

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

Section

75-03-07-01 Purpose [Repealed]

75-03-07-02 Objective of Rules [Repealed]

75-03-07-03 Definitions

75-03-07-04 In-Home Registration and Standards

75-03-07-05 Minimum Requirements for Care of Children With Special Needs

75-03-07-06 Denial or Revocation of In-Home Registration

75-03-07-07 Appeals

SECTION 1: Section 75-03-07-04 is amended as follows:

75-03-07-04. In-home registration and standards.

1. An application for a registration document must be submitted to the department ~~or~~for its authorized agent wherein the applicant proposes to provide in-home services. Application must be made in the form and manner prescribed by the department.
2. An applicant for an in-home registration document shall be directly responsible for the care, supervision, and guidance of the child or children in the child or children's home and shall comply with the following standards, certifying in the application that the applicant:
 - a. Is at least eighteen years of age.
 - b. Is physically, cognitively, socially, and emotionally healthy and will use mature judgment when making decisions impacting the quality of child care.
 - c. Shall devote adequate time and attention to the children in the applicant's care and provide an environment that is physically and socially adequate for children.
 - d. Shall participate in specialized training related to child care if provided by or approved by the department.
 - e. Shall complete one hour of department-approved training annually on sudden infant death prevention prior to in-home provider having unsupervised access to infants.
 - f. Shall provide food of sufficient quantity and nutritious quality in accordance with the United States department of agriculture standards which satisfies the dietary needs of the children while in the applicant's care.

- g. Shall provide proper care, supervision, and protection for children in the applicant's care. Supervision means the provider being within sight or hearing range of an infant, toddler, or preschooler at all times so the provider is capable of intervening to protect the health and safety of the child. For the school-age child, it means a provider being available for assistance and care so that the child's health and safety are protected.
- h. Shall provide for a safe and sanitary environment while children are in care.
- i. May not use or be under the influence of any illegal drugs or alcoholic beverages while children are in care.
- j. May not leave children without supervision.
- k. Shall ensure that discipline is constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint, such as holding. A child may not be subjected to physical harm, fear, or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, or neglect or abuse, to any child is grounds for denial or revocation of an in-home registration.
 - (1) Authority to discipline may not be delegated to children nor may discipline be administered by children.
 - (2) Separation, when used as discipline, must be appropriate to the child's development and circumstances. The child must be in a safe, lighted, well-ventilated room within sight or hearing range of the in-home provider. An in-home provider may not isolate a child in a locked room or closet.
 - (3) A child may not be punished for lapses in toilet training.
 - (4) An in-home provider may not use verbal abuse or make derogatory remarks about a child, or a child's family, race, or religion when addressing the child or in the presence of a child.
 - (5) An in-home provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
 - (6) An in-home provider may not force-feed a child or coerce a child to eat, unless medically prescribed and administered under a medical provider's care.

- (7) An in-home provider may not use deprivation of meals or snacks as a form of discipline or punishment.
 - (8) An in-home provider may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.
 - (9) An in-home provider may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
 - (10) An in-home provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.
 - I. Shall discuss methods of discipline and child management with the parent or parents.
3. If the physical or mental, cognitive, social, or emotional health capabilities of an in-home applicant or provider appear to be questionable, the department may require the individual to present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
4. In-home providers shall ensure safe care for the children receiving services in their care. If a ~~services-required~~confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by the applicant or in-home provider, that decision has a direct bearing on the applicant's or in-home provider's ability to serve the public in a capacity involving the provision of child care and the application or in-home registration may be denied or revoked. If a ~~services-required~~confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant or in-home provider, the applicant or in-home provider shall furnish information, satisfactory to the department, from which the department can determine the applicant's or in-home provider's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of current ability to the applicant or in-home provider. Each applicant shall complete a department-approved authorization for background check form no later than the first day of employment.
5. An in-home provider may provide early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.

History: Effective December 1, 1981; amended effective January 1, 1987; January 1, 2011; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-02, 50-11.1-06, 50-11.1-07, 50-11.1-08 75-03-07-05. Minimum requirements for care of children with special needs

SECTION 2: Section 75-03-07-06 is amended as follows:

75-03-07-06. Denial or revocation of in-home registration.

1. The right to provide early childhood services is dependent upon the applicant's or provider's continuing compliance with the terms of the registration as listed in section 75-03-07-04.
2. A fraudulent or untrue representation is grounds for revocation or denial.
3. a. The applicant or in-home provider may not have been found guilty of, pled guilty to, or pled no contest to:
 - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 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 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 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; 12.1-22-01, robbery; 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; or 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - (2) 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 paragraph 1; or
 - (3) An offense, other than an offense identified in paragraph 1 or 2, if the department determines that the individual has not been sufficiently rehabilitated. 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.

- b. The department has determined that the offenses enumerated in paragraphs 1 and 2 of subdivision a have a direct bearing on the applicant's or provider's ability to serve the public in a capacity as a provider.
 - c. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; 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 conviction.
4. An in-home provider shall submit an application for a fingerprint-based criminal history record check at the time of application and every within five years after from the date of initial approval and at least once every five years thereafter. 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~~ shall submit a request to the bureau of criminal investigation for 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.~~
 5. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

- c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

History: Effective January 1, 2011; amended effective April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-06, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

CHAPTER 75-03-07.1
SELF-DECLARATION PROVIDERS EARLY CHILDHOOD SERVICES

Section	
75-03-07.1-00.1	Definitions
75-03-07.1-01	Fees [Repealed]
75-03-07.1-02	Self-Declaration Standards - Application
75-03-07.1-03	Smoke-Free Environment [Repealed]
75-03-07.1-04	One Per Residence - Nontransferability of Self-Declaration and Emergency Designee
75-03-07.1-05	Appeals
75-03-07.1-06	Denial or Revocation of Self-Declaration Document
75-03-07.1-07	Minimum Sanitation Requirements
75-03-07.1-08	Infant Care
75-03-07.1-09	Minimum Requirements for the Care of Children With Special Needs
75-03-07.1-10	Correction of Violations
75-03-07.1-11	Fiscal Sanctions
75-03-07.1-12	Restricted Self-Declaration
75-03-07.1-13	Minimum Emergency and Disaster Plans
75-03-07.1-00.1.	Definitions.

SECTION 3: Section 75-03-07.1-00.1 is amended as follows:

75-03-07.1-00.1. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter:

1. "Application" means all forms the department requires when applying or reapplying for a self-declaration.
2. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
- ~~2.3.~~ "Attendance" means the total number of children present at any one time.
- ~~3.4.~~ "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
- ~~4.5.~~ "Emergency designee" means an individual designated by a provider to be a backup staff member for emergency assistance or to provide substitute care.
- ~~5.6.~~ "Infant" means a child who is less than twelve months of age.
- ~~6.7.~~ "Provider" means the holder of a self-declaration document.

- 7.8. "Supervision" means a provider or emergency designee responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so that the provider or emergency designee is capable of intervening to protect the health and safety of the child. For the school-age child, it means a provider or emergency designee responsible for caring for or teaching children being available for assistance and care so that the child's health and safety is protected.

History: Effective January 1, 2011; amended effective April 1, 2016; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02, 50-11.1-08, 50-11.1-17

SECTION 4: Section 75-03-07.1-02 is amended as follows:

75-03-07.1-02. Self-declaration standards - Application.

1. An applicant for a self-declaration document shall submit the application to the department or its authorized agent in which the applicant proposes to provide early childhood services. An application, including a department-approved authorization for background check for household members age twelve and older, an emergency designee, and an applicant, and an application for a fingerprint-based criminal history record check for the applicant and emergency designee, must be made in the form and manner prescribed by the department.
2. The current self-declaration document must be displayed prominently in the premises to which it applies.
3. A provisional self-declaration document may be issued:
 - a. The department may issue a provisional self-declaration document although the applicant or provider fails to, or is unable to, comply with all applicable standards and rules of the department.
 - b. A provisional self-declaration document must:
 - (1) State that the provider has failed to comply with all applicable standards and rules of the department;
 - (2) State the items of noncompliance;
 - (3) Expire at a set date, not to exceed six months from the date of issuance; and
 - (4) Be exchanged for an unrestricted self-declaration document, which bears an expiration date of one year from the date of issuance of the provisional self-declaration document, after the applicant or operator demonstrates compliance,

satisfactory to the department, with all applicable standards and rules.

- c. The department may issue a provisional self-declaration document only to an applicant or provider who has waived, in writing:
 - (1) The right to a written statement of charges as to the reasons for the denial of an unrestricted self-declaration document; and
 - (2) The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted self-declaration document, either at the time of application or during the period of operation under a provisional self-declaration document.
- d. Any provisional self-declaration document issued must be accompanied by a written statement of violations signed by the department and must be acknowledged in writing by the provider.
- e. Subject to the exceptions contained in this section, a provisional self-declaration document entitles the provider to all rights and privileges afforded the provider of an unrestricted self-declaration document.
- f. The provider shall display prominently the provisional self-declaration document and agreement.
- g. The provider shall provide parents written notice that the provider is operating on a provisional self-declaration document and the basis for the provisional self-declaration document.

3.4. The provider shall be directly responsible for the care, supervision, and guidance of the children.

- a. The provider:
 - (1) Must be at least eighteen years of age;
 - (2) Shall provide an environment that is physically and socially adequate for the children; and that the provider is of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
 - (3) Shall devote adequate time and attention to the children in the provider's care;
 - (4) Shall provide food of sufficient quantity and nutritious quality in accordance with the United States department of

agriculture standards which satisfies the dietary needs of the children while in the provider's care;

- (5) Shall provide proper care and protection for children in the provider's care;
- (6) May not use or be under the influence of, and will not allow any household member or emergency designee to use or be under the influence of any illegal drugs or alcoholic beverages while caring for children;
- (7) May not leave children without supervision;
- (8) Shall verify that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-age child;
- (9) Shall report immediately, as a mandated reporter, suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
- (10) Shall provide a variety of games, toys, books, crafts, and other activities and materials to enhance the child's intellectual and social development and to broaden the child's life experience. Each provider shall have enough play materials and equipment so that at any one time each child in attendance may be involved individually or as a group;
- (11) Shall ensure a current health assessment or a health assessment statement completed by the parent is obtained at the time of initial enrollment of the child, which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually;
- (12) Shall ensure a child information form completed by the parent is obtained at the time of initial enrollment of the child and annually thereafter;
- (13) Shall certify completion of a department-approved basic child care course within ninety days of being approved as a provider;
- (14) Shall be currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary

resuscitation and automated external defibrillator training programs that are approved by the department;

- (15) Shall be currently certified in first aid by a program approved by the department;
- (16) Shall complete a minimum of three hours of department-approved training annually, including one hour on sudden infant death prevention prior to provider having unsupervised access to infants. The same training courses may be counted toward self-declaration annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training;
- (17) Shall ensure the emergency designee is currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department;
- (18) Shall ensure the emergency designee is currently certified in first aid by a program approved by the department;
- (19) Shall ensure the emergency designee certifies completion of a departmentapproved basic child care course within ninety days;
- (20) Shall ensure that the emergency designee completes one hour of departmentapproved training on sudden infant death prevention prior to emergency designee having unsupervised access to infants; and
- (21) Shall release a child only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

- b. The provider shall ensure that discipline will be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint such as holding. A child may not be subjected to physical harm or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury or neglect or abuse to any child is grounds for denial or revocation of a self-declaration document.

- (1) A child may not be kicked, punched, spanked, shaken, pinched, bitten, roughly handled, struck, mechanically restrained, or physically maltreated by the provider, emergency designee, household member, or any other adult in the residence.
 - (2) Authority to discipline may not be delegated to or be administered by children.
 - (3) Separation, when used as discipline, must be appropriate to the child's development and circumstances, and the child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult. A child may not be isolated in a locked room or closet.
 - (4) A child may not be punished for lapses in toilet training.
 - (5) A provider may not use verbal abuse or make derogatory remarks about the child, or the child's family, race, or religion when addressing a child or in the presence of a child.
 - (6) A provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
 - (7) A provider may not force-feed a child or coerce a child to eat unless medically prescribed and administered under a medical provider's care.
 - (8) A provider may not use deprivation of snacks or meals as a form of discipline or punishment.
 - (9) A provider may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
 - (10) A provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.
- c. The provider shall ensure that a working smoke detector is properly installed and in good working order on each floor used by children.
 - d. The provider shall ensure that a fire extinguisher that is inspected annually is properly installed, is in good working order, and is located in the area used for child care.
 - e. The provider shall ensure that a working telephone is located in the location used for child care. ~~Emergency~~Current emergency numbers for parents and first responders must be posted.

- f. When transportation is provided by a provider, children must be protected by adequate supervision—and, safety precautions, and liability insurance.
 - (1) Drivers must be eighteen years of age or older and must comply with all relevant federal, state, and local laws, including child restraint laws.
 - (2) A child must not be left unattended in a vehicle.
- g. Aquatic activities:
 - (1) The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of the children participating in aquatic activities, and additional safety precautions to be taken.
 - (2) The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

4-5. Potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, poisonous plants, and open stairways must not be accessible to children. Guns and ammunition must be kept in separate locked storage, or trigger locks must be used. Other weapons and dangerous sporting equipment, such as bows and arrows, must not be accessible to children.

5-6. If the physical, cognitive, social, or emotional health capabilities of an applicant or provider appear to be questionable, the department may require that the individual present evidence of capability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.

6-7. A self-declaration document is only effective for one year.

History: Effective June 1, 1995; amended effective January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-08, 50-11.1-16, 50-11.1-17

SECTION 5: Section 75-03-07.1-06 is amended as follows:

75-03-07.1-06. Denial or revocation of self-declaration document.

- 1. The right to provide early childhood services is dependent upon the applicant's or provider's continuing compliance with the terms of the application as listed in section 75-03-07.1-02.

2. A fraudulent or untrue representation is grounds for revocation or denial.
3. a. The applicant, self-declaration provider, emergency designee, and household members may not have been found guilty of, pled guilty to, or pled no contest to:
 - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 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 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 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; 12.1-22-01, robbery; 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; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - (2) 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 paragraph 1; or
 - (3) An offense, other than an offense identified in paragraph 1 or 2, if the department determines that the individual has not been sufficiently rehabilitated. 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.
- b. The department has determined that the offenses enumerated in paragraphs 1 and 2 of subdivision a have a direct bearing on the applicant's, provider's, or emergency designee's ability to serve the public in a capacity as a provider or emergency designee.
- c. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03,

reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; 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 conviction.

4. A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and ~~every~~within five years ~~after~~from the date of initial approval and at least once every five years thereafter. The provider shall ensure that each emergency designee submits an application for a fingerprint-based criminal history record check upon hire and ~~every~~within five years ~~after~~from the date of initial approval and at least once every five years thereafter. 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~~shall submit a request to the bureau of criminal investigation for 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.~~
5. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
 - c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.
6. A provider shall ensure safe care for the children receiving services in the provider's residence. If a ~~services required~~confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists

indicating that a child has been abused or neglected by an applicant, provider, emergency designee, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care, and the application or self-declaration document may be denied or revoked.

- a. If a ~~services-required~~confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, provider, emergency designee, or household member, the applicant or provider shall furnish information to the department, from which the department can determine the applicant's, provider's, or emergency designee's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of ability to the applicant or provider.
- b. Each applicant, provider, and emergency designee shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form no later than the first day of employment.
- c. Household members over the age of twelve shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form at the time of application or upon obtaining residence at the location of the child care.

History: Effective June 1, 1995; amended effective January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08, 50-11.1-09

Law Implemented: NDCC 50-11.1-06.2, 50-11.1-08, 50-11.1-09, 50-11.1-16, 50-11.1-17

SECTION 6: Section 75-03-07.1-10 is amended as follows:

75-03-07.1-10. Correction of violations.

1. A provider shall correct violations noted in a correction order within the following times:
 - a. For a violation of subsection 24 of North Dakota Century Code section 50-11.1-02, North Dakota Century Code section 50-11.1-02.2, paragraph 5 or 7 of subdivision a of subsection 3 of section 75-03-07.1-02, subdivision b of subsection 3 of section 75-03-07.1-02, or subsection 4 of section 75-03-07.1-02, or section 75-03-07.1-08, within twenty-four hours.

- b. For a violation of subdivision g or h of subsection 1 of North Dakota Century Code section 50-11.1-17 or all other deficiencies of chapter 75-03-07.1, within twenty days.
2. All periods of correction begin on the date of the receipt of the correction order by the provider.
3. The department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
4. The provider shall furnish a written notice to the department or its authorized agent upon completion of the required corrective action. The correction order remains in effect until the department or its authorized agent confirms the corrections have been made.
5. The provider shall notify the parent of each child receiving care at the residence and each emergency designee how to report a complaint or suspected rule violation.
6. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care by this provider that a correction order has been issued. In addition to providing notice to the parent of each child, the provider also must post the correction order in a conspicuous location within the residence until the violation has been corrected or five days, whichever is longer.
7. A provider who has been issued a correction order must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the provider has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order must be mailed by certified mail to the provider. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
8. Refutation process for a correction order:
 - a. A self-declared provider may refute a correction order by submitting a refutation request in writing on the form provided by the department within five calendar days of receiving the correction order.
 - b. The department will respond to written refutations within five business days of receipt.

History: Effective January 1, 2011; amended effective January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-08

SECTION 7: Section 75-03-07.1-13 is amended as follows:

75-03-07.1-13. Minimum emergency disaster plans.

1. Each self-declared provider shall establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with local emergency management agencies. The plan must include:
 - a. Emergency procedures, including the availability of emergency food, water, and first aid supplies;
 - b. ~~What will be done if parents are unable to pick up their child as a result of the emergency; and~~Procedures for evacuation, relocation, shelter-in-place, and lockdown;
 - c. ~~What will be done if the self-declared provider has to be relocated or must close as a result of the emergency~~Communications and reunification with families;
 - d. Continuity of operations; and
 - e. Accommodations for infants, toddlers, children with disabilities, and children with chronic medical conditions.
2. Fire and emergency evacuation drills must be performed monthly.

History: Effective April 1, 2018; amended effective January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-17

CHAPTER 75-03-08
FAMILY CHILD CARE EARLY CHILDHOOD SERVICES

Section	
75-03-08-01	Purpose [Repealed]
75-03-08-02	Authority and Objective [Repealed]
75-03-08-03	Definitions
75-03-08-04	Effect of Licensing and Display of License
75-03-08-05	Denial or Revocation of License
75-03-08-05.1	Family Child Care License [Repealed]
75-03-08-06	Provisional License
75-03-08-06.1	Restricted License
75-03-08-07	Application for and Nontransferability of Family Child Care License
75-03-08-08	Family Child Care Homes Registered Prior to Effective Date [Repealed]
75-03-08-08.1	Duties of the Provider
75-03-08-09	Staffing Requirements
75-03-08-10	Minimum Qualifications of Providers
75-03-08-11	[Reserved]
75-03-08-12	Minimum Qualifications for All Staff Members Responsible for Caring for or Teaching Children
75-03-08-12.1	Minimum Qualifications effor Volunteers
75-03-08-13	Minimum Health Requirements for All Applicants, Providers, and Staff Members Responsible for Caring for or Teaching Children
75-03-08-14	Minimum Requirements of the Facility
75-03-08-15	Minimum Standards for Provision of Transportation 75-03-08-16 Minimum Emergency Evacuation and Disaster Plan
75-03-08-17	[Reserved]
75-03-08-18	[Reserved]
75-03-08-19	Admission Procedures
75-03-08-20	Program Requirements
75-03-08-21	Minimum Standards for Food and Nutrition
75-03-08-21.1	Minimum Sanitation and Safety Requirements
75-03-08-22	Records
75-03-08-23	Discipline - Punishment Prohibited
75-03-08-24	Specialized Types of Care and Minimum Requirements
75-03-08-25	Minimum Requirements for Care of Children With Special Needs
75-03-08-26	[Reserved]
75-03-08-27	Effect of Conviction on Licensure and Employment
75-03-08-28	Child Abuse and Neglect Decisions
75-03-08-29	Correction of Violations
75-03-08-30	Fiscal Sanctions
75-03-08-31	Appeals

SECTION 8: Section 75-03-08-03 is amended as follows:

75-03-08-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Application" means all forms the department requires when applying or reapplying for a license.
2. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
- ~~2.3.~~ "Attendance" means the total number of children present at any one time at the family child care.
- ~~3.4.~~ "Child with special needs" means a child determined by a medical provider to have or to be at risk for chronic physical, developmental, behavioral, or emotional conditions.
- ~~4.5.~~ "Emergency designee" means an individual designated by the provider to be a backup staff member for emergency assistance or to provide substitute care.
- ~~5.6.~~ "Infant" means a child who is younger than twelve months of age.
- ~~6.7.~~ "Medication" is defined as any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~7.8.~~ "Provider" means owner or operator of a family child care.
- ~~8.9.~~ "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~9.10.~~ "Volunteer" means an individual who visits or provides an unpaid service, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

SECTION 9: Section 75-03-08-09 is amended as follows:

75-03-08-09. Staffing requirements.

1. Staffing requirements are established by the number of children physically in care at the family child care at any given time, rather than total enrollment.

2. If a child with special needs is admitted to the program, the child's developmental age level must be used in determining the number of children for which care may be provided.
3. ~~Children using the family child care for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.~~

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

SECTION 10: Section 75-03-08-15 is amended as follows:

75-03-08-15. Minimum standards for provision of transportation.

1. Prior to licensure, the provider shall establish a written policy governing the transportation of children to and from the family child care, if the family child care provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the family child care. If the family child care provides transportation, the provider shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided by a family child care, children must be protected by adequate staff supervision ~~and~~, safety precautions, and liability insurance.
 - a. Staffing requirements must be maintained to assure the safety of children while being transported.
 - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct appropriate to their age and stage of development.
4. The driver shall be eighteen years of age or older and shall comply with all relevant federal, state, and local laws, including child restraint system laws.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

SECTION 11: Section 75-03-08-16 is amended as follows:

75-03-08-16. Minimum emergency evacuation and disaster plan.

1. Each provider shall establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with local emergency management agencies. The plan must include:
 - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
 - b. ~~What will be done if parents are unable to pick up their child as a result of the emergency; and~~ Procedures for evacuation, relocation, shelter-in-place, and lockdown;
 - c. ~~What will be done if the family child care has to be relocated or must close as a result of the emergency~~ Communications and reunification with families;
 - d. Continuity of operations; and
 - e. Accommodations for infants, toddlers, children with disabilities, and children with chronic medical conditions.
2. Fire and emergency evacuation drills must be performed monthly.

History: Effective January 1, 2011; amended effective January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

SECTION 12: Section 75-03-08-22 is amended as follows:

75-03-08-22. Records.

1. A copy of this chapter must be kept on the premises and available to staff members at all times.
2. The provider shall maintain the following records:
 - a. The child's full name, birth date, current home address, legal names of the child's parents, and ~~the~~ current business and personal telephone numbers where they can be reached;
 - b. A written statement from the parents or legal guardian authorizing emergency medical care;
 - c. Names and telephone numbers of individuals authorized to take the child from the family child care;
 - d. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document citing that the child is medically exempt

or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-age child; and

- e. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, that must indicate any special precautions for diet, medication, or activity. This assessment shall be completed annually.
3. The provider shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents of each child, and to the following, unless otherwise protected by law:
 - a. Authorized agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent. The family child care shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

SECTION 13: Section 75-03-08-27 is amended as follows:

75-03-08-27. Effect of conviction on licensure and employment.

1. An applicant or provider may not be, and a family child care may not employ or allow, in any capacity that involves or permits contact between the emergency designee, staff member, or household member and any child cared for by the family child care, a provider, emergency designee, staff member, or household member who has 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; 12.1-18, 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 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 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; 12.1-22-01, robbery; 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; 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 in the case of an applicant, provider, or household member, or the provider in the case of a staff member or emergency designee, determines that the individual has not been sufficiently rehabilitated. 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.
2. The department has determined that the offenses enumerated in subdivision a or b of subsection 1 have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public in a capacity as a provider, emergency designee, or staff member.
 3. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; 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 conviction.
 4. The provider shall establish written policies and engage in practices that conform to those policies to effectively implement this section before the hiring of any staff members.
 5. A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and every within five years after from the date of initial approval and at least once every five years thereafter. The provider shall ensure that each staff member submits an application for a

fingerprint-based criminal history record check upon hire and ~~every~~within five years after from the date of initial approval and at least once every five years thereafter. 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~~shall submit a request to the bureau of criminal investigation for 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. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
 - c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

SECTION 14: Section 75-03-08-28 is amended as follows:

75-03-08-28. Child abuse and neglect decisions.

1. A provider shall ensure safe care for the children receiving services in the provider's family child care. If a ~~services-required~~confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care, and the application or license may be denied or revoked. If a ~~services-required~~confirmed determination under North Dakota Century Code chapter

50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department can determine the applicant's, provider's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or provider.

2. Each applicant, provider, emergency designee, and staff member in the family child care shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form no later than the first day of employment.
3. Household members over the age of twelve shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form at the time of application, relicensure, or upon obtaining residence at the location of the family child care.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

SECTION 15: Section 75-03-08-29 is amended as follows:

75-03-08-29. Correction of violations.

1. A provider shall correct violations noted in a correction order within the following times:
 - a. For a violation of subsection 8 of North Dakota Century Code section 50-11.1-02, North Dakota Century Code section 50-11.1-02.2, section 75-03-08-04, subsection 4 or 11 of section 75-03-08-08.1, section 75-03-08-09, subsection 2 or 9 of section 75-03-08-14, section 75-03-08-23, or subsection 1 of section 75-03-08-24, within twenty-four hours.
 - b. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-08-14, within sixty days.
 - c. For a violation that requires substantial building remodeling, construction, or change, within sixty days.
 - d. For all other violations, within twenty days.

2. All periods for correction begin on the date of receipt of the correction order by the provider.
3. The department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
4. The provider shall furnish a written notice to the department or its authorized agent upon completion of the required corrective action. The correction order remains in effect until the department or its authorized agent confirms the corrections have been made.
5. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care at the family child care that a correction order has been issued. In addition to providing notice to the parent of each child, the provider also shall post the correction order in a conspicuous location within the family child care until the violation has been corrected or for five days, whichever is longer.
6. A family child care program that has been issued a correction order must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the program has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order must be mailed by certified mail to the program. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a family child care program receives more than one correction order in a single year, the provider may be referred by the department for consulting services to assist the provider in maintaining compliance and to avoid future corrective action.
8. Refutation process for a correction order:
 - a. A provider may refute a correction order by submitting a refutation request in writing on the form provided by the department within five calendar days of receiving the correction order.
 - b. The department will respond to written refutations within five business days of receipt.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2014; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

**CHAPTER 75-03-09
GROUP CHILD CARE EARLY CHILDHOOD SERVICES**

Section	
75-03-09-01	Purpose [Repealed]
75-03-09-02	Authority and Objective [Repealed]
75-03-09-03	Definitions
75-03-09-04	Effect of Licensing and Display of License
75-03-09-05	Denial or Revocation of License
75-03-09-06	Provisional License
75-03-09-06.1	Restricted License
75-03-09-07	Application for and Nontransferability of Group Child Care License
75-03-09-08	Duties of Group Child Care Provider
75-03-09-09	Staffing Requirements
75-03-09-10	Minimum Qualifications of Group Child Care Supervisor
75-03-09-11	Duties of Group Child Care Supervisor
75-03-09-12	Minimum Qualifications for All Staff Members Responsible for Caring for or Teaching Children
75-03-09-12.1	Minimum Qualifications for Volunteers
75-03-09-13	Minimum Health Requirements for All Applicants, Operators, and Staff Members
75-03-09-14	Minimum Requirements for Facility
75-03-09-15	Minimum Standards for Provision of Transportation
75-03-09-16	Minimum Emergency Evacuation and Disaster Plan
75-03-09-17	Fire Inspections
75-03-09-18	Minimum Sanitation and Safety Requirements
75-03-09-19	Minimum Requirements Regarding Space
75-03-09-20	Program Requirements
75-03-09-21	Minimum Standards for Food and Nutrition
75-03-09-22	Records
75-03-09-23	Discipline - Punishment Prohibited
75-03-09-24	Specialized Types of Care and Minimum Requirements
75-03-09-25	Minimum Requirements for Care of a Child With Special Needs
75-03-09-26	Minimum Provisions Regarding Emergency Care for Children
75-03-09-27	Effect of Conviction on Licensure and Employment
75-03-09-28	Child Abuse and Neglect Decisions 7
5-03-09-29	Correction of Violations
75-03-09-30	Fiscal Sanctions
75-03-09-31	Appeals

SECTION 16: Section 75-03-09-03 is amended as follows:

75-03-09-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Application" means all forms the department requires when applying or reapplying for a license.
2. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
- ~~2.3.~~ "Attendance" means the total number of children present at any one time at the group child care.
- ~~3.4.~~ "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
- ~~4.5.~~ "Emergency designee" means an individual designated by the operator to be a backup caregiver for emergency assistance or to provide substitute care.
- ~~5.6.~~ "Group child care supervisor" means an individual responsible for overseeing the day-to-day operation of a group child care.
- ~~6.7.~~ "Infant" means a child who is less than twelve months of age.
- ~~7.8.~~ "Medications" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~8.9.~~ "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a group child care.
- ~~9.10.~~ "Provider" means the group child care owner or operator.
- ~~10.11.~~ "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~11.12.~~ "Volunteer" means an individual who visits or provides an unpaid service or visit, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

SECTION 17: Section 75-03-09-07 is amended as follows:

75-03-09-07. Application for and nontransferability of group child care license.

1. An application for license must be submitted to the department or its authorized agent. Application must be made in the form and manner prescribed by the department.
2. A license issued under this chapter is nontransferable and valid only for the premises indicated on the license.
3. An application for a new license must be filed upon change of provider or location.
4. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling. ~~A provider or operator with more than one in-home registration, self-declaration, or license in a single residence or two or more providers or operators operating under in-home registrations, self-declarations, or licenses out of the same residence prior to January 1, 2011, will be exempt from this subsection until January 1, 2016, after which time all operators will be subject to this subsection.~~

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

SECTION 18: Section 75-03-09-09 is amended as follows:

75-03-09-09. Staffing requirements.

1. The number of staff members and their responsibilities must reflect program requirements, individual differences in the needs of the children enrolled, and may permit flexible groupings, if necessary.
2.
 - a. A provider may provide early childhood services for no more than seven children at any one time, which includes no more than three children under twenty-four months of age. A provider may also provide early childhood services to two additional school-age children; or
 - b. A provider may elect to staff according to the following minimum ratio of staff members responsible for caring for or teaching children to children in group child care:
 - (1) For children younger than eighteen months of age, a ratio of .25 in decimal form is assigned;
 - (2) For children eighteen months of age to thirty-six months of age, a ratio of .20 in decimal form is assigned;

- (3) For children thirty-six months of age to four years of age, a ratio of .14 in decimal form is assigned;
 - (4) For children four years of age to five years of age, a ratio of .10 in decimal form is assigned;
 - (5) For children five years of age to six years of age, a ratio of .08 in decimal form is assigned;
 - (6) For children six years to twelve years of age, a ratio of .05 in decimal form is assigned; and
 - (7) When there is a mixed-aged group, the number of children in each age category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of staff members responsible for caring for or teaching children necessary at any given time, numbers of staff members for all age categories are added, and any fractional staff member count is then rounded to the next highest whole number whenever the fractional staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped. No more than four children under the age of eighteen months per staff member are allowed in any mixed-aged group.
3. A provider licensed for at least two years may apply for a waiver of the required ratio, not to exceed .25 decimal point. The department shall consider demonstration of need, health and safety of children, age of children, number of children, and licensing history of the provider in determining whether to approve the application for a waiver. The department may deny an application for waiver and may revoke a waiver granted under this subsection. The decision to deny or revoke a waiver is not an appealable decision. The department shall review each waiver granted under this subsection ~~at least every twelve months~~ annually to determine if the circumstances which led to granting the waiver continue to exist.
4. The provider of a group child care shall ensure that the group child care is sufficiently staffed at all times to meet the child and staff ratios for children in attendance, and that no more children than the licensed capacity are served at one time.
5. If a child with special needs is admitted to the group child care, the child's developmental age level must be used in determining the number of children for which care can be provided.

6. The provider shall ensure that children with special needs requiring more than usual care and supervision have adequate care and supervision provided to them without adversely affecting care provided to the remaining children in the group child care.
- ~~7. Children using the group child care for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.~~

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; January 1, 1989; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2013; April 1, 2014; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

SECTION 19: Section 75-03-09-16 is amended as follows:

75-03-09-16. Minimum emergency evacuation and disaster plan.

1. Each provider shall establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with local emergency management agencies. The plan must include:
 - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
 - b. ~~What will be done if parents are unable to pick up their child as a result of the emergency; and~~ Procedures for evacuation, relocation, shelter-in-place, and lockdown;
 - c. ~~What will be done if the group child care has to be relocated or must close as a result of the emergency~~ Communications and reunification with families;
 - d. Continuity of operations; and
 - e. Accommodations for infants, toddlers, children with disabilities, and children with chronic medical conditions.
2. Fire and emergency evacuation drills must be performed.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2018; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

SECTION 20: Section 75-03-09-22 is amended as follows:

75-03-09-22. Records.

1. The provider shall keep a copy of this chapter on the premises of the group child care and shall make it available to staff members at all times.
2. The provider shall maintain the following records:
 - a. The child's full name, birthdate, and current home address;
 - b. Legal names of the child's parents, and ~~the~~current business and personal telephone numbers where they can be reached;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individuals legally responsible for the child cannot be reached immediately in an emergency;
 - d. A written statement from the parents authorizing emergency medical care;
 - e. Names and telephone numbers of individuals authorized to take the child from the group child care;
 - f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document citing that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-age child; and
 - g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
3. The provider must verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
4. The provider shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents of each child, and to the following, unless otherwise protected by law:
 - a. The authorized agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the children concerned and who, in the judgment of the department, are in a

position to serve the children's interests should that be necessary;
and

- c. Individuals who possess a written authorization from the child's parent. The group child care shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

SECTION 21: Section 75-03-09-27 is amended as follows:

75-03-09-27. Effect of conviction on licensure and employment.

1. An applicant or provider may not be, and a group child care may not employ or allow, in any capacity that involves or permits contact between the emergency designee, group child care supervisor, staff member, or household member and any child cared for by the group child care, a provider, emergency designee, group child care supervisor, staff member, or household member who has 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; 12.1-18, 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 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of 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; 12.1-22-01, robbery; 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; 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 in the case of a group child care applicant, provider, or group child care supervisor, or household member, or the provider in the case of a staff member or emergency designee, determines that the individual has not been sufficiently rehabilitated. 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.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public as a provider, emergency designee, or staff member.
3. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; 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 conviction.
4. The provider shall establish written policies and engage in practices that conform to those policies to effectively implement this section before the hiring of any staff.
5. A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and every within five years after from the date of initial approval and at least once every five years thereafter. The provider shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and every within five years after from the date of initial approval and at least once every five years thereafter. 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~~ shall submit a request to the bureau of criminal investigation for 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. Review of fingerprint-based criminal history record check results.

- a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
- b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
- c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

SECTION 22: Section 75-03-09-28 is amended as follows:

75-03-09-28. Child abuse and neglect decisions.

1. A provider shall ensure safe care for the children receiving services in the provider's group child care. If a ~~services-required~~confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a ~~services-required~~confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department can determine the applicant's, provider's, emergency designee's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or provider.

2. Each applicant, provider, emergency designee, and staff member in the group child care shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form no later than the first day of employment.
3. Household members over the age of twelve shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form at the time of application or relicensure or upon obtaining residence at the location of the group child care.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

SECTION 23: Section 75-03-09-29 is amended as follows:

75-03-09-29. Correction of violations.

1. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care at the group child care that a correction order has been issued. In addition to providing notice to the parent of each child, the provider shall post the correction order in a conspicuous location within the facility until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; section 75-03-09-04; subdivision i of subsection 1 of section 75-03-09-08; section 75-03-09-09; subsection 4 or 8 of section 75-03-09-12; subsection 3, 6, 9, or 10 of section 75-03-09-18; section 75-03-09-23; or subsection 1 of section 75-03-09-24, within twenty-four hours;
 - b. For a violation requiring the hiring of a group child care supervisor with those qualifications set forth in section 75-03-09-10, within sixty days;
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-09-17, within sixty days;
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and

- e. For all other violations, within twenty days.
3. All periods for correction begin on the date of receipt of the correction order by the provider.
4. The department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
5. The provider shall furnish written notice to the department or its authorized agent upon completion of the required corrective action. The correction order remains in effect until the department or its authorized agent confirms the corrections have been made.
6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a group child care that has been issued a correction order. If, upon reinspection, it is determined that the group child care has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the group child care. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a group child care receives more than one correction order in a single year, the department or its authorized agent may refer the group child care for consulting services to assist the provider in maintaining compliance and to avoid future corrective action.
8. Refutation process for a correction order:
 - a. A provider may refute a correction order by submitting a refutation request in writing on the form provided by the department within five calendar years of receiving the correction order.
 - b. The department will respond to written refutations within five business days of receipt.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2018; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-10
CHILD CARE CENTER EARLY CHILDHOOD SERVICES

Section	
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75-03-10-02	Authority and Objective [Repealed]
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75-03-10-27	Effect of Conviction on Licensure and Employment
75-03-10-28	Child Abuse and Neglect Decisions
75-03-10-29	Correction of Violations
75-03-10-30	Fiscal Sanctions
75-03-10-31	Appeals
75-03-10-32	Penalties [Repealed]

SECTION 24: Section 75-03-10-03 is amended as follows:

75-03-10-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Application" means all forms the department requires when applying or reapplying for a license.
2. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
- ~~2.3.~~ "Attendance" means the total number of children present at any one time at the facility.
- ~~3.4.~~ "Child with special needs" means a child whose medical providers have determined that the child has or is at risk of chronic physical, developmental, behavioral, or emotional conditions.
- ~~4.5.~~ "Director" means the individual responsible for overseeing the general operation and implementing the policies and procedures of the child care center.
- ~~5.6.~~ "Emergency designee" means an individual designated by the operator to be a backup staff member for emergency assistance or to provide substitute care.
- ~~6.7.~~ "Infant" means a child who is less than twelve months of age.
- ~~7.8.~~ "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~8.9.~~ "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a child care center.
- ~~9.10.~~ "Substitute staff" means staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~10.11.~~ "Supervisor" means any individual with the responsibility for organizing and supervising daily child care center activities.
- ~~11.12.~~ "Volunteer" means an individual who visits or provides an unpaid service, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

SECTION 25: Section 75-03-10-07 is amended as follows:

75-03-10-07. Application for and nontransferability of child care center license.

An application for a license must be submitted to the department or its authorized agent.

1. An applicant shall submit an application for a license to the department or its authorized agent. Application must be made in the form and manner prescribed by the department.
2. A license issued under this chapter is nontransferable and is valid only for the premises that are indicated on the license.
3. An application for a new license must be filed by the operator upon change of operator or location.
4. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling. ~~A provider or operator with more than one in-home registration, self-declaration, or license in a single residence or two or more providers or operators operating under in-home registrations, self-declarations, or licenses out of the same residence prior to January 1, 2011, will be exempt from this subsection until January 1, 2016, after which time all operators will be subject to this subsection.~~

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

SECTION 26: Section 75-03-10-08 is amended as follows:

75-03-10-08. Staffing and group size requirements.

1. The number of staff members and their responsibilities must reflect program requirements and individual differences in the needs of the children enrolled, and may permit mixed-age groups, if necessary. Service personnel engaged in housekeeping and food preparation may not be counted in the child to staff ratio for periods of time when they are engaged in housekeeping or food preparation.
2. a. The operator shall ensure that the center is sufficiently staffed at all times to meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at one time. The minimum ratio of staff members responsible for caring for

or teaching children to children in child care centers and maximum group size of children must be:

- (1) For children less than eighteen months of age, one staff member may care for four children, a ratio of .25 in decimal form, with a maximum group size of ten children;
- (2) For children eighteen months of age to thirty-six months of age, one staff member may care for five children, a ratio of .20 in decimal form, with a maximum group size of fifteen children;
- (3) For children three years of age to four years of age, one staff member may care for seven children, a ratio of .14 in decimal form, with a maximum group size of twenty children;
- (4) For children four years of age to five years of age, one staff member may care for ten children, a ratio of .10 in decimal form, with a maximum group size of twenty-five children;
- (5) For children five years of age to six years of age, one staff member may care for twelve children, a ratio of .08 in decimal form, with a maximum group size of thirty children; and
- (6) For children six years to twelve years of age, one staff member may care for twenty children, a ratio of .05 in decimal form, with a maximum group size of forty children.

b. ~~The provisions in subdivision a relating to maximum group size do not apply to operators licensed prior to January 1, 1999, if those operators are otherwise qualified to operate a child care center. Any operator who discontinues operation of the child care center under a valid license or who fails to renew the operator's license upon its expiration will not be exempt subsequently from the requirements relating to maximum group size. The exemption for operators licensed prior to January 1, 1999, will end on January 1, 2015, after which time all operators will be subject to the requirements of this subsection.~~

e. When there are mixed-age groups in the same room, the operator shall ensure:

- (1) The maximum group size is consistent with the:
 - (a) Age of the majority of the children; or
 - (b) Highest number of children in the youngest age group;
- (2) When children age zero to eighteen months are in the mixed-age group, the maximum group size does not exceed ten children;

- (3) The mixed-age group does not exceed the acceptable ratio pursuant to subdivision d of subsection 2 of section 75-03-10-08 and the maximum number of children per staff member pursuant to subdivision a of subsection 2 of section 75-03-10-08; and
- (4) If the mixed-age group contains the maximum number of children per staff member pursuant to subdivision a of subsection 2 of section 75-03-10-08, the mixed-age group may only contain additional older children.

d.c. When there is a mixed-age group, the number of children in each age category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of staff members responsible for caring for or teaching children necessary at any given time, numbers of staff members for all age categories are added, and any fractional staff member count is then rounded to the next highest whole number whenever the fractional staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.

- 3. If a child with special needs is admitted to the child care center, the child's developmental age level must be used to determine into which age group the child should be placed for determining child to staff ratios.
- 4. The operator shall ensure that a child with special needs requiring more than usual care and supervision has adequate care and supervision without adversely affecting care provided to the other children in the child care center.
- 5. ~~Children using the child care center for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.~~
- 6. ~~—~~An operator licensed for at least two years may apply for a waiver of the required ratio and maximum group size, not to exceed .25 decimal point per group. The department shall consider demonstration of need, health and safety of children, age of children, number of children, and licensing history of the operator in determining whether to approve the application for a waiver. The department may deny an application for waiver and may revoke a waiver granted under this subsection. The decision to deny or revoke a waiver is not an appealable decision. The department shall review each waiver granted under this subsection ~~at least every twelve months~~ annually to determine if the circumstances which led to granting the waiver continue to exist.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2013; April 1, 2014; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

SECTION 27: Section 75-03-10-16 is amended as follows:

75-03-10-16. Minimum emergency evacuation and disaster plan.

1. The operator shall establish and post an emergency disaster plan for the safety of the children in care. The operator shall develop written disaster plans in cooperation with local emergency management agencies. The plan must include:
 - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
 - b. ~~What will be done if parents are unable to pick up their child as a result of the emergency; and~~ Procedures for evacuation, relocation, shelter-in-place, and lockdown;
 - c. ~~What will be done if the child care center has to be relocated or must close as a result of the emergency~~ Communications and reunification with families;
 - d. Continuity of operations; and
 - e. Accommodations for infants, toddlers, children with disabilities, and children with chronic medical conditions.
2. Fire and emergency evacuation drills must be performed monthly.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2018; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

SECTION 28: Section 75-03-10-22 is amended as follows:

75-03-10-22. Records.

1. The operator shall keep a copy of this chapter on the premises of the child care center and shall make it available to staff members at all times.
2. The operator shall maintain the following records:
 - a. The child's full name, birth date, and current home address;

- b. Legal names of the child's parents and ~~the~~current business and personal telephone numbers where they can be reached;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individuals legally responsible for the child cannot be reached immediately in an emergency;
 - d. A written statement from the parents authorizing emergency medical care;
 - e. Names and telephone numbers of individuals authorized to take the child from the child care center;
 - f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-age child; and
 - g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
3. The operator shall record and verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the operator considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents of each child, and to the following, unless otherwise protected by law:
 - a. The authorized agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the children concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess a written authorization from the child's parent. The child care center shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

SECTION 29: Section 75-03-10-27 is amended as follows:

75-03-10-27. Effect of conviction on licensure and employment.

1. An applicant, operator, director, or supervisor may not be, and a child care center may not employ or allow, in any capacity that involves or permits contact between the emergency designee, substitute staff member, or staff member and any child cared for by the child care center, an operator, emergency designee, substitute staff member, director, supervisor, or staff member who has 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; 12.1-18, 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 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of 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; 12.1-22-01, robbery; 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; 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 in the case of a child care center applicant, operator, director, or supervisor, or the operator in the case of an emergency designee, substitute staff, or staff member, determines that the individual has not been sufficiently rehabilitated. 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.

2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, operator's, emergency designee's, substitute staff member's, director's, supervisor's, or staff member's ability to serve the public as an operator, emergency designee, substitute staff member, director, supervisor, or staff member.
3. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; 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 conviction.
4. The operator shall establish written policies and engage in practices that conform to those policies to effectively implement this section before hiring any staff member.
5. An operator shall submit an application for a fingerprint-based criminal history record check at the time of application and everywithin five years afterfrom the date of initial approval and at least once every five years thereafter. The operator shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and everywithin five years afterfrom the date of initial approval and at least once every five years thereafter. 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~~shall submit a request to the bureau of criminal investigation for 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. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

- b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
- c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

SECTION 30: Section 75-03-10-28 is amended as follows:

75-03-10-28. Child abuse and neglect decisions.

An operator shall ensure safe care for the children receiving services in the child care center.

1. If a ~~services-required~~confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, that decision has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provisions of child care and the application or license may be denied or revoked. If a ~~services-required~~confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, the applicant or operator shall furnish information satisfactory to the department, from which the department can determine the applicant's, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator.
2. Each applicant, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete, and the operator shall submit to the department or its authorized agent, a department-

approved authorization for background check form no later than the first day of employment.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

SECTION 31: Section 75-03-10-29 is amended as follows:

75-03-10-29. Correction of violations.

1. Within three business days of the receipt of the correction order, the operator shall notify the parents of each child receiving care at the child care center that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the child care center until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; section 75-03-10-04 or 75-03-10-08; subsection 12 of section 75-03-10-09; subdivision e of subsection 1 of section 75-03-10-12; subsection 3 of section 75-03-10-12; subsection 3, 6, 9, or 10 of section 75-03-10-18; section 75-03-10-23; or subsection 1 of section 75-03-10-24, within twenty-four hours;
 - b. For a violation requiring the hiring of a child care supervisor with those qualifications set forth in section 75-03-10-11.1, or a child care center director with those qualifications set forth in section 75-03-10-10, within sixty days;
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-10-17, within sixty days;
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other violations, within twenty days.
3. All periods for correction begin on the date of receipt of the correction order by the operator.
4. The department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the operator and a showing

that the need for the extension is created by unforeseeable circumstances and the operator has diligently pursued the correction of the violations.

5. The operator shall furnish a written notice to the department or its authorized agent upon completion of the required corrective action. The correction order remains in effect until the department or its authorized agent confirms that the corrections have been made.
6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a child care center that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the child care center has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the child care center. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a child care center receives more than one correction order in a single year, the operator may be referred by the department for consulting services to assist the operator in maintaining compliance and to avoid future corrective action.
8. Refutation process for a correction order:
 - a. An operator may refute a correction order by submitting a refutation request in writing on the form provided by the department within five calendar days of receiving the correction order.
 - b. The department will response to written refutations within five business days of receipt.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-11
PRESCHOOL EARLY CHILDHOOD SERVICES

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75-03-11-02	Authority and Objective [Repealed]
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75-03-11-05	Denial or Revocation of License
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75-03-11-21	Minimum Standards for the Provision of Snacks
75-03-11-22	Records
75-03-11-23	Discipline - Punishment Prohibited
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75-03-11-27	Effect of Conviction on Licensure and Employment
75-03-11-28	Child Abuse and Neglect Determinations
75-03-11-29	Correction of Violations
75-03-11-30	Fiscal Sanctions
75-03-11-31	Appeals

SECTION 32: Section 75-03-11-03 is amended as follows:

75-03-11-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Application" means all forms the department requires when applying or reapplying for a license.
2. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
- ~~2.3.~~ "Assistant" means any individual who works directly with children in a preschool under the supervision of a teacher or a director.
- ~~3.4.~~ "Attendance" means the total number of children present at any one time at the facility.
4. 5. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
- ~~5.6.~~ "Director" means an individual responsible for supervising and organizing program activities in a preschool.
- ~~6.7.~~ "Emergency designee" means an individual designated by the operator to be a backup staff member for emergency assistance or to provide substitute care.
- ~~7.8.~~ "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~8.9.~~ "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a preschool.
- ~~9.10.~~ "Preschool" means a program licensed to provide early childhood services which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day.
- ~~10.11.~~ "Substitute staff" means staff who work less than thirty-two hours per month, and are not regularly scheduled for work.
- ~~11.12.~~ "Teacher" means an individual with the responsibility of implementing program activities, either as the director or under the supervision of the director.
- ~~12.13.~~ "Volunteer" means an individual who visits or provides an unpaid service or visit, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

SECTION 33: Section 75-03-11-07 is amended as follows:

75-03-11-07. Application for and nontransferability of preschool license.

1. An applicant shall submit an application for a license to the department or its authorized agent. Application must be made in the form and manner prescribed by the department.
2. A license issued under this chapter is nontransferable and valid only for the premises indicated on the license. An application for a new license must be filed upon change of operator or location.
3. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling. ~~A provider or operator with more than one in-home registration, self-declaration, or license in a single residence or two or more providers or operators operating under in-home registrations, self-declarations, or licenses out of the same residence prior to January 1, 2011, will be exempt from this subsection until January 1, 2016, after which time all operators will be subject to this subsection.~~

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

SECTION 34: Section 75-03-11-09 is amended as follows:

75-03-11-09. Staffing requirements.

1. The number of staff members and their responsibilities must reflect program requirements and individual differences in the needs of the children enrolled, and may permit mixed-age groups, if necessary. Service personnel engaged in housekeeping and food preparations may not be counted in the child to staff member ratio for periods of time when they are engaged in housekeeping or food preparation.
2. The minimum ratio of staff members responsible for caring for or teaching children to children in preschool must be:

- a. If all children in care are children two years of age to three years of age, one staff member may care for six children, a ratio of .167 in decimal form.
 - b. If all children in care are children three years of age to four years of age, one staff member may care for eleven children, a ratio of .09 in decimal form.
 - c. If all children in care are children four years of age to five years of age, one staff member may care for thirteen children, a ratio of .077 in decimal form.
 - d. If all children in care are children five years of age to six years of age, one staff member may care for sixteen children, a ratio of .063 in decimal form.
 - e. There must be at least one director or teacher, in addition to at least one staff member responsible for caring for or teaching children, per group of ten children, if the group includes children two years old.
 - f. There must be at least one director or teacher, in addition to at least one staff member responsible for caring for or teaching children, per group of twenty children, if the group includes children three years old.
 - g. There must be at least one director or teacher, in addition to at least one staff member responsible for caring for or teaching children, per group of twenty-four children, ages four to six.
3. When there are mixed-age groups, the number of children in each category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of staff members responsible for caring for or teaching children necessary at any given time, numbers of staff members for all age categories are added, and any fractional staff member count is then rounded to the next highest whole number whenever the fractional staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.
 4. If a child with special needs is admitted to the preschool, the child's developmental age level must be used in determining the child to staff ratios.
 5. The operator shall ensure that a child with special needs requiring more than usual care and supervision has adequate care and supervision without adversely affecting care provided to the other children in the preschool.

6. ~~Children using the preschool for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.~~

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

SECTION 35: Section 75-03-11-16 is amended as follows:

75-03-11-16. Minimum emergency evacuation and disaster plan.

1. Each operator shall establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with local emergency management agencies. The plan must include:
 - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
 - b. ~~What will be done if parents are unable to pick up their child as a result of the emergency; and c. What will be done if the preschool has to be relocated or must close as a result of the emergency~~Procedures for evacuation, relocation, shelter-in-place, and lockdown;
 - c. Communications and reunification with families;
 - d. Continuity of operations; and
 - e. Accommodations for infants, toddlers, children with disabilities, and children with chronic medical conditions.
2. Fire and emergency evacuation drills must be performed monthly.

History: Effective January 1, 2011; amended effective April 1, 2018; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

SECTION 36: Section 75-03-11-19 is amended as follows:

75-03-11-19. Minimum requirements regarding space.

1. Each preschool shall provide adequate indoor and outdoor space for the daily activities of all children for the licensed capacity of the preschool.
2. Adequate space must include a minimum of thirty-five square feet [3.25 square meters] of indoor space per child. Indoor space considered must

exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy.

3. There must be a minimum of seventy-five square feet [6.97 square meters] of appropriate outdoor play space per child for the preschool. If available outdoor play space does not accommodate the licensed capacity of the preschool at one time, the total appropriate outdoor play space available must be no less than the number of children in the largest class or group of the preschool multiplied by seventy-five square feet [6.97 square meters]. Operators who provide seventy-five square feet [6.97 square meters] of separate indoor recreation space per child for the largest class or group are exempt from the outdoor space requirement. The operator shall prepare a written schedule of outdoor or separate indoor recreation space playtime which limits the use of the play area to its capacity, giving each class or group an opportunity to play daily.
4. An operator holding a current license under this chapter on or before January 1, 2022, is exempt from subsection 3 unless the operator's license lapses for more than six months.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

SECTION 37: Section 75-03-11-22 is amended as follows:

75-03-11-22. Records.

1. The operator shall keep a copy of this chapter on the premises of the preschool and shall make it available to staff members at all times.
2. The operator shall maintain the following records:
 - a. The child's full name, birth date, current home address, legal names of the child's parents, and ~~the~~current business and personal telephone numbers where they can be reached;
 - b. A written statement from the parents authorizing emergency medical care;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individuals legally responsible for the child cannot be reached immediately in an emergency;
 - d. Names and telephone numbers of individuals authorized to take the child from the preschool;

- e. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document citing that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in child; and
 - f. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
- 3. The operator shall verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
 - 4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents, and to the following, unless otherwise protected by law:
 - a. The authorized agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent. The preschool shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

SECTION 38: Section 75-03-11-27 is amended as follows:

75-03-11-27. Effect of conviction on licensure and employment.

- 1. An applicant, operator, or director may not be, and a preschool may not employ or allow, in any capacity that involves or permits contact between the teacher, assistant, emergency designee, or staff member and any child cared for by the preschool, an operator, director, staff member, teacher, assistant, or emergency designee, who has 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; 12.1-18, 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 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of 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; 12.1-22-01, robbery; 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; 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 in the case of an applicant, operator, or director, or the operator in the case of a staff member, teacher, assistant, substitute staff member, or emergency designee, determines that the individual has not been sufficiently rehabilitated. 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.
2. The department has determined that the offenses enumerated in subdivision a or b of subsection 1 have a direct bearing on the applicant's, operator's, director's, teacher's, assistant's, substitute staff member's, emergency designee's, or a staff member's ability to serve the public as an operator, director, teacher, assistant, emergency designee, or a staff member.
 3. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; 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 conviction.

4. The operator shall establish written policies and engage in practices that conform to those policies to effectively implement this section, before hiring any directors, staff members, teachers, assistants, substitute staff members, or emergency designees.
5. An operator shall submit an application for a fingerprint-based criminal history record check at the time of application and ~~every~~within five years ~~after~~from the date of initial approval ~~and at least once every five years thereafter~~. The operator shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and ~~every~~within five years ~~after~~from the date of initial approval ~~and at least once every five years thereafter~~. 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~~shall submit a request to the bureau of criminal investigation for 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. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
 - c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

History: Effective January 1, 1999; amended effective January 2, 2011; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

SECTION 39: Section 75-03-11-28 is amended as follows:

75-03-11-28. Child abuse and neglect determinations.

An operator shall ensure safe care for the children receiving services in the preschool.

1. If a ~~services-required~~confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by any applicant, operator, director, teacher, assistant, staff member, substitute staff member, or emergency designee, it has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a ~~services-required~~confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, operator, director, teacher, assistant, staff member, substitute staff member, or emergency designee, the applicant or operator shall furnish information satisfactory to the department, from which the department can determine the applicant's, operator's, director's, teacher's, assistant's, staff member's, substitute staff member's, or emergency designee's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator.
2. Each applicant, operator, director, teacher, assistant, staff member, substitute staff member, and emergency designee shall complete, and the operator shall submit to the department or its authorized agent, a department-approved authorization for background check form no later than the first day of employment.

History: Effective January 1, 1999; amended effective January 2, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

SECTION 40: Section 75-03-11-29 is amended as follows:

75-03-11-29. Correction of violations.

1. Within three business days of receipt of the correction order, the operator shall notify the parents of each child enrolled in the preschool that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the preschool until the violation has been corrected or for five days, whichever is longer.

2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; section 75-03-11-04; subsection 13 of section 75-03-11-08; section 75-03-11-09; subsection 4 of section 75-03-11-10; subsection 3 of section 75-03-11-13; subsection 2, 7, or 8 of section 75-03-11-18; or section 75-03-11-23, within twenty-four hours;
 - b. For a violation requiring the hiring of a director with those qualifications set forth in section 75-03-11-08.1 or a teacher with those qualifications as set forth in section 75-03-11-08.2, within sixty days;
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11-17, within sixty days;
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other violations, within twenty days.
3. All periods for correction begin on the date of receipt of the correction order by the operator.
4. The department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the operator and a showing that the need for the extension is created by unforeseeable circumstances and the operator has diligently pursued the correction of the violation.
5. The operator shall furnish written notice to the department or its authorized agent upon completion of the required corrective action. The correction order remains in effect until the department or its authorized agent confirms that the corrections have been made.
6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a preschool that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the preschool has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the preschool. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a preschool receives more than one correction order in a single year, the operator may be referred by the department for consulting services. The

consulting services will be offered to assist the operator in maintaining compliance and to avoid future corrective action.

8. Refutation process for a correct order:

- a. An operator may refute a correction order by submitting a refutation request in writing on the form provided by the department within five calendar days of receiving the correction orders.
- b. The department will respond to written refutations within five business days of receipt.

History: Effective January 1, 1999; amended effective January 2, 2011; January 1, 2013; April 1, 2014; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-11.1
SCHOOL-AGE CHILD CARE PROGRAM EARLY CHILDHOOD SERVICES

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75-03-11.1-29	Correction of Violations
75-03-11.1-30	Fiscal Sanctions

75-03-11.1-31 Appeals
75-03-11.1-32 Appeals [Repealed]

SECTION 41: Section 75-03-11.1-03 is amended as follows:

75-03-11.1-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. “Application” means all forms the department requires when applying or reapplying for a license.
2. “Aquatic activity” means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
- ~~2.3.~~ “Attendance” means the total number of children present at any one time at the facility.
- ~~3.4.~~ “Child with special needs” means a child whose medical providers have determined that the child has or is at risk of chronic physical, developmental, behavioral, or emotional conditions.
- ~~4.5.~~ “Director” means an individual responsible for overseeing the general operation of, and implementing the policies and procedures of, the school-age child care program.
- ~~5.6.~~ “Emergency designee” means an individual designated by the school-age child care program to be a backup staff member for emergency assistance or to provide substitute care.
- ~~6.7.~~ “Medication” means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~7.8.~~ “Operator” means the individual or governing board who has the legal responsibility and the administrative authority for the operations of a school-age child care program.
- ~~8.~~ “School-age child care program satellite” means a location used by a licensed school-age child care program other than the building or location listed as the main location on the license.
9. “School-age child care program” or “program” means a program licensed to provide early childhood services exclusively to school-age children before and after school, during school holidays, and during summer vacation.
10. “Substitute staff” means staff who work less than thirty-two hours per month and are not regularly scheduled for work.

11. "Supervisor" means any person with the responsibility for organizing and supervising daily program activities.
12. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

SECTION 42: Subsection 3 of section 75-03-11.1-04 is amended as follows:

3. The license must specify the maximum number of children for whom the school-age child care program, ~~including any satellite locations,~~ may provide care. The school-age child care program, ~~including satellite locations,~~ may not admit a greater number of children than the license allows.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; January 1, 2022.

General Authority: NDCC 50-11.1-08 2

Law Implemented: NDCC 50-11.1-03, 50-11.1-04 75-03-11.1-05.

SECTION 43: Section 75-03-11.1-07 is amended as follows:

75-03-11.1-07. Application for and nontransferability of school-age child care program license.

1. An applicant shall submit an application for a license to the department or its authorized agent. Application must be made in the form and manner prescribed by the department.
2. A license issued under this chapter is nontransferable and is valid only for the premises indicated on the license.
3. An application for a new license must be filed upon change of operator or location.
4. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling. ~~A provider or operator with more than one in-home registration, self-declaration, or license in a single residence or two or more providers or operators operating under in-home registrations, self-declarations, or licenses out of the same residence prior to January 1, 2011, will be exempt from this subsection until January 1, 2016, after which time all operators will be subject to this subsection.~~

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

SECTION 44: Subsection 1 of section 75-03-11.1-08 is amended as follows:

1. Shall designate a qualified director, shall delegate appropriate duties to the director, and shall:
 - a. Ensure that the director is present at the school-age child care program at least sixty percent of the time that the program is open. If ~~the operation operator has satellite sites, the~~ legal responsibility and the administrative authority over two or more school-age child care programs, a director shared between two or more school-age child care programs shall be present a combined total of sixty percent of the school-age ~~program's~~ programs' hours of operation.
 - b. Ensure that when the director and designated acting director are not present at the program, a person who meets the qualifications of a supervisor is on duty.
 - c. Ensure that the individual designated as an acting director for longer than thirty consecutive days meets the qualifications of a school-age child care program director.
 - d. Ensure that if the operator of the school-age child care program is also the director, that the operator meets the qualifications of a director set forth in section 75-03-11.1-08.1;

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

SECTION 45: Section 75-03-11.1-09 is amended as follows:

75-03-11.1-09. Staffing and group size requirements.

1. The number of staff members responsible for caring for or teaching children and their responsibilities must reflect program requirements and individual differences in the needs of the children enrolled, and may permit mixed groups, if necessary. Service personnel engaged in housekeeping and food preparation may not be counted in the child to staff ratio for periods of time when they are engaged in housekeeping or food preparation. The operator shall ensure that a child with special needs requiring more than usual care

and supervision has adequate care and supervision without adversely affecting care provided to the other children in the school-age child care program.

2. Staffing requirements and maximum group size.

a. The operator of a school-age child care program shall ensure that the program is sufficiently staffed at all times to meet the child to staff ratios for children in attendance, and that no more children than the licensed capacity are served at one time. ~~The minimum ratio of staff members responsible for caring for or teaching children to children and maximum group size of children must be:~~

~~(1) For one to fourteen children, one staff member; and~~

~~(2) For fifteen children or more, two staff members, with a maximum group size of thirty children.~~

~~(3) The provisions in this subsection relating to maximum group size do not apply to school-age child care program operators licensed prior to January 1, 1999, if those operators are otherwise qualified to operate a school-age child care program. Any school-age child care program operator who discontinues operation of the school-age child care program under a valid license, or who fails to renew the license when it expires, will not be exempt from the requirements relating to maximum group size if the operator subsequently reapplies for a school-age child care program license. This exemption for operators licensed prior to January 1, 1999, will end on January 1, 2015, after which time all operators will be subject to the requirements of this subsection. One staff member may care for or teach a maximum of twenty children, with a maximum group size of forty children.~~

b. A staff member may be counted in the required ratio only for the time the staff member is directly responsible for a group of children.

c. The director shall ensure that staff members responsible for caring for or teaching children and children under the age of eighteen are supervised by an adult at all times while in the school-age child care program.

~~3. Children using the licensed program for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.~~

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

SECTION 46: Section 75-03-11.1-16 is amended as follows:

75-03-11.1-16. Minimum emergency evacuation and disaster plan.

1. The operator shall establish and post an emergency disaster plan for the safety of the children in care. The operator shall develop written disaster plans in cooperation with local emergency management agencies. The plan must include:
 - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
 - b. ~~What will be done if parents are unable to pick up their child as a result of an emergency; and~~Procedures for evacuation, relocation, shelter-in-place, and lockdown;
 - c. ~~What will be done if the school-age child care program has to be relocated or must close as a result of the emergency~~Communications and reunification with families;
 - d. Continuity of operations; and
 - e. Accommodations for infants, toddlers, children with disabilities, and children with chronic medical conditions.
2. Fire and emergency evacuation drills must be performed monthly.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; April 1, 2018; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

SECTION 47: Section 75-03-11.1-22 is amended as follows:

75-03-11.1-22. Records.

1. The operator shall keep a copy of this chapter on the premises of the school-age child care program ~~and all satellite sites~~ and shall make it available to staff members at all times.
2. The operator shall maintain the following records and shall keep copies at the school age program premises ~~and satellite sites~~ where the child is enrolled:
 - a. The child's full name, birth date, and current home address;

- b. Legal names of the child's parents, and ~~the~~current business and personal telephone numbers where they can be reached;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individual legally responsible for the child cannot be reached immediately in an emergency;
 - d. A written statement from the parents authorizing emergency medical care;
 - e. Names and telephone numbers of individuals authorized to take the child from the school-age child care program; and
 - f. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
3. The operator shall record and verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the operator considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents, and to the following, unless protected by law:
- a. The authorized agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent. The school-age child care program shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

SECTION 48: Section 75-03-11.1-27 is amended as follows:

75-03-11.1-27. Effect of conviction on licensure and employment.

1. An applicant, operator, director, or supervisor may not be, and a school-age child care program may not employ or allow, in any capacity that involves or permits contact between the emergency designee, substitute staff member, or staff member and any child cared for by the school-age child care program, an operator, emergency designee, substitute staff member, director, supervisor, or staff member who has 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; 12.1-18, 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 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, 12.1-17-01.2, domestic violence; aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 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; 12.1-22-01, robbery; 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; 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 in the case of a school-age child care program applicant, operator, director, or supervisor, or the school-age child care program operator in the case of an emergency designee, substitute staff member, or staff member, determines that the individual has not been sufficiently rehabilitated. 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.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, operator's, emergency designee's, substitute staff member's, director's, supervisor's, or staff member's ability to serve the public as an operator, emergency designee, substitute staff member, director, supervisor, or staff member.

3. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; 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 conviction.
4. The operator shall establish written policies, and engage in practices that conform to those policies, to effectively implement this section before hiring any staff member.
5. An operator shall submit an application for a fingerprint-based criminal history record check at the time of application and every within five years after from the date of initial approval and at least once every five years thereafter. The operator shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and every within five years after from the date of initial approval and at least once every five years thereafter. 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~~ shall submit a request to the bureau of criminal investigation for 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. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
 - c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

SECTION 49: Section 75-03-11.1-28 is amended as follows:

75-03-11.1-28. Child abuse and neglect decisions.

An operator shall ensure safe care for the children receiving services in the school-age child care program.

1. If a ~~services-required~~confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, that decision has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a ~~services-required~~confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that a child has been abused or neglected by the applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, the applicant or operator shall furnish information satisfactory to the department from which the department can determine the applicant's, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator.
2. Each applicant, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete, and the operator shall submit to the department or its authorized agent, a department-approved authorization for background check form no later than the first day of employment.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

SECTION 50: Section 75-03-11.1-29 is amended as follows:

75-03-11.1-29. Correction of violations.

1. Within three business days of the receipt of a correction order, the operator shall notify the parents of each child receiving care at the school-age child care program that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the school-age child care program ~~and applicable satellite location~~ until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; subsection 13 of section 75-03-11.1-08; subsection 4 or 5 of section 75-03-11.1-08.4; section 75-03-11.1-09; subsection 2, 3, 10, or 20 of section 75-03-11.1-18; or section 75-03-11.1-23, within twenty-four hours.
 - b. For a violation requiring the hiring of a school-age child care program director with those qualifications set forth in section 75-03-11.1-08.1 or a child care supervisor with those qualifications set forth in section 75-03-11.1-08.3, within sixty days.
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11.1-17, within sixty days.
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days.
 - e. For all other violations, within twenty days.
3. All time periods for correction begin on the date of receipt of the correction order by the operator.
4. The department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the operator and a showing that the need for the extension is created by unforeseeable circumstances and the operator has diligently pursued the correction of the violation.
5. The operator shall furnish a written notice to the department or its authorized agent upon completion of the required corrective action. The correction order remains in effect until the department or its authorized agent confirms that the corrections have been made.
6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a school-age child care program that has

been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the school-age child care program has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the school-age child care program. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.

7. If a school-age child care program receives more than one correction order in a single year, the department or authorized agent may refer the school-age child care program for consulting services to assist the operator in maintaining compliance to avoid future corrective action.
8. Refutation process for a correction order:
 - a. An operator may refute a correction order by submitting a refutation request in writing on the form provided by the department within five calendar days of receiving the correction order.
 - b. The department will respond to written refutations within five business days of receipt.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; July 1, 2020; January 1, 2022.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3