed application. Referral may be completed by:
 - a. A public agency, if a prospective resident is in foster care and a public agency is granted custody and given full placement authority pursuant to law or court order; or
 - b. A parent or guardian, if a prospective resident is a private placement.
4. Pre-placement visit. Whenever possible, a facility shall arrange with the custodial agency for a pre-placement visit for the prospective resident and the parent or guardian, to provide them with an orientation to the facility. If the ability to arrange onsite visitation is not possible, virtual meeting is acceptable.
5. Admission conditions. A facility may admit a prospective resident if the facility can meet the prospective resident's needs, as determined by the admission determination and the following conditions are met:
 - a. Qualified individual - Level of care assessment.
 - (1) Completed assessment. The facility has received documentation from the department approved qualified individual granting approval for the resident to be admitted to a qualified residential treatment program based on the North Dakota level of care assessment; or
 - (2) Thirty-day assessment period approval. The facility has received documentation from the department approved qualified individual granting approval for the resident to be admitted for a thirty-day assessment period. No resident shall be admitted to the facility for the assessment period without the approval of the qualified individual. For residents placed in the facility during the thirty-day assessment period to determine appropriateness of a qualified

residential treatment program placement, the facility shall allow access to the qualified individual and collaborate in the completion of the level of care assessment;

b. Juvenile court approval. For foster children, confirmation from the juvenile court must be on file approving the qualified residential treatment program placement within sixty days of the resident's date of entry into the facility;

c. Interstate placements. In accepting a prospective resident from outside the state of North Dakota, the facility shall receive prior written approval under the interstate compact on the placement of children;

d. Non-discrimination against a resident; and

e. All documentation required for the resident record; including medical consent, medical history, family contact information, family history, placement care agreement, and financial responsibility.

6. Orientation. Upon admissions, each resident shall receive orientation to facility living. An employee shall:

a. Orient the new resident and the resident's custodian and parent or guardian to the facility program, if no pre-placement visit occurred;

b. Help the new resident to adjust to the effects of separation from family and to the residential placement; and

c. Provide the new resident and the resident's custodian and parent or guardian copies of the house rules, including rules on visiting, expected behavior and consequences for rule infractions, resident rights, and grievance and complaint procedures, with explanations of the documents.

7. Initial screenings. Upon admissions, a facility shall complete for each resident a:

a. Suicide risk screening within twenty-four hours;

b. Mental health screening within twenty-four hours; and

c. Health screening completed by the facility nurse within twenty-four hours.

8. Discharge date. Each admission must have preliminary plans for discharge.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-34. Interstate compact on the placement of children.

1. All placements of children made from out-of-state must follow the interstate compact on the placement of children or the interstate compact on juveniles and be in full compliance with the appropriate interstate compact. It is the responsibility of the facility to ensure, prior to the placement in the facility, all necessary procedures pursuant to the interstate compact on the placement of children or the interstate compact on juveniles have been completed.
2. Before admitting an out-of-state resident, a facility shall make arrangement with the referral to assure a lawful return of the resident to the sending state without regard to the circumstance under which the resident is discharged.
3. Out-of-state referrals must adhere to all requirements of this chapter.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 14-13, 27-22

75-03-40-35. Treatment plan.

1. A treatment coordinator employee shall develop a written, individualized plan for each resident within thirty days of admission to the facility. The facility shall conduct an initial assessment of the resident's treatment and service needs and develop a treatment plan. The resident's treatment plan must:
 - a. Indicate review of the level of care assessment completed by the qualified individual, as well as other supporting documentation to assist in the development of a written treatment plan;
 - b. Be based on a thorough assessment of the situation and circumstances of the resident and the resident's family strengths and needs;
 - c. Support timely achievement of permanency including reunification, guardianship, or adoption, if in foster care;
 - d. Specify details including the resident's:

- (1) Strengths and needs;
 - (2) Family's strengths and needs;
 - (3) Behavioral functioning;
 - (4) Psychological or emotional adjustment;
 - (5) Personal and social development;
 - (6) Medical needs;
 - (7) Medication management;
 - (8) Educational and vocational needs;
 - (9) Independent living and transition skills; and
 - (10) Recreational interests and normalcy activities;
- e. Be time-limited, goal-oriented, and individualized to meet the specific needs of the resident as identified from the assessment, including:
- (1) Implementation date;
 - (2) Goals and objectives that specify behaviors to be modified;
 - (3) Projected achievement dates, with measurable indicators or criteria for monitoring progress and assessing achievement of treatment goals; and
 - (4) The name of the employee or community provider responsible for providing treatment required to the resident and the resident's family;
- f. Include and document the involvement from the resident, parent or guardian, public custodial agency, courts, schools, informal social network, residential treatment team members, peer support, or any other individuals important to the resident;
- g. Document the conditions for discharge and estimated discharge date; and
- h. Be reviewed at least every thirty days by the treatment coordinator employee or designated facility clinician. Changes and modifications must be made and documented in writing as

needed, but no less than quarterly to ensure appropriateness of the treatment goals.

2. Family treatment. The facility shall plan for how family members are integrated into the treatment process, including post-discharge aftercare services, and how sibling connections are maintained throughout placement. The family section of the resident's treatment plan must include:
 - a. Contact information and outreach services with family members, including siblings. The plan must detail how the resident may maintain contact for any known family and appropriate social supports of the resident;
 - b. Family-based support during placement;
 - c. Family-based support for at least six months post-discharge;
 - d. Document and provide evidence of the resident's and family's involvement during ongoing planning efforts;
 - e. Document ongoing outreach to and engagement with family members during resident's treatment. The facility shall maintain contact with the resident's custodian and parent or guardian at least weekly. Type of contact may be detailed and includes face-to-face, phone calls, and written communication;
 - f. Date and signature of the resident, employee, custodian, parent or guardian, and others, as applicable; and
 - g. Evidence of facility providing the treatment plan to the resident's custodian and parent or guardian.
3. Visitation plan. The facility shall detail in the resident's treatment plan the agreed upon visitation schedule for the resident from the custodian and parent or guardian. The plan shall identify approved visitors and opportunities for the resident to engage in home visits.
4. Resident acknowledgement. The written treatment plan must include an indication of who shall provide treatment coordination, and the residents' signature or the signed statement of the treatment coordinator employee that the treatment plan was explained to the resident and the resident refused to sign the treatment plan.

5. Electronic filing. 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 records process, procedures for internal network security, employee access, and management of facility data, backup systems, and how the facility shall engage in electronic file sharing with the resident's custodian and parent or guardian.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-36. Discharge plan.

Each resident must have their discharge plan developed within thirty days of admission and reviewed ongoing as part of the treatment plan.

1. Persons involved in discharge planning should include:
 - a. Resident;
 - b. Resident's parent or guardian;
 - c. Custodian, if applicable;
 - d. Psychiatrist, if applicable;
 - e. Therapist, if applicable;
 - f. Clinical director;
 - g. Treatment coordinator employee;
 - h. Facility nurse;
 - i. Facility educator or community teacher;
 - j. Direct care employee;
 - k. Foster parents, if applicable;
 - l. Juvenile court, if applicable; and
 - m. Other individuals important to the resident and family.
2. The discharge plan must address the following:

- a. The date of admission;
 - b. The anticipated date of discharge;
 - c. Details of the events and circumstances leading to the decision to discharge;
 - d. The name and address of the individual or agency to whom the resident must be discharged and the rationale for planning a discharge to that individual or agency;
 - e. A summary of services provided during placement;
 - f. A summary of goal achievement;
 - g. A summary of the resident's continuing needs, including, health care, educational or vocational training, psychiatric, medical, psychological, social, behavioral, developmental, and chemical dependency treatment needs;
 - h. Appointments scheduled including individual therapy, psychiatric services, educational services, and other services or supports as needed;
 - i. Medication plan including a seven-day supply of needed medication and a prescription for medication to last through the first outpatient visit with a prescribing provider;
 - j. A summary of community-based service needs for the resident and resident's family;
 - k. A summary of efforts made by facility to prepare the resident and the resident's family for discharge; and
 - l. The facility's plan for the six months of aftercare services for the resident and the resident's family.
3. The discharge committee shall review and approve each anticipated discharge thirty days prior to the discharge and provide the completed discharge plan to the custodian at least seven days prior to the anticipated discharge. A discharge planning meeting involving the resident, custodian, parent or guardian, facility treatment team, additional family members, community service providers, and foster care provider if the resident is being discharged to another level of foster care, must take place to review and sign the discharge plan to ensure the continuity of services consistent with the resident's treatment needs after discharge.

4. For discharges that were not anticipated at least thirty calendar days ahead of time, the facility shall finalize a discharge plan and provide a written copy to the parent or guardian and custodial agency at least seven days prior to the resident's discharge. A discharge planning meeting to discuss efforts the facility engaged to maintain the placement must take place to review and sign the discharge plan to ensure the continuity of services consistent with the resident's treatment needs after discharge.
5. For unplanned discharges due to the emergency nature of the resident's needs, the facility shall verbally notify the parent or guardian and custodial agency as soon as possible and no longer than twenty-four hours after discharge from the facility. The facility shall send the written discharge plan within seven days after the resident's unplanned emergency discharge.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-37. Resident and family engagement.

The facility shall create a written policy detailing how the facility embeds foundational concepts of family-driven, resident-guided care into the overall treatment model. The facility's policy shall account for situations in which termination of parental rights has occurred and limitations are set forth in a court order or law. The facility shall document and provide evidence of the resident's and their family's involvement in ongoing treatment planning. Resident and family engagement strategies may include:

1. Ongoing outreach to families during resident's treatment;
2. Engagement of family and resident in treatment;
3. Recognition of resident and family members as co-experts in treatment efforts;
4. Permitting family member on-site visits at any time, encouraging or requiring frequent phone contact, and supporting frequent home visits;
5. Intervention efforts occurring in the home and community whenever possible;
6. Parent involvement, if appropriate, in facility professional development trainings;
7. Resident and family participation in case planning and discharge planning meetings;

8. Resident advocacy and leadership training and opportunities within the facility with access and connections made in the community;
9. Parent advocacy and leadership training opportunities within the facility with access and connections made in the community;
10. Teaching a foundation of negotiation and conflict resolution skills to residents and their families; and
11. Creating and connecting residential intervention with resident's community through outpatient services and providing a range of supporting services to meet each resident and family where they reside, ranging from traditional office based out-patient to intensive in-home supports, planned and crisis respite care, or skills coaches working in community settings.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-38. Aftercare.

The facility shall have written policies and procedures regarding how the six-month aftercare requirements must be implemented to best meet the needs of residents and families. Aftercare policy applies to all residents accepted into the facility for treatment. The six-month followup period must begin the day following the resident's discharge from the facility. The facility shall implement the aftercare plan developed as part of the discharge planning process. If a resident discharged from the facility remains in foster care, the facility shall collaborate with the custodial agency to implement the six-month followup period. If a resident is discharged and no longer in foster care, the facility shall coordinate the ongoing six-month aftercare with the resident and resident's family. The facility may directly provide aftercare services and supports or coordinate with local service providers. The facility shall conduct a department approved post residential outcomes survey at the conclusion of the six-month required aftercare period.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-39. Runaway notification.

1. A facility shall have written policies and procedures for notification if a resident has left the facility without permission or fails to return to the

facility after an approved leave. Facility policy and procedures must detail how the determination is made that a resident is missing and must identify the employee designated to promptly complete notifications.

2. Facility notifications include:
 - a. Law enforcement officials immediately after the facility confirms that the whereabouts of the resident are unknown;
 - b. Resident's custodian and parent or guardian as soon as possible and no later than twelve hours after the resident's whereabouts become unknown; and
 - c. The department's interstate compact administrator within forty-eight hours of an out-of-state resident's absence.
3. When the resident is found, the facility shall report the resident's return immediately to the law enforcement officials and the resident's custodian and parent or guardian.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-01

Law Implemented: NDCC 50-11-02

75-03-40-40. Incident and sentinel event reporting.

The facility shall have written policy outlining the documentation of incidents and sentinel events that occur while the resident is in placement. Policy must include:

1. Description of an incident as an unplanned occurrence that resulted or could have resulted in injury to people or damage to property, specifically involving the general public, residents, or agency employees.
 - a. Incidents involving law enforcement, including in the case of a runaway, criminal activity, behavior resulting in harm to others, or restraint injury. An incident may also involve issues such as outbreak of a serious communicable disease, harassment, violence, and discrimination.
 - b. Notification must be made to the resident's custodian and parent or guardian immediately or no more than twenty-four hours; and

2. Description of a sentinel event as an unexpected occurrence involving death or serious physical or psychological injury that is not related to the natural course of a resident's illness or underlying condition, including any process variation for which a reoccurrence would carry a significant chance of a serious adverse outcome.
 - a. Sentinel events include serious injury or trauma to a resident, attempted suicide by the resident, death of a resident, or inappropriate sexual contact.
 - b. Notification must be made to the resident's custodian and parent or guardian, and the department regional office immediately or no more than twelve hours.

3. Documentation of an incident or sentinel event must be completed and placed in the resident's record within twenty-four hours. The report must include:
 - a. Resident's name, age, and sex;
 - b. A description of the incident or event;
 - c. The date, time, and location of the incident or event;
 - d. The name of each employee or nonemployee involved;
 - e. Methods used to address the resident's behavior, including duration of each intervention;
 - f. Detailed description of the technique or approach engaged with the resident at the time of the incident or event;
 - g. Results achieved from methods used to address resident behavior;
 - h. Injuries received by either the resident or an employee in using physically enforced separation or physical hold restraint, how the injuries occurred, and any medical care provided;
 - i. The facility shall maintain a log of written reports of incidents involving residents;

- j. Direct care employees shall be given time at the beginning of each shift to be informed of or review incident reports occurring since their last shift; and
- k. Employees, nonemployees, and residents shall be given time to debrief the incident with clinical staff.

History: Effective October 1, 2019.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-40-41. Suicide prevention.

A facility shall develop a suicide prevention plan that addresses several key components, including:

1. Employee and nonemployee training;
2. Intake screening;
3. Ongoing risk assessments;
4. Levels of supervision for resident's;
5. Intervention options;
6. Use of suicide prevention kits or cut down tools;
7. Facility communication, notification, and referral procedures;
8. Reporting and documentation; and
9. Sentinel event debriefing procedures.

History: Effective October 1, 2019.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-40-42. Medical.

1. The facility shall adopt a comprehensive written plan of preventive, routine, and emergency medical care for residents including first aid, dental, optical care, and administration of prescription and nonprescription medicine. If a resident is due for a medical examination, the facility shall arrange for a physical examination within seven days of admission and for

a dental or optical examination, if needed, within ninety days of admission. The facility shall arrange and provide for necessary remedial and corrective measures for every resident as soon as possible after an examination indicates a need.

2. The facility shall have policies governing the use of psychotropic medications.
3. The facility shall have a plan to separate an ill resident from other residents only if necessary, because of the severity of the illness and it is contagious or infectious.
4. The facility shall have a policy to prevent transmission of infection from all blood or other body fluid exposures, and all employees and nonemployees shall be aware of and follow policy related to universal precautions.
5. The facility shall have a first aid kit on each level of the building housing residents, in buildings where resident activities take place, and in every vehicle used to transport residents. The first aid kit must be placed where it is inaccessible to residents, but accessible to employees and nonemployees. A first aid kit must be inventoried and resupplied after each use.
6. The facility shall have a suicide prevention kit on each level of the building housing residents; including a cut down tool. The kit must be placed where it is inaccessible to residents, but accessible and readily available to employees and nonemployees. A kit must be inventoried and resupplied after each use.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-43. Medication management.

1. For purposes of this section:
 - a. “General supervision” means regular coordination, direction, and inspection of the exercise of delegation of medication administration by a physician or nurse of an employee not licensed to administer medications.
 - b. “Medication administration” means proper administration of medication to a resident by an employee designated and trained for the administration of medications.

- c. “Monitoring of resident self-administration” means distributing the medication to the resident by a designated and trained employee according to physician and medication label instructions and observing and ensuring the proper ingestion, injection, application, or inhalation of the medication by the resident.
2. The facility shall adopt comprehensive written policies and procedures for medication administration and monitoring of resident self-administration. Each employee responsible for administering medication or monitoring of resident self-administration shall receive a copy of the facility policies and procedures for medication administration and monitoring of resident self-administration and shall be knowledgeable of them. The policies and procedures must include:
- a. Medications Administration:
- (1) Having written informed consent on file;
 - (2) Having information in each resident’s health record about any health allergies or health-related restrictions;
 - (3) Having on file written authorization from a physician or nurse for each employee permitted to administer medications or to monitoring of resident self-administration;
 - (4) Instructions for employees concerning administration of medications and monitoring of resident self-administration of medications, secure storage of medications, and recording medication administration information in the resident’s health record;
 - (5) Immediate notification to the facility nurse of all medication errors;
 - (6) Immediate notification of a physician in the event of a resident’s adverse drug reaction; and
 - (7) Medications distributed onsite may only occur when an employee authorized by the facility is present;
- b. For prescription medications, all of the following apply:
- (1) Require the medication be administered by employees certified to distribute medication to a resident only when:

- (a) The resident's attending physician or medical consultant provides employee with clear written instructions for administering the medication and authorizes the facility to administer the medication;
 - (b) The administration takes place under the general supervision of a physician or nurse. Employees certified to distribute medication are supervised by the facility nurse; and
 - (c) The label on the medication container gives clear instruction for administration of the medication and, if not clear, the facility shall contact the physician or pharmacy for clarification before administration of the medication; and
- (2) Allowing a medication to be self-administered onsite by a resident only while the resident is under direct supervision of employee and if self-administration is authorized in writing from the prescribing physician or facility medical consultant;
- c. Information to employees, a resident, and the resident's custodian and parent or guardian about any medication prescribed for the resident and when a physician orders any changes to the resident's medication. Information must include expected benefits and potential adverse side effects which may affect the resident's overall treatment. Employees shall also be informed on procedures of what to do if the resident refuses medication;
- d. Instructions for employees on what to look for in monitoring physical or mental changes to a resident that may occur from a medication, what to do if physical or mental changes are observed, and documentation needed in the resident's health record;
- e. Arrangement for a second medical consultation when a resident or the resident's custodian and parent or guardian has concerns about any medication received by the resident or the resident's medication plan;
- f. The resident's physician or facility medical consultant review a resident's prescription when there are noted adverse effects from the medication. Documentation showing the date of review and reviewer's name must appear in the resident's health record;
- g. The use of any non-prescription medication is based on an assessment by a physician or nurse and is approved by either a

physician or nurse;

h. Arrangement for administration of prescribed medications to a resident when the resident is away from the facility. A resident may not be given access to medications if there is reason to believe the resident may harm self through abuse or overdose;

i. Medications storage. A facility shall comply with all the following requirements for storage of medications:

(1) Medications must be kept in locked cabinets or containers and under proper conditions of sanitation, temperature, light, moisture, and ventilation to prevent deterioration;

(2) A facility shall immediately properly dispose of all outdated prescriptions, over-the-counter medication, and all prescription medication no longer in use; and

(3) The facility shall maintain a log of the medication properly disposed, which employee disposed of it, and what and how much was disposed;

j. Medication administration record. A facility shall have in each resident's health record a written medications administration record which lists each prescribed and over-the-counter medication the resident receives. The record must contain the following information:

(1) For an over-the-counter medication, the resident's name, type of medicine, reason for use, times and day of administration, and employee authorizing its use; and

(2) For a prescription medication, all of the following apply:

(a) The name of the resident;

(b) The generic or commercial name of the medication;

(c) The date the medication was prescribed;

(d) The name and telephone number of the prescriber to call in case of a medical emergency;

(e) The reason the medication was prescribed;

(f) The dosage;

- (g) The time or times of day for administering the medication;
 - (h) Documentation of all medication administered with the date and time of administration or, if not administered, with the date and time of resident refusal to take it;
 - (i) The method of administration, such as orally or by injection;
 - (j) The name of the employee who administered or monitored resident self-administration of the medication;
 - (k) Any adverse effects observed; and
 - (l) Any medication administration errors and corrective or other action taken; and
- k. Psychotropic medications. In this subdivision, "psychotropic medication" means any drug that affects the mind and is used to manage behavior or psychiatric symptoms.
- (1) Non-emergency procedures. A facility serving a resident for whom psychotropic medications are prescribed shall ensure that all of the following requirements are met:
 - (a) Arrangements have been made for a physician or medical consultant to complete a medical screening of the resident for the type of psychotropic medication to be prescribed;
 - (b) The resident, if fourteen years of age or older, and the resident's custodian and parent or guardian shall have signed written consent forms agreeing to the use of the psychotropic medication; and
 - (c) The facility has obtained from the prescribing physician or medical consultant a written report within the first forty-five days after the resident has first received a psychotropic medication and at least every sixty days thereafter. The report must state in detail all of the following:
 - [1] Reasons for the initial use of the medication;

- [2] Reasons for continuing, discontinuing, or changing the medication;
 - [3] Any recommended change in treatment goals or program; and
 - [4] The method and procedures for administering or monitoring of resident self-administration of a psychotropic medication must have been approved by the prescribing physician or medical consultant.
- (2) Emergency procedures. For emergency administration of a psychotropic medication to a resident, a facility shall do all of the following:
- (a) Have authorization from a physician;
 - (b) Notify the resident's custodian and parent or guardian as soon as possible following emergency administration. The facility shall document the dates, times, and individuals notified in the resident's record; and
 - (c) Document the physician's reasons for ordering the emergency administration psychotropic medication.
- (3) Revocation of consent or refusal. A resident, custodian and parent or guardian may at any time revoke consent for non-emergency use of psychotropic medications. When a consent is revoked, the facility shall do all of the following:
- (a) Document the reasons for refusal;
 - (b) Employee who personally witnessed the refusal shall sign a written statement indicating the event and place it in the file;
 - (c) Notify the resident's physician or medical consultant; and
 - (d) Notify the custodian and parent or guardian. Notification must be provided immediately if the resident's refusal threatens the resident's well-being and safety.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-44. Behavior management.

1. For the purposes of this section:

a. "Behavior management" means techniques, measures, interventions, and procedures applied in a systematic fashion to prevent or interrupt a resident's behavior to promote positive behavioral or functional change fostering resident self-control.

b. "Emergency safety intervention" means that an employee physically intervenes with a resident when the resident's behavior presents an imminent danger of harm to self or others and physical restraint or physically enforced separation is necessary to contain the risk and keep the resident and others safe.

c. "Physically enforced separation" means that a resident is temporarily physically removed to a time-out room or seclusion area. Physically enforced separation does not include sending a resident on their own volition to the resident's room or another area for a cooling off period as part of a de-escalation technique.

d. "Physical hold restraint" means that a resident is temporarily physically restrained by an employee or employees.

e. "Time-out room" means a designated room used for temporarily holding a resident who is in physically enforced separation from other residents.

2. Discipline must be constructive or educational in nature. Discipline may include diversion, separation from a problem situation, discussion with the resident about the situation, praise for appropriate behavior, and physical restraint as needed by a trained employee. A facility shall adopt and implement written policies for discipline and behavior management which include:

a. Monitor and review responsibility. A facility shall assign an employee the responsibility to monitor and review, on an ongoing basis, the use of all facility behavior management measures for

appropriateness and consistency. A facility shall specify criteria for levels of supervision for activities, including off-grounds activities. The criteria must be directed at protecting the safety and security of residents, employees, nonemployees, visitors, and the community. Monitoring and reviewing must cover the:

- (1) Violation of house rules and their resulting consequences;
- (2) Use of physical hold restraint and physically enforced separation in an emergency safety intervention;
- (3) Use of a locked unit when used to facilitate a resident's treatment plan; and
- (4) Related facility policies and procedures.

b. Conduct of residents. A facility shall have written policies and procedures covering the conduct expected of residents. The policies and procedures must:

- (1) Promote the growth, development, and independence of residents;
- (2) Address the extent to which a resident's choice must be accommodated in daily decision making; and
- (3) Specify facility behavior management techniques and approaches available to change, eliminate, or modify the behaviors or condition identified in the resident's treatment plan.

c. Prohibited measures. Employees and nonemployees may not engage in any cruel or unusual discipline for any resident. No resident may be:

- (1) Slapped, punched, spanked, shook, pinched, roughly handled, struck with an object, or engaged in any inappropriate physical treatment;
- (2) Required to engage in physical exercise or other activities causing physical discomfort or assigning the resident unduly strenuous physical work;
- (3) Verbally abused, ridiculed, or humiliated;

- (4) Subjected to a chemical or physical restraint, physically enforced separation or use of a time-out room as punishment;
- (5) Authorized or directed to employ behavior management techniques on another resident;
- (6) Penalized as a group for an identified resident's misbehavior; or
- (7) Denied any of the following items;
 - (a) A place to sleep with a pillow and bedding;
 - (b) Meals;
 - (c) Clean clothes;
 - (d) Personal or telephone visits with the resident's custodian and parent or guardian;
 - (e) Time necessary for personal hygiene;
 - (f) Minimum exercise;
 - (g) Receipt and sending of hand written or electronic 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;
 - (l) Program services; and
 - (m) Entry to the facility.

d. An employee may not use any type of physical restraint or physically enforced separation on a resident unless the resident's behavior presents an imminent danger of harm to self or others and physical restraint is necessary to contain the risk and keep the

resident and others safe.

- e. An employee shall attempt other feasible alternatives to de-escalate a resident and situation before using physical restraint or physically enforced separation.
- f. An employee may not use physical restraint or physically enforced separation as a disciplinary action or for the convenience of an employee.
- g. Physically enforced separation in a time-out room may not be used as a substitute for supervision of a resident who is at risk of running away.
- h. If physical restraint is necessary to prevent imminent danger of harm to self or others, an employee may only use the physical restraint:
 - (1) With the least amount of force necessary;
 - (2) In the least restrictive manner to manage the imminent danger;
 - (3) For the duration of time where imminent danger of harm to self or others exists; and
 - (4) May not include any techniques not authorized by the crisis intervention model utilized by the facility.
- i. Use of physically enforced separation must meet the following additional conditions:
 - (1) The employee using physically enforced separation of a resident shall review need for continued use every ten minutes and shall log the time of each review and the emotional status of the resident;
 - (2) Separation may not extend for more than one hour without authorization from the clinical team; and
 - (3) A resident may be kept in physically enforced separation only by means of one of the following:
 - (a) An unlocked room;

- (b) A room where the employee is present to prevent the resident's leaving;
 - (c) A room, which may be equipped with a lock that only operates with an employee present, such as a push-button that results in a door remaining locked while it is being pushed; or
 - (d) A secured room where an employee has the means to unlock the secure door immediately, if necessary.
- j. A time-out room must:
 - (1) Be free of materials which could represent a hazard to the resident or to others;
 - (2) Have adequate ventilation;
 - (3) Contain, if there is a door, a shatter-proof observation window on or adjacent to the door. The window's location must allow for observation of all parts of the room;
 - (4) Be located within hearing or call to a living area or other area of activity;
 - (5) Have at least sixty-four square feet [5.95 square meters] of floor space with a ceiling height of not less than eight feet [2.44 meters] and a width of at least eight feet [2.44 meters];
and
 - (6) Be an architectural or permanent part of the building structure.
- k. A resident placed in a time-out room must be under constant direct employee supervision.
- l. A time-out room may be utilized for only one resident at a time.
- m. A facility may not use intrusive and restrictive behavior management techniques such as behavior-modifying medications or other forms of physical restraint not approved by the facility crisis intervention model.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

75-03-40-45. Seclusion.

The facility locked for purposes of external security is not considered locked seclusion as residents may exit at will. The facility may opt to apply to have locked seclusion interventions onsite. The facility must obtain approval from the department to offer seclusion onsite. The facility shall have developed policies and procedures including:

1. Designated space utilized for locked seclusion. The space must have adequate ventilation and be free of furnishings that could be used by a resident in a harmful way. Residents may not be housed in locked seclusion.
2. Informed consent by the custodian and parent or guardian shall be obtained through a separate written informed consent document. Renewal of informed consents must be reviewed at least quarterly. Consent may be withdrawn at any time, orally or in writing. Informed consent must describe details regarding locked seclusion, including:
 - a. When the intervention would be utilized;
 - b. What behaviors require such intervention;
 - c. What behavior outcomes are desired;
 - d. Why less restrictive alternatives are ineffective or inappropriate;
 - e. The time period including hours the resident may be expected to remain in seclusion;
 - f. The time period for which the informed consent is effective; and
 - g. The right to withdraw informed consent at any time, orally or in writing, and possible consequences for the facility and resident if consent is withdrawn.
3. The use of locked seclusion may only be used if all the following are met:
 - a. Ordered by a physician to protect the health of the resident or other residents acknowledging the resident has no known medical or

- mental health condition which would place the resident at risk or harm from being placed in locked seclusion;
- b. The custodian and parent or guardian gives written informed consent;
 - c. The treatment plan acknowledges the intervention as an approved treatment strategy; and
 - d. The resident exhibits severely aggressive or destructive behaviors that place the resident or others in imminent danger and the lack of the locked seclusion prevents the facility from being able to treat the resident.
4. Direct care employees shall directly supervise residents at all times while placed in locked seclusion. A facility shall provide at least one direct care employee with no assigned responsibilities other than direct supervision of the resident. During hours when residents are awake, there must be one direct care employee for each resident and one direct care employee for every two residents during sleeping hours.
5. Director care employee shall be present in locked seclusion with residents and shall have the means to immediately request additional employee assistance if necessary. Direct care employees supervising in locked seclusion shall have the means to unlock the unit immediately if necessary.
6. The facility shall maintain written documentation of seclusion episodes in the resident's record including the date the resident is placed in locked seclusion and the length of time each day the resident is placed in locked seclusion.
7. Daily assessment is required to determine continued need for locked seclusion and documentation required in the resident's record.
8. Locked seclusion is prohibited for more than forty-eight consecutive hours.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-46. Use of mechanical restraints - Limitations.

The facility is not required to utilize mechanical restraints. The facility shall request approval from department to adopt policy to opt into the application of mechanical restraint interventions. The term “mechanical restraint” does not include seatbelts, shoulder harnesses, or wheelchair locks used in vehicular transportation. The facility shall develop policies and procedures including:

1. Permissible mechanical restraints consist solely of handcuffs and foot cuffs which may be used only when residents are transported from the facility by vehicle.
2. The facility may use permissible mechanical restraints to contain the behavior of a resident in transit from the facility if the resident has clearly indicated the intent to inflict serious physical injury upon themselves or others and the facility is unable to get immediate assistance from law enforcement.
3. If granted approval by the department, the facility shall provide the department with a list of 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 professional development and training record.
4. A facility that has authority to use mechanical restraints shall inform referring agencies that the facility may use mechanical restraints as a behavior management intervention in transporting residents from the facility.
5. A facility shall report each incident of any use of mechanical restraints including documentation from the employee applying the mechanical restraint detailing:
 - a. The name of the employee applying the mechanical restraints and a statement that the employee using the mechanical restraints has been properly trained;
 - b. A statement that the use of mechanical restraints was a last resort measure;
 - c. List of less restrictive measures that failed; and

- d. The name of the law enforcement unit called, the time that law enforcement was called and was unable to respond, and the time of transport.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-47. Buildings, grounds, and equipment.

1. A facility shall comply with all state, county, and local building and zoning codes and ordinances as well as all applicable state, county, and local safety, sanitation laws, codes, and ordinances.
2. A facility must be inspected annually by the local fire department or the state fire marshal's office. A facility shall correct any deficiencies found during these inspections. The facility shall keep a written report of the annual inspection and provide a copy to the department, including evidence of correction of noted deficiencies. All chimneys, flues, and vent attachments to combustion-type devices must be structurally sound, appropriate to the unit or units attached to them, and cleaned and maintained as necessary to provide safe operation. The heating system of each facility, including chimneys and flues, must be inspected at least once each year by a qualified individual.
3. There must be at least one 2A 10BC fire extinguisher on each floor and in or immediately adjacent to the kitchen, incinerator, and combustion-type heating units. Additional fire extinguishers must be provided so it is never necessary to travel more than seventy-five feet [22.86 meters] to an extinguisher. Fire extinguishers must be mounted on a wall or a post where they are clearly visible and at a readily accessible height. All required fire extinguishers must be checked once a year and serviced as needed. Each fire extinguisher must have a tag or label securely attached indicating the month and year the maintenance check was performed last and the individual who performed the service.
4. The facility shall provide the following smoke detectors:
 - a. One unit for each bedroom hallway;
 - b. One unit at the top of each interior stairway; and
 - c. One unit for each room with a furnace or other heat source.
5. Battery-operated smoke detectors must signal when the battery is

exhausted or missing and be tested at least once a month.

6. Carbon monoxide detectors must be operational as recommended by the local fire department or state fire marshal.
7. The facility must be equipped with furnishings suitable to needs of the residents. Recreational space and equipment must be safe, functional, and available for all residents.
8. The facility shall have one centrally located living room for the informal use of residents.
9. The facility shall have a dining room area large enough to accommodate the number of residents served.
10. A facility shall provide space and privacy for individual interviewing and counseling sessions. This space must be separate and apart from rooms used for ongoing program activities.
11. A facility shall have bedroom accommodations for the residents as follows:
 - a. The facility shall have at least one bedroom for each three residents;
 - b. The facility may not permit non-ambulatory residents to sleep above or below the ground floor;
 - c. There must be no more than one resident per bed, and triple bunks are prohibited;
 - d. All bedrooms must have at least one window which opens to the outside;
 - e. No sleeping room may be in an unfinished attic, hallway, or other room not normally used for sleeping purposes;
 - f. A basement which has over half its outside walls below grade and no door opening directly to the outside may not be used for bedrooms, unless the bedroom space has egress windows;
 - g. Furnishings must be safe, attractive, easy to maintain, and selected for suitability to the age and development of the residents; and
 - h. A facility shall have sufficient individual storage areas to

accommodate resident's clothing and other personal belongings.

12. A facility shall have one complete bathroom to include a toilet, washbasin, and a tub or shower for each six residents and:
 - a. All bathroom facilities must be indoors, equipped with hot and cold running water, and kept clean;
 - b. When bathroom units contain more than one toilet, tub, or shower, each must be in a separate compartment; and
 - c. The facility shall provide bathrooms with nonslip surfaces in showers or tubs.

13. Facilities shall ensure that kitchen equipment and area meet the standards prescribed by the state department of health for food and beverage establishments. Compliance with these standards must be documented annually and inspection documentation must be provided to the department. A facility shall ensure that:
 - a. Food storage space is clean, and containers are covered and stored off the floor;
 - b. Dishes, cups, and drinking glasses used by the residents are free of chips, cracks, and other defects, and are sanitized after every use by a washing process, sanitization solution, and air-drying or commercial dishwasher; and
 - c. Kitchen floors are reasonably impervious to water, slip-resistant, and maintained in a clean and dry condition.

14. Laundry facilities must be located in an area separate from areas occupied by residents. Space for sorting, drying, and ironing must be made available to residents who are capable of handling personal laundry.

15. The water supply of a facility must be from an approved municipal system where available. Where a municipal system is not available, a water sample must pass the approved drinking water standard bacteriological water analysis testing. The facility shall obtain results from an environmental protection agency approved laboratory for testing through licensing with the department of environmental quality.

16. Alcohol, tobacco, and vaping is prohibited in the facility.

17. All toxic cleaning supplies, chemical, agricultural and ground maintenance

chemicals, pesticides, and other poisons must be stored in a locked cabinet.

18. All shampoos, body wash, hand sanitizers, perfumes, and aerosols may only be distributed in a limited quantity to a resident. These items must be stored in a locked cabinet when not distributed to residents.
19. Firearms are prohibited in program or living areas of a facility premises. Firearms kept at any other location on the facility premises must be stored in a locked and secure area.
20. A facility shall have a quiet area to be used for studying and furnished for that purpose.
21. All rooms in a facility must have adequate lights, heat, and ventilation. All bathrooms must have a window which opens to the outside or exhaust ventilation.
22. Buildings and grounds of a facility must be maintained in a clean, comfortable, sanitary, and safe condition.
 - a. The facility may not be located within three hundred feet [91.44 meters] of an aboveground storage tank containing flammable liquids used in connection with a bulk storage or other similar hazards;
 - b. The grounds must be attractive, well-kept, and spacious enough to accommodate recreational areas that take into consideration the age and interest levels of residents;
 - c. Rooms, exterior walls, exterior doors, skylights, and windows must be weathertight and watertight;
 - d. Stairways, porches, and elevated walks and ramps must have structurally sound and safe handrails;
 - e. Buildings must be free of unabated asbestos; and
 - f. Lead paint may not be used within a building or on the exterior, grounds, or recreational equipment.
23. Any non-housing buildings located on the facility property must be locked when not in use by employees, nonemployees, or residents. Residents must be supervised by an employee when entering a non-housing building.

24. All pet inoculations must comply with the local and state requirements.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-48. Food and nutrition.

1. The facility shall appoint an employee to be responsible for complying with requirements for healthy and safe food and nutrition practices.
2. All food service personnel shall have in-service training annually. Training topics must relate to proper food handling procedures, maintenance of sanitary conditions, and food service arrangements. Documentation of annual training must be kept in the employee's file.
3. Food must be in wholesome condition, free from spoilage, filth, or contamination and must be safe for human consumption. Food in damaged containers or with expired freshness dating is not considered safe for human consumption.
4. The facility shall ensure that the nutritional requirements of the residents are met. The facility shall serve nutritionally balanced meals each day. Medically required special diets must be prepared for residents as needed.
5. 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.
6. No home-canned foods may be served.
7. 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.
8. The facility shall provide refrigeration for perishable food and shall maintain perishable food in accordance with standards prescribed by the state department of health for food and beverage establishments.
9. Employees, nonemployees, and residents 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 October 1, 2019.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-40-49. Resident accommodations.

1. The facility shall arrange for residents to have a personal supply of clean, well-fitting clothing and shoes for both indoor and outdoor wear and appropriate for the season.
2. The facility shall make room assignments to best meet the needs and vulnerabilities of residents. The facility shall assess room assignments on an ongoing basis to minimize potential risk to residents.
3. The facility shall provide residents personal hygiene and toiletries, including washcloths and towels which must be changed when soiled, and no less often than weekly.
4. The facility shall provide residents a bed with a clean mattress and bedding. The facility shall provide additional blankets to each resident as temperatures make necessary. Sheets and bedding must be changed when soiled, and no less often than weekly.
5. A facility that assigns jobs and household responsibilities for residents, shall do so in a manner that does not conflict with the education and treatment schedule or physical health of the residents or preclude the opportunity for socialization activities.
6. Participation in recreational and social activities must be on the basis of the individualized needs and treatment goals of each resident.
7. The facility shall advise all residents and the resident's custodian and 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 treatment needs of residents. The rules must include:
 - a. A general description of acceptable and unacceptable conduct;
 - b. A resident's individual freedoms when involved in recreational or school activities away from the facility; and
 - c. Consequences for a resident who violates a facility rule.
8. The facility shall advise residents and the resident's custodian and parent or guardian, in writing, of the process used by employees to complete

a search of residents or their belongings when returning to the facility from offsite outings, events, school, or home visits. The facility shall inform residents of the reason searches may be conducted, the protocol for conducting searches, and any disciplinary action a facility may take if contraband items are identified during a search.

9. A facility shall ensure that privacy is made available when a custodian, parent, guardian, or family member arrives onsite to visit a resident. The facility shall record any reason for restricting communications or visits between a resident and the resident's custodian, parent, guardian or family members in the resident's file.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-50. Transportation.

This section applies to the transportation of residents in a facility-owned or leased vehicle, driven by an employee or nonemployee. A facility shall develop a comprehensive transportation policy addressing the following:

1. Driver information. A facility shall maintain a list of approved employee and nonemployee drivers. The list must indicate the name of each driver, type of license held, and the date of expiration of the license. The list must be on file at the facility.
2. Driver qualifications.
 - a. The driver shall hold a current valid operator's license for the type of vehicle being driven, be at least twenty-one years of age, and have at least one year of experience as a licensed driver;
 - b. Before a driver may transport residents, the facility shall obtain a copy of their driver's license. A copy of a valid driver's license must remain in the employee and nonemployee file; and
 - c. Before a driver may transport residents, the facility shall initially check the driver's driving record for any driving safety violations. A copy of the employees and nonemployees driving record must be obtained annually and placed in the employee and nonemployees file. The facility shall develop policy to address safety related driving violations and the ability to transport residents.

3. Vehicle capacity and supervision.
 - a. A facility shall meet employee-to-resident ratios; and
 - b. A facility shall determine if additional supervision is required to minimize risk while transporting, based on the resident's needs.
4. Vehicle operation. Any vehicle used by a facility for the transportation of residents must:
 - a. Be maintained and inspected on a monthly basis, with records of inspections maintained at the facility;
 - b. Be registered and licensed in accordance with North Dakota law and carry vehicle liability insurance;
 - c. Have a first aid kit stored inside the vehicle;
 - d. Have a log to track date and time of the transport, who was driving, and the residents in the vehicle. The log book must also list emergency contact information for community first responders and facility administration to notify in case of an accident;
 - e. Have operating seat belts for the use of all occupants on each transport;
 - f. Prohibit smoking, tobacco use, and vaping; and
 - g. Prohibit the use of a cell phone while operating the vehicle.
5. Accident Report. A facility shall implement policy for employees and nonemployees to follow when operating a facility vehicle impacted by a motor vehicle accident. In addition, the facility shall keep on file a copy of the official police report of any accident involving a facility vehicle transporting residents.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-51. Water safety.

1. For purposes of this section, "aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, or water slides. Water activities are prohibited in waters the facility knows contain health-threatening pollutants.
2. The facility shall determine the swimming ability of each resident prior to engaging in an aquatic activity. The facility may not permit any resident to participate in an aquatic activity requiring higher skills than the resident's swimming classification, except during formal instruction.
3. The facility may not permit residents to engage in an aquatic activity without adult supervision at all times and without regard to sufficient weather and resident abilities.
4. The facility shall adopt and enforce a method to account for each resident's whereabouts during aquatic activities, such as a buddy system.
5. The facility shall require that all activity participants wear personal flotation devices during all boating activities, including water skiing, canoeing, tubing, and rafting.
6. Prior to any travel in any watercraft, the facility shall provide safety instructions.
7. The requirements of this section apply to activities wherever the activities take place. If the location where aquatic activity takes place does not have lifesaving equipment available, the facility is required to provide facility-owned lifesaving equipment. The facility shall provide and maintain lifesaving equipment in good repair and shall maintain documentation of equipment maintenance. All lifesaving equipment utilized by the facility must be listed in policy and immediately accessible in case of an emergency.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-40-52. Variance.

Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance regarding a specific provision of this chapter upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of any resident cared for by the facility and no variance may be granted except at the discretion of the department. A facility shall submit a written request to the department justifying the

variance. A refusal to grant a variance is not subject to appeal.

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

Section 16. Chapter 75-03-41 is created as follows:

CHAPTER 75-03-41
SUPERVISED INDEPENDENT LIVING

<u>75-03-41-01</u>	<u>Definitions</u>
<u>75-03-41-02</u>	<u>Application - Effect of License</u>
<u>75-03-41-03</u>	<u>Denial or Revocation</u>
<u>75-03-41-04</u>	<u>Correction Orders</u>
<u>75-03-41-05</u>	<u>Agency Program Closure</u>
<u>75-03-41-06</u>	<u>Governance and Administration</u>
<u>75-03-41-07</u>	<u>Financial Structure</u>
<u>75-03-41-08</u>	<u>Disaster Plan</u>
<u>75-03-41-09</u>	<u>Confidentiality</u>
<u>75-03-41-10</u>	<u>Quality Assurance</u>
<u>75-03-41-11</u>	<u>Employee Qualifications</u>
<u>75-03-41-12</u>	<u>Program Administrator</u>
<u>75-03-41-13</u>	<u>Transition Coordinator</u>
<u>75-03-41-14</u>	<u>Nonemployees</u>
<u>75-03-41-15</u>	<u>Professional Development</u>
<u>75-03-41-16</u>	<u>Personnel Files</u>
<u>75-03-41-17</u>	<u>Background Checks Effect on Operation of Agency or Employment</u>
<u>75-03-41-18</u>	<u>Criminal Convictions</u>
<u>75-03-41-19</u>	<u>Child Abuse and Neglect Reporting</u>
<u>75-03-41-20</u>	<u>Supervised independent living setting</u>
<u>75-03-41-21</u>	<u>Client Eligibility</u>
<u>75-03-41-22</u>	<u>Program Acceptance</u>
<u>75-03-41-23</u>	<u>Program and Services</u>
<u>75-03-41-24</u>	<u>Transition Plan</u>
<u>75-03-41-25</u>	<u>Client Rights</u>
<u>75-03-41-26</u>	<u>Client File</u>
<u>75-03-41-27</u>	<u>Incident and Sentinel Event Reporting</u>
<u>75-03-41-28</u>	<u>Variance</u>

75-03-41-01. Definitions.

As used in this chapter:

1. "Agency" means the public or private entity licensed by the department to provide supervised independent living programming to eligible clients.
2. "Client" means an eligible individual between the ages of eighteen and twenty-four years.
3. "Continued foster care services" is a voluntary foster care program to allow a foster child to remain in or return to foster care between the ages

of eighteen and twenty-one while in the placement and care of a public agency, but not in public custody.

4. "Employee" means an individual compensated by the agency to work in a part-time, full-time, intermittent, or seasonal capacity for the agency. This definition is not inclusive to contracted service providers who come onsite to conduct trainings, treatment groups, individual therapy, or other program services.
5. "License" means an agency that is either licensed by the department or approved by the department if the agency is located within a tribal jurisdiction.
6. "Nonemployee" means an individual who is not compensated by the agency, such as a volunteer or student intern providing a specific service under the supervision of an employee.
7. "Placement and care agency" means a public agency granted legal placement and care authority.
8. "Supervised independent living program" means a program offered by an agency providing services and supports to eligible clients transitioning to independence.
9. "Supervised independent living setting" means a specific setting certified in accordance with the standards set forth by the agency to operate a supervised independent living program.

History: Effective October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-00.1

75-03-41-02. Application - Effect of license.

1. Application for a supervised independent living program license must be made on an application provided by the department.
2. At the initial application, the applicant shall submit a written purpose and policy statement for the general operation and management of the supervised independent living program. The information submitted to the department for consideration must include:
 - a. The purpose of the supervised independent living program;

- b. The geographic area the applicant expects to serve;
 - c. The ages of eligible clients to be served;
 - d. Written placement policy and agreement forms; and
 - e. Written statement of the fees associated with the service.
3. Upon receipt of the application for licensure or renewal of license, the department shall conduct a licensing study or a license review to determine if the applicant meets all applicable requirements for licensure.
4. After completion of a licensing study or license review, the department shall issue a license to any applicant that meets all requirements for licensure to provide a supervised independent living program.
5. Each agency shall carry general comprehensive liability insurance.
6. The department shall renew the license on the expiration date of the previous license if:
- a. The agency makes written application for renewal prior to the expiration date of its current license; and
 - b. The agency continues to meet all requirements for licensure at the time of the licensing study or license review.
7. If the department determines that an application, renewal of license, or accompanying information is incomplete or erroneous, the department shall notify the applicant of the specific deficiencies or errors, and the applicant shall submit the required or corrected information. The department may not issue or renew a license until it receives all required or corrected information.
8. A supervised independent living program license is in force and effect for the period stated thereon, not to exceed two years, is nontransferable, and is valid only to the agency providing the program oversight for the number of clients indicated on the license.

History: Effective October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

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

75-03-41-03. Denial or revocation.

1. After written notice to the applicant or licensee, the department may deny, suspend, or revoke a supervised independent living program application or license upon finding that the applicant or agency:
 - a. Is not in compliance with all licensure requirements; or
 - b. Has made a material misrepresentation to the department regarding its operations.

2. An applicant or agency whose application or license has been denied or revoked, may appeal to the department under the provisions of North Dakota Century Code sections 50-11-08 and 50-11-09. The agency may continue the operation of the program pending the final administrative determination or until the license expires, whichever occurs first; provided, this subsection does not limit the actions the department may take pursuant to North Dakota Century Code chapter 50-11.

History: Effective October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-07, 50-11-08, 50-11-09

75-03-40-04 Correction orders.

1. The department may require immediate correction of a violation that threatens the life or safety of a client in the licensed supervised independent living program.

2. All time periods under this section commence on the third day after the department mails notice of the correction order to the agency.

3. Upon written request by the agency and upon showing need for an extension created by circumstances beyond the control of the agency and that the agency has diligently pursued correction of the violation, the department may grant extensions of time to correct violations.

4. The department may inform the public of agency correction order status.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-04.2

75-03-41-05. Agency program closure.

The agency shall have policy to ensure proper and efficient procedure in the event a supervised independent living program closes. Prior to closing, the agency program administrator shall provide at least sixty days written notice to the department:

1. Detailing a plan for closure, including:
 - a. Date of closure;
 - b. Plan to notify clients and placement and care agency, when applicable;
 - c. Identification of a North Dakota depository to maintain the agency case, fiscal, and employee and nonemployee records; and
 - d. Retention of all fiscal records for a period of seven years following account settlement.
2. Written notification must be given to each client and placement and care agency at least forty-five days prior to program closure.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-06. Governance and administration.

1. The agency shall have a governing body that is responsible for the policies, activities, practice, and overall operations of the agency. The governing body shall:
 - a. Be composed of at least five members. A list of the names and contact information of members of the governing body must be maintained and submitted to the department annually. Each board member shall annually disclose conflict of interests. Members of the board may not be family or have conflicts of interest with agency administration or employees with budget or accounting duties;
 - b. Meet at least every six months;

- c. Maintain records of the governing body's meetings;
- d. Develop and review policies for member selection and rotation;
- e. Ensure each board member understands the agency operation and program goals;
- f. Ensure the agency is funded, housed, staffed, and equipped in a manner required for the provision of services;
- g. Approve the agency's annual budget of anticipated income and expenditures necessary to provide services described in the program's statement of purpose;
- h. Provide financial statements and audits to the department for reimbursement purposes, upon request;
- i. Ensure the agency has an active strategic plan with a schedule to review annually;
- j. Adopt a written statement of the purpose and philosophy of the agency; and
- k. Adopt written policies for the agency regarding administration, personnel and program services. Personnel policies for the recruitment and retention of employees necessary to operate the agency must indicate expectations of employees and nonemployees, detail job descriptions for each position, and ensure a process to review policies and procedures with employee participation at least every five years.

- 2. All statements and policies required by this chapter must be in writing to demonstrate the intent of the standards are integrated into agency practice. The agency policy must be up to date.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-07. Financial structure.

1. For purposes of initial licensure, the applicant shall demonstrate that it has sufficient income to operate its program of services and, upon relicensure, the agency shall demonstrate ongoing financial stability.
2. The agency shall prepare an annual budget based on the assessment of agency program priorities and appraisal of anticipated funding, including reimbursement for services. The agency shall submit a copy of its budget to the department with a cost breakdown of budget items utilized to determine fees for services.
3. The agency shall maintain liability insurance as protection for its governing body, staff, clients, funds, and property. The agency shall review the liability insurance annually to assure adequate agency coverage.
4. The supervised independent living program rate setting shall be negotiated with the department for clients who meet the continued foster care services criteria. Rates setting may include the review of program costs and client outcomes.

History: Effective October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-08. Disaster Plan.

The agency shall have a written disaster plan to accommodate emergencies. The disaster plan must allow the department and placement and care agency to identify, locate, and ensure continuity of services to clients who are displaced or adversely affected by a disaster. The agency shall ensure the disaster plan specifies:

1. Agency responsibilities and contact information;
2. Primary and alternate plans for evacuation specific to the setting, including transportation, relocation, and evacuation of injured individuals;
3. Supervision and followup with clients after evacuation or relocation;
4. Where clients and if applicable, employees or nonemployees, would go in an evacuation, including one location in the nearby area and one location out of the area;

5. The process the agency must use to inform the clients, department, and placement and care agencies of clients who are displaced or adversely affected by a disaster;
6. Employee training on the disaster plan that details the procedures for meeting disaster emergencies. The review of the disaster plan must occur with employees on an annual basis to ensure it is current, accurate, and employees understand their role; and
7. Client training on the disaster plan ensuring awareness of all emergency and evacuation procedures upon acceptance to the program and approved supervised independent living setting. These procedures must be reviewed at time of placement and every six months thereafter.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-09. Confidentiality.

1. Except as otherwise provided in this section, agency records concerning clients that have received, are receiving, or seek to receive supervised independent living programming must be safeguarded. The agency shall ensure the safety of client records against loss, theft, defacement, tampering, or use by unauthorized persons. Any documents containing identifying information regarding the client must be locked when unattended by staff.
2. The agency 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 client or member of the client's family without first securing the written consent of the appropriate parties.
3. Client consent is not required to release confidential information if situations where the safety of the client or other individuals are at risk, child abuse or neglect is suspected, or other compelling professional reasons exists.
4. The agency shall have policy in place to ensure all clients served have a responsibility for keeping confidentiality of other clients in the program. This includes not confirming or denying another client's participation in the

program to outside persons or agencies via telephone, face-to-face, social media, electronic communications, or written requests.

5. The agency shall have written policies regarding retention of client records and supervised independent living program personnel files.

6. The agency shall disclose its records to the department as requested.

History: Effective October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-05

75-03-41-10. Quality assurance.

A supervised independent living program shall have a performance and quality improvement plan which advances efficient, effective service delivery, management practices, and the achievement of goals and outcomes.

1. An agency shall have a written quality assurance plan, which defines:

a. Approach to quality improvement;

b. Employee roles and responsibility for implementing and coordinating quality assurance;

c. Data outcomes tracked and collection processes; and

d. Processes for reporting findings and monitoring results.

2. An agency quality assurance plan must include agency performance and client outcomes which identify measures of the following client outcomes:

a. Employment;

b. Education;

c. Permanent connections;

d. Health insurance coverage;

e. Reduction of illegal or high-risk behaviors;

f. Reduction of unplanned parenting; and

g. Reduction of homelessness.

3. The agency shall conduct a department approved outcomes survey for each client upon entry, exit and six-month following exit from the supervised independent living program.

History: Effective October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-11. Employee qualifications.

1. The agency shall employ supervised independent living program staff with sufficient qualifications to enable the supervised independent living program staff to perform the agency's fiscal, clerical, and maintenance functions associated with operating the program.
2. The supervised independent living program shall comply with the following minimum employee-to-client ratio requirements:
 - a. No less than one part-time program administrator for a supervised independent living program serving less than thirty clients or a full-time program administrator for a program serving thirty or more clients; and
 - b. No less than one supervised independent living program transition coordinator for each fifteen clients.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-12. Program administrator.

The agency shall designate a program administrator to oversee the agency's supervised independent living program.

1. The agency shall clearly define, in writing, the responsibilities of the program administrator. At a minimum, the program administrator's responsibilities shall include:

- a. Planning and coordinating the development of policies and procedures governing the supervised independent living program;
 - b. Ensuring that the governing body is kept informed of matters affecting the supervised independent living program's finances, operation, and provision of services;
 - c. Ensuring employment of qualified staff and the administration of the supervised independent living program's employee and nonemployee policies;
 - d. Ensuring that the supervised independent living program and its services are made known to the community;
 - e. Maintaining the policies and procedures required by this chapter in written form;
 - f. Maintaining a current organizational chart representing program authority; and
 - g. Supervising, evaluating, and monitoring the work progress of the program staff.
2. The program administrator shall have a bachelor's degree in business, public administration, or behavioral science field and have four years of related work experience.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-13. Transition coordinator.

1. The agency shall clearly define, in writing, the responsibilities of the supervised independent living program transition coordinator. At a minimum, responsibilities must include:
 - a. Performance of intake services;
 - b. Provide client case management and coordination of services;

- c. Referral of resources to assist clients;
 - d. Overall management of the client's transition plan;
 - e. Documentation of ongoing communications and case activity for each client;
 - f. Competencies necessary to implement an individualized transition plan of care for each client; and
 - g. Competencies to provide group services, if applicable to the program.
2. The transition coordinator shall have a bachelor's degree in social work or related human service field, be licensed as required by the field of practice, and have two years previous paid or unpaid work experience with children or families.
 3. The agency shall have sufficient transition coordinators employed to meet minimum employee-to-client ratios required by this chapter.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-14. Nonemployee.

An agency that utilizes nonemployees who regularly work directly with clients shall:

1. Require nonemployees be at least two years older than the client;
2. Require each nonemployee to successfully complete a fingerprint based criminal background check and a child abuse and neglect index check; and
3. Detail policy and procedure specific to nonemployees, including:
 - a. Description of duties and specify responsibilities for nonemployee positions;

- b. Checking personal references before placement as a nonemployee;
- c. Designating an employee to supervise and evaluate nonemployees;
- d. An orientation plan which includes education on the legal requirements for confidentiality, training in the philosophy of the agency, and the needs of clients served by the supervised independent living program; and
- e. A plan for required trainings.

History: Effective October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-15. Professional development.

- 1. The agency shall ensure employees receive training, as applicable to their position, and in current program and service delivery specific to transition to adulthood. All employees in contact with clients shall receive at least fifteen hours of training per year with evidence of completion in the employee personnel file.
- 2. Prior to a new employee working independently with clients, the agency shall provide orientation training to the employee covering the following areas, with evidence of completion present in the employee personnel file:
 - a. Overall agency philosophy and program goals;
 - b. Review of administrative procedures, policy, and protocols;
 - c. Review of personnel policies;
 - d. Review of programs and services, policy, and protocols;
 - e. Nature of clients' emotional and physical needs;
 - f. Expected employee conduct toward clients and expected client conduct;
 - g. Overview of trauma and trauma informed transition into adulthood;

- h. Review protocol for incident reporting;
- i. Review client rights and grievance procedures;
- j. Identification and reporting of child abuse and neglect;
- k. Review suicide prevention, including signs and agency response measures;
- l. Review disaster planning;
- m. Review confidentiality standards;
- n. Review procedures for reporting a runaway and missing individual;
- o. Emergency medical procedures;
- p. Review procedures for client searches, if applicable for the setting; and
- q. Review child abuse and neglect mandated reporter policy and offer training.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-16. Personnel files.

- 1. The agency shall maintain an individual personnel file on each employee. The employee personnel file must include:
 - a. File inventory detailing first and last date of employment, reason employment ended, training totals per year, and performance evaluation dates due;
 - b. Application for employment including a record of previous employment;
 - c. Copy of the initial fingerprint based criminal background check;
 - d. Copy of annual child abuse and neglect index findings;

- e. Copy of motor vehicle operator's license record, if applicable to duties;
 - f. Copy of other evaluation or background checks deemed necessary by the program administrator;
 - g. Verification of any required license or qualification for the position or tasks assigned to the employee;
 - h. 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 agency written child abuse and neglect procedures;
 - i. Job description specifying the employee roles and responsibilities;
 - j. Annual performance evaluations; and
 - k. Professional development training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation.
2. The agency shall maintain an individual personnel file on each nonemployee. The nonemployee personnel file must include:
- a. Personal identification information;
 - b. Copy of the initial fingerprint based criminal background check;
 - c. Copy of annual child abuse and neglect index findings;
 - d. Copy of motor vehicle operator's license record, if applicable to duties;
 - e. Copy of other evaluation or background checks deemed necessary by the program administrator;
 - f. Description of nonemployee duties;
 - g. 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 agency's written child abuse and neglect procedures; and

- h. Professional development training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation.
3. The agency shall adopt a policy regarding the retention of employee and nonemployee personnel files.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-17. Background checks.

1. The agency shall require an initial fingerprint based criminal background check for each prospective employee and nonemployee with direct contact with clients. Subsequent background checks are not required for an employee who maintains continuous employment at the agency unless the agency or the department determines that a need exists to conduct a subsequent investigation.
2. The agency shall require an initial child abuse and neglect index check review including index check review in each state where the employee or nonemployee has resided in the past five years. After the initial investigation, a child abuse and neglect index check review must be repeated annually for each prospective employee and nonemployee with direct contact with clients.
3. The agency shall submit proper paperwork for the department to perform an annual child abuse and neglect index check review on every agency employee and nonemployee. The agency shall place a copy of the results in each employee or nonemployee personnel file.
4. The agency shall make an offer of employment to a prospective employee or an offer of placement to a nonemployee conditional upon the individual's consent to complete required background checks. The agency shall define in policy parameters specific to duties allowed while awaiting the results of the required background check.
5. The department may excuse an employee or nonemployee from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If an employee or nonemployee is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the employee or nonemployee lived during the eleven years preceding the signed authorization for the background check.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-06.8

75-03-40-18. Criminal conviction - Effect on operation of agency or employment.

1. An agency may not employ an employee or place a nonemployee, in any capacity that involves or permits contact between an employee or nonemployee and any client provided supervised independent living programming by the agency, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; Section 1 of 2019 Senate Bill No. 2273, sexual extortion; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult – penalty; 12.1-31-07.1, exploitation of an eligible adult – penalty; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.

- (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, has elapsed.
 - (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of supervised independent living program and services.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction. The department may not be compelled to make such determination.
4. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.
5. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - a. Common knowledge in the community;
 - b. Acknowledged by the individual; or
 - c. Discovered by the agency or department as a result of a background check.

6. An agency shall establish written policies and engage in practices that conform to those policies, to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.
7. An agency shall establish written policies specific to how the agency shall proceed if a current employee or nonemployee is known to have been found guilty of, pled guilty to, or pled no contest to an offense.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-06.8

75-03-41-19. Child abuse and neglect reporting.

1. All agency employees and nonemployees 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 agency's written child abuse and neglect procedures.
2. Each agency offering supervised independent living programming to clients with the client's own children, shall adopt written policies and procedures requiring employees and nonemployees to report cases of suspected child abuse or neglect. The procedures must include the following statement: "All agency employees and nonemployees shall comply with North Dakota Century Code chapter 50-25.1, child abuse and neglect. Therefore, it is the policy of this agency that if any employee or nonemployee who knows or reasonably suspects that a child of a client whose health or welfare has been, or appears to have been, harmed as a result of abuse or neglect, that employee or nonemployee shall immediately report this information to the department. Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment or placement of nonemployee and referral of the employee or nonemployee to the office of the state's attorney for investigation of possible criminal violation."
3. The agency's 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 and discipline of an employee or nonemployee who fails to report suspected child abuse or neglect; and
 - f. The status of the employee or nonemployee while the report is being assessed; if they are the subject of the report.
4. An agency shall establish written policies specific to how the agency shall proceed when a current employee or nonemployee is known to be:
- a. Involved in any capacity in a reported incident of institutional child abuse or neglect; or
 - b. The subject of a services-required decision in a child abuse or neglect report that occurred outside of the agency.

Effective: October 1, 2019

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-20. Supervised independent living setting.

1. An agency licensed to provide supervised independent living programming may engage in service delivery based on different housing options, referenced as a supervised independent living setting. The agency is not required to offer each setting and shall specify during application and in policy which setting the agency shall provide. The agency shall have defined criteria and policy specific to clients eligible for each setting. The agency may own, lease, or contract with another person to provide a setting. Setting may include:
- a. Individual apartment: Is an individual suite or shared apartment unit located within a building serving one or multiple clients, each with a private bedroom and a private or shared bathroom, living space, kitchen facilities designed as a residence. This setting may include on-site program management.
 - b. Shared housing: Is a single-family residence serving clients living cooperatively as an unrelated family in a house each with a private bedroom. If a client has a child of their own, the shared housing accommodations must meet the needs of all individuals residing in the home. This setting may include on-site program management.
 - c. College dorm room: Is a room in building provided by a college or university containing several private or semiprivate bedrooms for housing a number of individuals in a setting whose inhabitants are in school. This includes dorms on or off-campus and may include

on-site program management.

2. A supervised independent living setting is not required to be licensed in addition to the agency license to provide supervised independent living programming.
3. A supervised independent living setting must be in compliance with all applicable provisions of state and local laws, ordinances, rules, and regulations concerning health, safety, and nondiscrimination for housing. A supervised independent living setting must be:
 - a. Located in an appropriate neighborhood and so located that it is readily accessible to necessary services and adequate transportation;
 - b. Of sufficient size to provide proper accommodations for the client; and
 - c. Kept in clean and sanitary condition and in good repair providing reasonable comfort and well-being of the client.
4. Only clients accepted into the supervised independent living program may reside in a supervised independent living program setting.
5. Supervised independent living programs provided to pregnant or parenting clients and client's children shall also meet the following criteria:
 - a. The setting shall provide safe and adequate sleeping arrangements for the children;
 - b. The client's transition plan must include appropriate parent education including certified first aid, certified cardiopulmonary resuscitation, and childcare; and
 - c. The program policy for pregnant or parenting clients must be followed.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-21. Client eligibility.

The supervised independent living program may be made available for a variety of clients in need of transition services. The agency shall detail in policy clients eligible for program acceptance and the expectations of a client's ability to live independently with minimal supervision. Clients eligible for acceptance into the program may include:

1. Clients currently in the placement and care of a public agency, actively participating in continued foster care services;
2. Clients pregnant or parenting a child; or
3. Clients in need of supervised independent living programming.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-22. Program acceptance.

Agencies licensed to provide supervised independent living programming, shall define in writing policy and procedures specific to acceptance of a client into the program. The agency shall have written policies that describe the program and services offered, range of client characteristics the agency shall accept, and procedures for placement into a supervised independent living setting. The supervised independent living program policy must indicate the agency shall provide services to a client referred to the program without discrimination.

1. Application. The agency shall have written policy regarding the application required including prospective client information, placement settings options, and financial agreements with the applicant or referral source.
2. Program acceptance committee. The agency shall have policy detailing employees on the committee, how often the committee meets, and the timeliness the committee has in responding to referrals. Before a prospective client is accepted for supervised independent living programming, the committee shall evaluate the needs of the prospective client using information and procedures described in policy and determine whether the agency can meet the identified needs of the prospective client.

3. Acceptance determination. The program acceptance committee shall complete a written, dated, and signed determination on a prospective client which includes review and identification of the prospective client's primary presenting needs. The committee shall:
 - a. Provide a written statement recommending reasons for or against program acceptance based on the ability of the agency to meet the prospective client's needs.
 - b. Provide the determination and decision within fourteen working days of receipt of the completed application; and
 - c. If denied, ensure a process for assisting the applicant or referral source in obtaining services from other agencies when the supervised independent living program is not appropriate to the applicant's needs.

4. Orientation. Each client shall receive orientation upon acceptance into the supervised independent living program. An agency employee shall:
 - a. Orient the new client and client's placement and care agency worker, if applicable, to the program;
 - b. Help the client adjust to the setting; and
 - c. Provide the client and placement and care agency, if applicable, copies of the supervised independent living setting rules, including rules on visiting, expected behavior and consequences for rule infractions, client rights and grievance and complaint procedures, with explanations of the documents.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-23. Program and services.

1. The agency shall adopt written program policy that must include:
 - a. A description of the agency'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 service delivery;

- b. A description of the services provided by the agency, clearly stating which services are provided directly by the agency and which services are to be provided in collaboration with the placement and care agency, if the client is in public custody, or other agencies and informal supports determined appropriate for the transition plan;
 - c. The purpose or mission of the agency;
 - d. Characteristics and eligibility requirements of individuals appropriate for referral to the agency;
 - e. A list of information that is required to be submitted with the referral;
 - f. A description of how the agency engages in the child and family team meeting structure facilitated by the placement and care agency for a client in foster care;
 - g. A description of how the agency provides services for a client to accommodate needs, either directly or through cooperative arrangements with other agencies and informal supports;
 - h. A description of how the agency participates in preparing clients to develop the skills required to transition into adulthood, achieve outcomes, and live independently;
 - i. A description of how the agency demonstrates that the program is guided by the best interests of the clients in all matters relating to services; and
 - j. A description of how family or other adult connections shall be maintained.
2. Supervised independent living programs include the following service components to provide clients with opportunities to achieve positive outcomes and make successful transitions to self-sufficiency, which may include:
- a. Academic support;
 - b. Budget financial management;
 - c. Career preparation;
 - d. Educational financial assistance;

- e. Employment programs or vocational training;
 - f. Family support and healthy relationships;
 - g. Health education and risk prevention;
 - h. Housing education and home management;
 - i. Needs assessment;
 - j. Mentoring;
 - k. Other financial assistance;
 - l. Post-secondary educational support;
 - m. Access to community resources and community linkages;
 - n. Recreational and leisure skills; and
 - o. Preparation for transition to independence.
3. The agency shall detail in writing the expectations of how often the clients are seen. Face-to-face contact with clients is required at least monthly and additional frequency is decided based on the individualized needs of the client and setting. Policy may include if the agency engages in unannounced visits.
4. The agency shall collaborate with the placement and care agency, if the client is in foster care, to request documentation for the client record and to coordinate service delivery and planning.
5. The agency shall address expectations of each supervised independent living setting. Expectations may include:
- a. House rules of the specified setting;
 - b. Curfew;
 - c. Personal belongings;
 - d. Medication management;
 - e. Clothing;

- f. Allowance;
- g. Groceries;
- h. Grievance procedures;
- i. Transportation;
- j. Utilities;
- k. Guidelines for guests and visitation;
- l. Client rights;
- m. Disaster planning;
- n. Abstain from underage consumption of alcohol;
- o. Abstain from illegal use of drugs;
- p. Abstain from illegal or criminal behavior;
- q. Abstain from violence and threats of violence; and
- r. Emergency and crisis protocols.

History: Effective October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-24. Transition plan.

The agency shall adopt a written policy that ensures the agency shall develop a written transition plan for each client, to aid in the client's personal transition to adulthood and independence.

1. The client's transition plan must be:
 - a. Developed within thirty days of acceptance to the program;
 - b. Developed and reviewed with appropriate participation and informed consent of the client and placement and care agency, if applicable; and
 - c. Developed in collaboration with the client and the transition coordinator and if applicable, the child and family team meeting

participants on a quarterly basis.

2. The client's transition plan must include documentation of:
 - a. Collaboration and communication with other agencies that are working with the client to ensure coordination of services and to carry out the client's transition plan;
 - b. Services provided by the supervised independent living program and other agencies or informal supports;
 - c. Completion of a needs assessment of the client;
 - d. Completion of the outcomes survey;
 - e. Identified measurable goals and client outcomes, including time frames for completion;
 - f. Identified tasks to assist the client in meeting set goals; and
 - g. The individual or entity responsible for providing the service or completing the task.

History: Effective October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-25. Client rights.

The agency shall have written policy indicating that the agency supports the rights of clients. Specifically, the agency shall:

1. Respect the client;
2. Ensure the client is treated fairly and without discrimination;
3. Respect the client's family members or adult connections;
4. Provide safe housing;
5. Allow the client to take their personal items, clothing and any gifts or possessions that have been acquired when exiting the program;
6. Provide referrals for the client to receive medical, vision, and dental care;
7. Support cultural traditions and religious faith in reasonable ways;

8. Support the client in participating in the development of their transition plan;
9. Support the client in attending and leading their quarterly foster care child and family team meeting, if applicable;
10. Support the participation and representation in the client's foster care judicial proceedings, if applicable; and
11. Outline a process that can be utilized by the client if the client feels their rights are not being protected.

History: Effective October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-26. Client file.

Upon acceptance to the supervised independent living program, a client's case file is confidential and must be protected from unauthorized examination unless permitted or required by law or regulation. The agency shall adopt a policy regarding the retention of client files.

1. The client file must include:
 - a. A file inventory with dates of acceptance into the program, referral agency, and emergency contact information;
 - b. The client's full name, birthdate, and other identifying information;
 - c. A photo of the client;
 - d. Signed care program acceptance agreement, including financial responsibility and expectations of all parties. The agreement must indicate a clear division of responsibility between the agency, client, and the placement and care agency, if applicable;
 - e. If the client is in continued foster care services, a current court order establishing the authority granted to the placement and care agency;
 - f. If the client is in continued foster care services, a copy of the continued foster care agreement signed by all parties;

- g. A copy of the outcomes survey;
 - h. A copy of the transition plan prepared by the agency and client;
 - i. Transition plan progress reports, no less than quarterly;
 - j. Ongoing documentation and case activity logs of face to face contact, emails, and texts with clients; and
 - k. All incident or sentinel event reports involving the client.
2. The agency shall designate an employee to review each client file at least quarterly. Documentation of the file review must be included in the client file.
 3. An agency shall disclose its records to the department as requested.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-05

75-03-41-27. Incident and sentinel event reporting.

A client served by the agency also in foster care, shall have all incident and sentinel events reported to the placement and care agency. The agency shall report sentinel events to the regional office of the department.

1. The agency shall have written policy outlining the critical incident and sentinel event reporting for all clients.
 - a. An incident is an unplanned occurrence that resulted or could have resulted in injury to people or damage to property, specifically involving the general public, clients in supervised independent living setting, or agency employees an nonemployees. An incident can also involve issues such as harassment, violence, and discrimination.
 - b. A sentinel event is an unexpected occurrence involving death or serious physical or psychological injury that is not related to the natural course of a client's illness or underlying condition, including any process variation for which a recurrence would carry a

significant chance of a serious adverse outcome including inappropriate sexual contact.

2. Agency shall immediately notify the client's placement and care agency when any of the following occurs involving a client in foster care:

a. An incident that requires the services of law enforcement, including:

(1) Case of a runaway or missing individual; or

(2) Criminal activity by the client placed in a supervised independent living setting; or

b. A sentinel event, including:

(1) Death of a client in foster care;

(2) Serious injury or trauma of a client in foster care, requiring medical attention;

(3) Any attempt at suicide by a client in foster care; and

(4) Any behavior involving a client in foster care, that results in a serious threatening situation of harm to others.

History: Effective October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-28. Variance.

Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance regarding a specific provision of this chapter upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of any client accepted in the supervised independent living program and no variance may be granted except at the discretion of the department. An agency shall submit a written request to the department justifying the variance. A refusal to grant a variance is not subject to appeal.

Effective: October 1, 2019.

General Authority: NDCC 50-06-05.1, 50-11-03

Law Implemented: NDCC 50-06-05.1, 50-11-03

