

**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75-03-07-01	Purpose [Repealed]
75-03-07-02	Objective of Rules [Repealed]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.** Subdivision d of subsection 2 and subsection 4 of section 75-03-07-04 are amended as follows:

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

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:
  - d. Shall participate in specialized training related to child care if provided by or approved by the department, including one hour of training annually on sudden infant death prevention if the in-home provider provides care to infants.
  
4. In-home providers shall ensure safe care for the children receiving services in their care. If a services-required 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 determination under North Dakota Century Code chapter 50-25.1 ~~and under chapter 75-03-19~~ 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 and to the director of the regional human service center or the director's designee for consideration and action on the in-home registration document. Each applicant shall complete 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; January 1, 2011; April 1, 2016.

**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

**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 ~~chapters~~ chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code ~~sections~~ section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, 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 or neglect of a 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; 12.1-17-07.1, stalking; 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. ~~If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the~~ An in-home provider shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. 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 statewide-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.

**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
<u>75-03-07.1-12</u>	<u>Restricted Self-Declaration</u>

**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. "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. "Attendance" means the total number of children present at any one time.
23. "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.
34. "Emergency designee" means an individual designated by a holder of a self-declaration provider to be a backup staff member for emergency assistance or to provide substitute care.
45. "Infant" means a child who is less than twelve months of age.
56. "Provider" means the holder of a self-declaration document.
67. "Supervision" means a provider or ~~staff member~~ 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 ~~staff member~~ 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 ~~staff member~~ 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.

**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 authorized agent in the county 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. ~~The application must include the following sworn statement:~~

~~I am not required by North Dakota state law (Chapter 50-11.1) to be licensed to provide early childhood services.~~

2. A provisional self-declaration document may be issued:
  - a. The director of a regional human service center, or the director's designee, in consultation with the department, may issue a provisional self-declaration document although the applicant or ~~self-declaration holder~~ 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 ~~self-declaration holder~~ 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 director of the regional human service center or the director's designee 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 ~~holder~~provider to all rights and privileges afforded the ~~holder~~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. ~~An applicant for a self-declaration document~~The provider shall be directly responsible for the care, supervision, and guidance of the ~~child or children;~~ shall comply with the following standards; and shall certify:
  - a. ~~That the applicant~~The provider:
    - (1) ~~is~~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 ~~applicant-provider~~ is an adult 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 ~~applicant's-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 ~~applicant's-provider's~~ care;
- (5) Shall provide proper care and protection for children in the ~~applicant's-provider's~~ care;
- (6) May not use or be under the influence of, and will not allow any household member or ~~staff member~~ 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; ~~and~~
  - (13) ~~Has completed~~ Shall complete a department-approved basic child care course; within three months of being approved as a provider;
  - (14) Shall complete a minimum of three hours of department-approved training annually, including one hour on sudden infant death prevention if the provider provides care 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;
  - (15) Shall ensure that the emergency designee completes one hour of department-approved training annually on sudden infant death prevention if the provider provides care to infants; and
  - (16) 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. ~~That~~ 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, ~~staff member~~ 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. ~~That~~ The provider shall ensure that a working smoke detector is properly installed and in good working order on each floor used by children.
- d. ~~That~~ 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. ~~That~~ The provider shall ensure that a working telephone is located in the location used for child care. 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.
    - (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 which 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. 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. 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. 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.

**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 75-03-07.1-05 is amended as follows:

**75-03-07.1-05. Appeals.** An applicant for, ~~or a holder of,~~ a self-declaration document or a provider has the right to appeal a decision to deny or revoke a self-declaration document. A written appeal must be postmarked or received by the

department within ten calendar days of the applicant's or holder's provider's receipt of written notice of the decision to deny or revoke the document. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner prescribed by chapter 75-01-03.

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

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-10

**SECTION 6.** 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, ~~staff members,~~ 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 ~~chapters~~ chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code ~~sections~~ section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, 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 or neglect of a 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, ~~or staff member's~~ ability to serve the public in a capacity as a provider, or emergency designee, ~~or staff member~~.
  - 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; 12.1-17-07.1, stalking; 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. ~~If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the~~ A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. The provider shall ensure that each emergency designee submits an application for a fingerprint-based criminal history record check upon hire and every five years after initial approval. 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 ~~statewide~~ 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 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 self-declaration document may be denied or revoked.

- a. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 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 to the department, from which the department can determine the applicant's, provider's, or ~~staff member's~~ 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 and to the director of the regional human service center or the director's designee for consideration and action on the application or self-declaration document.
- b. Each applicant, provider, and emergency designee, ~~and staff member~~ shall complete, and the provider shall submit to the 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 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.

**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 7.** Subdivision g of subsection 4 of section 75-03-07.1-08 is amended as follows:

**75-03-07.1-08. Infant care.**

**4. Sleeping.**

- g. The provider shall check on sleeping infants regularly ~~or~~ and have a monitor in the room with sleeping infants, unless the provider or an emergency designee is in the room with the infants while the infants are sleeping.

**History:** Effective January 1, 2011; amended effective January 1, 2013; April 1, 2016.

**General Authority:** NDCC 50-11.1-08

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

**SECTION 8.** Section 75-03-07.1-09 is amended as follows:

**75-03-07.1-09. Minimum requirements for the care of children with special needs.** A provider shall make appropriate provisions, as required by the Americans with Disabilities Act, to meet the needs of children with special needs. The provider shall receive documentation of the child's special needs by the parent upon the child's enrollment.

1. When a child with special needs is admitted, the provider shall consult with the child's parents, and with the parent's permission, the child's source of professional health care or, when appropriate, other health and professional consultants, to gain an understanding of the child's individual needs. The provider shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.
2. The provider shall ensure that ~~staff members~~ emergency designees responsible for caring for or teaching children ~~and the emergency designee~~ receive proper instructions as to the nature of the child's disability and potential for growth and development.

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

**General Authority:** NDCC 50-11.1-08

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

**SECTION 9.** 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 regional supervisor of early childhood services 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 authorized agent upon completion of the required corrective action. The correction order remains in effect until the 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 ~~staff member~~ 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.

**History:** Effective January 1, 2011; amended effective January 1, 2013; April 1, 2014; April 1, 2016.

**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 10.** Section 75-03-07.1-12 is amended as follows:

**75-03-07.1-12. Restricted self-declaration.** The department may issue a restricted self-declaration:

1. To restrict an individual's presence when children are in child care;
2. To restrict a pet or animal from areas accessible to children; or
3. When necessary to inform the parents that the provider is restricted to operating in certain rooms or floors of the residence or from using specified outdoor space of the residence.

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

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04

**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 of 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 11.** 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. "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. "Attendance" means the total number of children present at any one time at the family child care.
23. "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.
34. "Emergency designee" means an individual designated by the provider to be a backup staff member for emergency assistance or to provide substitute care.
45. "Infant" means a child who is younger than twelve months of age.
56. "Medication" is defined as any drug or remedy which is taken internally or orally, inhaled, or applied topically.
67. "Provider" means owner or operator of a family child care.
78. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
89. "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.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

**SECTION 12.** Section 75-03-08-08.1 is amended as follows:

**75-03-08-08.1. Duties of the provider.**

1. A provider shall maintain, whenever services are provided, at least one staff member who:

- a. Is certified in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department; and
  - b. Is certified or trained in a department-approved program to provide first aid.
- ~~2.~~ ~~Substitute staff are exempt from the requirements of subsection 1. If a provider utilizes a substitute or emergency designee who is not certified in cardiopulmonary resuscitation or first aid when no other staff member who is certified is on duty, the provider shall notify the parents of the date and time that the substitute or emergency designee will be caring for the children.~~
- ~~3.~~ The provider shall have an adult staff member responsible for caring for or teaching children present in the family child care at all times to supervise staff members under the age of eighteen and children in care.
- ~~43.~~ A staff member may not at any time place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health.
- ~~54.~~ The provider shall report to the authorized agent within twenty-four hours:
  - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the family child care or attributable to care received in the family child care;
  - b. An injury to any child which occurs while the child is in the care of the family child care and which requires medical treatment;
  - c. Poisonings or errors in the administration of medication;
  - d. Closures or relocations of child care programs due to emergencies; and
  - e. Fire that occurs or explosions that occur in or on the premises of the family child care.
- ~~65.~~ The provider shall be present in the family child care no less than sixty percent of the time when children are in care.

- 76. The provider, as a mandatory reporter, shall report any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03.
- 87. The provider shall select an emergency designee.
- 98. The provider shall maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the family child care.
- 409. The provider must be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care.
- 4110. The provider shall ensure safe care for the children under supervision. Supervision means a staff member 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 staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so the child's health and safety is protected.
- 11. The provider shall ensure that each child is released 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.

**History:** Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2016.

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

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

**SECTION 13.** Section 75-03-08-10 is amended as follows:

**75-03-08-10. Minimum qualifications of providers.** A provider shall:

1. Be at least eighteen years of age;
2. Complete a department-approved basic child care course during the first three months of licensure; ~~and~~
3. Certify completion of a minimum of nine hours of department-approved training related to child care every licensing year. The same training courses may be counted toward licensing 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; and

4. Certify annual completion of one hour of department-approved sudden infant death prevention training if the provider provides care to infants.

**History:** Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016.

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

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

**SECTION 14.** Section 75-03-08-12 is amended as follows:

**75-03-08-12. Minimum qualifications for all staff members responsible for caring for or teaching children.** Each staff member who provides care shall:

1. Be at least fourteen years of age, provided that each staff member under age sixteen provides written parental consent for employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07. A member of the immediate family of the provider may provide care if the family member is at least twelve years of age;
2. Be an individual of good physical, cognitive, social, and emotional health and use mature judgment when making decisions impacting the quality of child care;
3. Complete a department-approved basic child care course during the first three months of employment, with the exception of substitute staff and emergency designees; and
4. Certify annual completion of one hour of department-approved sudden infant death prevention training if the staff member provides care to infants; and
5. Receive orientation related to child care policies, emergency procedures, special needs of children in care, and child care activities during the first week of employment.

**History:** Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016.

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

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

**SECTION 15.** Subsections 7 and 15 of section 75-03-08-14 are amended as follows:

**75-03-08-14. Minimum requirements of the facility.**

7. The provider shall ensure that each child has a comfortable and clean place to sleep or rest and an individual blanket. The provider may allow a child to sleep or rest on the floor only when the floor is carpeted or padded, warm, and free from drafts. ~~A provider caring for a child between~~

~~the hours of eight p.m. and six a.m. shall ensure that the child has an individual sleeping place.~~

15. ~~The family child care must meet the local minimum fire and safety standards. If the fire, safety, health, or sanitation environment of the family child care appears questionable, the department or authorized agent may require the provider to obtain an appropriate inspection from the appropriate fire authority or state department of health, and to submit the results of the inspection to the authorized agent. The provider shall obtain a fire and safety inspections inspection prior to licensure if the family child care is located in a manufactured home, a mobile home, an apartment building, a home in which care is provided to children in the basement, or a home having alternate heating devices, such as wood burning stoves, propane heaters, or fireplaces, and annually thereafter. Any inspection fees are the provider's responsibility. The provider shall ensure that any problems found are corrected have any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the authorized agent. If the fire, safety, health or sanitation environment appears questionable, the department or authorized agent may require the provider to obtain additional inspections at the cost of the provider. The provider shall provide:~~
- ~~a. The fire inspector's written statement of compliance with the local fire code, if there is one; or~~
  - ~~b. The fire inspector's written statement that the family child care has been inspected and that the inspector is satisfied that the family child care meets minimum fire and safety standards.~~

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

**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 16.** Subsection 16 and 17 of section 75-03-08-21.1 is amended as follows:

**75-03-08-21.1. Minimum sanitation and safety requirements.**

16. Aquatic activities:
- ~~a. The provider shall have policies which 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 children participating in aquatic activities, and additional safety precautions to be taken.~~

- b. 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.

- 17. The provider shall ensure that garbage stored outside is kept away from areas used by children and is kept in covered containers. Open burning is not permitted. The provider shall keep indoor garbage in containers with lids. The provider may allow paper waste to be kept in open waste containers.

**History:** Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016.

**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 17.** Paragraph 7 of subdivision d of subsection 1 of section 75-03-08-24 is amended as follows:

**75-03-08-24. Specialized types of care and minimum requirements.**

**1. Infant care.**

**d. Sleeping.**

- (7) ~~The provider~~ A staff member shall check on sleeping infants regularly ~~or and~~ have a monitor in the room with sleeping infants, unless a staff member is in the room with the infants while the infants are sleeping.

**History:** Effective January 1, 2011; amended effective January 1, 2013; April 1, 2016.

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

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

**SECTION 18.** 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 ~~chapters~~ chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code ~~sections~~ section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03,



reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, 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 or neglect of a child;

- b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
  - c. An offense, other than an offense identified in subdivision a or b, if the department 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; 12.1-17-07.1, stalking; 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. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. The provider shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and every five years after initial approval. 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 statewide 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.

**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 19.** Subsection 1 of 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 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 determination under North Dakota Century Code chapter 50-25.1 ~~and under chapter 75-03-19~~ 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 and to the regional director of the human service center or the director's designee for consideration and action on the application or license.

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

**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

**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
75-03-09-29	Correction of Violations
75-03-09-30	Fiscal Sanctions
75-03-09-31	Appeals

**SECTION 20.** 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. "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. "Attendance" means the total number of children present at any one time at the group child care.
23. "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.
34. "Emergency designee" means an individual designated by the operator to be a backup caregiver for emergency assistance or to provide substitute care.
45. "Group child care supervisor" means an individual responsible for overseeing the day-to-day operation of a group child care.
56. "Infant" means a child who is less than twelve months of age.
67. "Medications" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
78. "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a group child care.
89. "Provider" means the group child care owner or operator.
910. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
4011. "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.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

**SECTION 21.** Subsection 1 of section 75-03-09-08 is amended as follows:

**75-03-09-08. Duties of group child care provider.**

1. The provider of a group child care is responsible for compliance with requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. The provider shall:
  - a. Establish the child care program;
  - b. Apply for a license for the group child care;
  - c. Possess knowledge or experience in management and interpersonal relationships;
  - d. Formulate written policies and procedures for the operation of the group child care. Policies must include:
    - (1) An explanation of how accidents and illnesses will be handled;
    - (2) The methods of developmentally appropriate discipline and guidance techniques that are to be used;
    - (3) The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;
    - (4) Hiring practices and personnel policies for staff members;
    - (5) Informing parents that they may request daily reports for their child, including details regarding eating, napping, and diapering;
    - (6) Procedure for accountability when a child fails to arrive as expected at the child care; and
    - (7) Transportation procedures, if the provider provides transportation;
  - e. Notify the authorized agent of any major changes in the operation or in the ownership of the group child care, including staff member changes;
  - f. Maintain records of enrollment, attendance, health, and other required records;
  - g. Select an emergency designee;

- h. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the group child care;
- i. Ensure 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 any one time;
- j. Ensure preadmission visits for children and their parents are offered so the facility's program, fees, operating policies, and procedures can be viewed and discussed;
- k. Ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
- l. Provide parents, upon request, with progress reports on their children, and provide unlimited opportunities for parents to observe their children while in care. Providing unlimited access does not prohibit a group child care from locking its doors while children are in care;
- m. Provide parents with the name of the group child care provider, the group child care supervisor, staff members, and the emergency designee;
- n. Report, as a mandatory reporter, any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
- o. Ensure, whenever services are provided, that at least one staff member, on duty meets current certification requirements in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other cardiopulmonary resuscitation training programs approved by the department, and is certified or trained in a department-approved program to provide first aid. ~~Substitute staff are exempt from this requirement. If a provider utilizes a substitute or emergency designee who is not certified in cardiopulmonary resuscitation or first aid when no other staff member who is certified is on duty, the provider shall notify the parents of the date and time that the substitute or emergency designee will be caring for the children;~~ and

- p. Ensure that children do not depart from the child care premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for the age and development of the child. The provider shall obtain written parental consent for the child to leave the child care premises unsupervised, which must specify the activity, time the child is leaving and length of time the child will be gone, method of transportation, and parental responsibility for the child once the child leaves the child care premises; and
- q. Ensure that each child is released only to the child's parent, legal custodian, guardian, or individual who has been authorized by the child's parent, legal custodian, or guardian.

**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, 2016.

**General Authority:** NDCC 50-11.1-08

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

**SECTION 22.** Subsection 4 of section 75-03-09-10 is amended as follows:

**75-03-09-10. Minimum qualifications of group child care supervisor.**

- 4. The group child care supervisor shall certify completion of a minimum of ten hours of department-approved training related to child care annually, including one hour on sudden infant death prevention if the provider provides care to infants. The ten hours of training in the first year following initial licensure must include a department-approved basic child care course taken during the first three months of employment. The same training courses may be counted toward licensing 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.

**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, 2016.

**General Authority:** NDCC 50-11.1-08

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

**SECTION 23.** Section 75-03-09-12 is amended as follows:

**75-03-09-12. Minimum qualifications for all staff members responsible for caring for or teaching children.** Staff members shall:

- 1. Be at least fourteen years of age, provided that each staff member under age sixteen provides written parental consent for employment as a staff



member, and the employment arrangements comply with North Dakota Century Code chapter 34-07. A member of the immediate family of the provider may provide care if the family member is at least twelve years of age;

2. Be individuals of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
3. Receive orientation related to child care policies, emergency procedures, special needs of children in care, and group child care activities during the first week of work;
4. Ensure that at no time a child is placed in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health;
5. Certify completion of a department-approved basic child care course within their first three months of employment with the exception of substitute staff and emergency designees;
6. ~~Shall certify~~ Certify the staff member's own completion of department-approved training related to child care annually as set forth below:
  - a. A staff member working thirty or more hours per week shall certify a minimum of eight hours of department-approved training annually;
  - b. A staff member working fewer than thirty and at least twenty hours per week shall certify a minimum of six hours of department-approved training annually;
  - c. A staff member working fewer than twenty and at least ten hours per week shall certify a minimum of four hours of department-approved training annually;
  - d. A staff member working fewer than ten hours per week shall certify a minimum of two hours of department-approved training annually;  
and
  - e. An emergency designee is exempt from department-approved annual training, with the exception of training required by subsection 7; and
  - f. The same training courses may be counted toward licensing 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; and

7. Certify annual completion of one hour of department-approved sudden infant death prevention training if the staff member provides care to infants; and
8. Ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety are protected.

**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.

**General Authority:** NDCC 50-11.1-08

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

**SECTION 24.** Subsection 2 of section 75-03-09-14 is amended as follows:

**75-03-09-14. Minimum requirements for facility.**

2. The provider shall ensure that safe and comfortable arrangements for naps for enrolled children are provided.
  - a. The provider may allow a child to sleep or rest on the floor only when the floor is carpeted or padded, warm, free from drafts, and when each child has an individual blanket or sleeping mat.
  - b. The provider shall ensure that aisles between cots and cribs are a minimum space of two feet [58.42 centimeters] and are kept free of all obstructions while cots and cribs are occupied.
  - c. The provider shall ensure that there is a room available, separate from the nap room, where an individual child can go for supervised play if the child is unable to nap, so as not to disrupt the other children's rest.
  - d. ~~The provider shall ensure that a child who is in care between the hours of eight p.m. and six a.m. has an individual sleeping place.~~

**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.

**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 25.** Section 75-03-09-17 is amended as follows:

**75-03-09-17. Fire inspections.**

1. The provider shall ensure that initial and annual fire inspections are completed by local or state fire authorities for all group child cares in which care is provided ~~to eight or more children and upon any group child care providing care for any number of children in homes which are manufactured or mobile homes, in apartment buildings, homes in which care is provided to children in basements, and in homes that have alternative heating devices, such as wood burning stoves, propane heaters, or fireplaces.~~ The group child care is responsible for any inspection fee. The provider shall have any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the authorized agent. If the fire, safety, health or sanitation environment appears questionable, the department or authorized agent may require the provider to obtain additional inspections at the cost of the provider.
2. The provider shall provide:
  - a. The fire inspector's written statement of compliance with the local fire code, if there is one; or
  - b. The fire inspector's written statement that the group child care has been inspected and that the inspector is satisfied that the facility meets minimum fire and safety standards.
3. The provider shall ensure that the group child care is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.

**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.

**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 26.** Subsection 22 of section 75-03-09-18 is amended as follows:

**75-03-09-18. Minimum sanitation and safety requirements.**

22. Aquatic activities:

- a. The provider shall have policies which 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 children participating in aquatic activities, and additional safety precautions to be taken.
- b. 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.

**History:** Effective December 1, 1981; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016.

**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 27.** Paragraph 7 of subdivision d of subsection 1 of section 75-03-09-24 is amended as follows:

**75-03-09-24. Specialized types of care and minimum requirements.**

1. Infant care.

d. Sleeping.

(7) ~~The provider~~ A staff member shall check on sleeping infants regularly ~~or~~ and have a monitor in the room with the sleeping ~~infant~~ infants, unless a staff member is in the room with the infants while the infants are sleeping.

**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, 2016.

**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 75-03-09-27 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 ~~chapters~~ chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code ~~sections~~ section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, 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 or neglect of a child;
  - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
  - c. An offense, other than an offense identified in subdivision a or b, if the department 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; 12.1-17-07.1, stalking; 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. ~~If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the~~ A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. The provider shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and every five years after initial approval. 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 statewide-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.

**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 29.** Subsection 1 of 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 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 determination under North Dakota Century Code chapter 50-25.1 ~~and under chapter 75-03-19~~ 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 and to the regional director of the human service center or the director's designee for consideration and action on the group child care application or license.

**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.

**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

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

Section	
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75-03-10-02	Authority and Objective [Repealed]
75-03-10-03	Definitions
75-03-10-04	Effect of Licensing and Display of License
75-03-10-05	Denial or Revocation of License
75-03-10-06	Provisional License
75-03-10-06.1	Restricted License
75-03-10-07	Application for and Nontransferability of Child Care Center License
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75-03-10-10	Minimum Qualifications of Child Care Center Director
75-03-10-11	Duties of Child Care Center Director
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75-03-10-11.2	Duties of the Child Care Center Supervisor
75-03-10-12	Minimum Qualifications for All Staff Members Responsible for Caring for or Teaching Children
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75-03-10-23	Discipline - Punishment Prohibited
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75-03-10-26	Minimum Provisions Regarding Emergency Care for Children
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 30.** 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. "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. "Attendance" means the total number of children present at any one time at the facility.
23. "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.
34. "Director" means the individual responsible for overseeing the general operation and implementing the policies and procedures of the child care center.
45. "Emergency designee" means an individual designated by the operator to be a backup staff member for emergency assistance or to provide substitute care.
56. "Infant" means a child who is less than twelve months of age.
67. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
78. "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a child care center.
89. "Substitute staff" means staff who work less than thirty-two hours per month and are not regularly scheduled for work.
910. "Supervisor" means any individual with the responsibility for organizing and supervising daily child care center activities.
4011. "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.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

**SECTION 31.** Subsections 1, 21, 22, and 23 of section 75-03-10-09 are amended as follows:

**75-03-10-09. Duties of child care center operator.** The operator is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator shall:

1. Designate a qualified director and shall delegate appropriate duties to the director:
  - a. The operator shall ensure that the director or a designated acting director is present at the center at least sixty percent of the time when the center is open;
  - b. The operator shall ensure that the individual designated as an acting director meets the qualifications of a supervisor and for an ongoing period of more than thirty days meets the qualifications of a director; and
  - c. The operator shall ensure that when the director and acting director are not present at the center, a person who meets the qualifications of a supervisor is on duty;
  
21. Report to the authorized agent within twenty-four hours:
  - a. A death or a serious accident or illness requiring hospitalization of a child while in the care of the child care center or attributable to care received in the child care center;
  - b. An injury to any child which occurs while the child is in the care of the child care center and which requires medical treatment;
  - c. Poisonings or errors in the administering of medication;
  - d. Closures or relocations of child care programs due to emergencies; and
  - e. Fire that occurs or explosions that occur in or on the premises of the child care center; ~~and~~
  
22. Ensure that children do not depart from the child care premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for the age and development of the child. The provider shall obtain written parental consent for the child to leave the child care premises unsupervised, which must specify the activity, time the child is leaving and length of time the

child will be gone, method of transportation, and parental responsibility for the child once the child leaves the child care premises-; and

23. Ensure that each child is released 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.

**History:** Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; September 1, 1990; 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.

**General Authority:** NDCC 50-11.1-08

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

**SECTION 32.** Subsection 4 of section 75-03-10-10 is amended as follows:

**75-03-10-10. Minimum qualifications of child care center director.** A director shall:

4. Certify annual completion of a minimum of thirteen hours of department-approved training related to child care, including one hour on sudden infant death prevention if the director provides care to infants. The same training courses may be counted toward licensing 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.

**History:** Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; 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.

**General Authority:** NDCC 50-11.1-08

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

**SECTION 33.** Subsection 6 of section 75-03-10-11.1 is amended as follows:

**75-03-10-11.1. Minimum qualifications of child care center supervisor.** A supervisor shall:

6. Successfully complete a minimum of thirteen hours of department-approved training related to child care, including one hour on sudden infant death prevention if the supervisor provides care to infants. The same training courses may be counted toward licensing 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.

**History:** Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2016.

**General Authority:** NDCC 50-11.1-08

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

**SECTION 34.** Subdivision d of subsection 1 of section 75-03-10-12 is amended as follows:

**75-03-10-12. Minimum qualifications for all staff members responsible for caring for or teaching children.**

1. Staff members:
  - d. Shall certify the staff member's own annual successful completion of the department-approved training related to child care as set forth below:
    - (1) If working thirty or more hours per week, certify thirteen hours of department-approved training annually;
    - (2) If working fewer than thirty hours and more than twenty hours per week, certify eleven hours of department-approved training annually;
    - (3) If working fewer than twenty hours and at least ten hours per week, certify nine hours of department-approved training annually; and
    - (4) If working fewer than ten hours per week, certify seven hours of department-approved training annually;
    - (5) Completion of one hour on sudden infant death prevention if the staff member provides care to infants;
    - (6) The same training courses may be counted toward licensing 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; and
    - (7) Substitute staff and emergency designees are exempt from the annual training requirement with the exception of paragraph 5; and

**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, 2014; April 1, 2016.

**General Authority:** NDCC 50-11.1-08

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

**SECTION 35.** Section 75-03-10-18 is amended as follows:

**75-03-10-18. Minimum sanitation and safety requirements.**

1. The operator shall ensure that the state department of health conducts an annual inspection. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.
2. The operator shall ensure that the child care center bathroom sinks, toilets, tables, chairs, and floors are cleaned daily.
3. Cots and mats must be designated individually, and cleaned and sanitized at least weekly. If different children use the same cots or mats, they must be cleaned thoroughly and sanitized between each use. The operator shall ensure that aisles between cots, cribs, and portable cribs are a minimum space of two feet [58.42 centimeters] and are kept free of all obstructions while cots, cribs, and portable cribs are occupied. The operator shall provide separate storage for personal blankets or coverings.
4. The operator shall ensure that the child care center's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and the staff members.
5. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, single-use cloth towels, or paper towels must be available at each sink.
6. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys and equipment are kept clean and in sanitary condition. Books and other toys are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
7. The operator shall ensure that the child care center ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.

8. The operator shall ensure that the garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.
9. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
10. The operator shall ensure that potential hazards, such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
11. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
12. The operator shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls
13. The operator shall take steps to keep the child care center free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the child care center. Insect repellent may be applied outdoors on children with written parental permission.
14. The operator shall ensure that exit doorways and pathways are not blocked.
15. If the center is providing care to children in wheelchairs, the operator shall ensure doors have sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the child care center.
16. The operator shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.
17. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
18. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All

heating devices must be approved by the local fire authorities. During the heating season when the child care center is occupied by children, the room temperature may not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].

19. The operator shall ensure that all child care center buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.
20. The operator shall ensure that personal items including combs, pacifiers, and toothbrushes are individually identified and stored in a sanitary manner.
21. Pets and animals.
  - a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
  - b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
  - c. The operator shall ensure parents are aware of the presence of pets and animals in the child care center.
  - d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
  - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children.

- The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
- f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
  - g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
  - h. The operator shall ensure that the child care center is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
22. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the child care center and shall empty, clean, and sanitize wading pools daily.
23. All swimming pools used by children must be approved annually by the local health unit.
24. Aquatic activities:
- a. The operator shall have policies which 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 children participating in aquatic activities, and additional safety precautions to be taken.
  - b. The operator 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.
25. Water supply:
- a. The operator shall ensure that the child care center has a drinking supply from an approved community water system or from a source tested and approved annually by the state department of health.
  - b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups.



- c. The child care center must have hot and cold running water. The water in the faucets used by children may not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

2526. Toilet and sink facilities:

- a. The operator shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff members.
- b. Toilets must be located in rooms separated from those used for cooking, eating, and sleeping. A minimum of one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained.
- c. The operator shall ensure that separate restrooms are provided for boys and girls six years of age and over, and partitions are installed to separate toilets in these restrooms.
- d. The operator shall provide child-sized toilet adapters, training chairs, or potty chairs for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.
- e. The operator shall provide at least one handwashing sink per toilet room facility or diapering area.
- f. The operator shall provide safe step stools to allow children to use standard-size toilets and sinks or the operator shall ensure the availability of child-size toilets and sinks.

2627. The operator of a child care center not on a municipal or public water supply or wastewater disposal system shall ensure the child care center's sewage and wastewater system has been approved by the state department of health.

2728. Laundry:

- a. If the child care center provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation.
- b. The operator shall ensure that soiled linens are placed in closed containers or hampers during storage and transportation.

- c. The operator shall ensure that in all new or extensively remodeled child care centers, the handling, sorting, or washing of soiled linens or blankets takes place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas.
- d. The operator shall ensure that in an existing child care center where physical separation of laundry and kitchen areas is impractical, procedures are developed that prohibit the washing or transportation of laundry while meals are being prepared or served.
- e. The operator shall ensure that sorting of laundry is not allowed in food preparation, serving, or kitchen areas.
- f. If the child care center provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the operator shall ensure that water temperature must be greater than one hundred forty degrees Fahrenheit [60 degrees Celsius].
- g. The operator shall ensure that if the water temperature is less than one hundred forty degrees Fahrenheit [60 degrees Celsius], bleach or sanitizer is used in the laundry process during the rinse cycle or the center shall use a clothes dryer that reaches a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius].

**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, 2016.

**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 36.** Paragraph 7 of subdivision d of subsection 1 of section 75-03-10-24 is amended as follows:

**75-03-10-24. Specialized types of care and minimum requirements.**

1. Infant care.

d. Sleeping.

(7) The operator shall ensure that a staff member responsible for caring for or teaching children checks on sleeping infants regularly ~~or~~ and that a monitor is in the room with the infants, unless a staff member is in the room with the infants while the infants are sleeping.

**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.

**General Authority:** NDCC 50-11.1-08

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

**SECTION 37.** 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 chapters chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code ~~sections~~ section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, 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 or neglect of a child;
  - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
  - c. An offense other than an offense identified in subdivision a or b, if the department 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; 12.1-17-07.1, stalking; 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. ~~If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the~~ An operator shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. The operator shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and every five years after initial approval. 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 statewide-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.

**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 38.** Subsection 1 of 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 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 determination under North Dakota Century Code chapter 50-25.1 ~~and under chapter 75-03-19~~ 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 and to the director of the regional human service center or the director's designee for consideration and action on the application or license.

**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.

**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

**CHAPTER 75-03-11  
PRESCHOOL EARLY CHILDHOOD SERVICES**

Section	
75-03-11-01	Purpose [Repealed]
75-03-11-02	Authority and Objective [Repealed]
75-03-11-03	Definitions
75-03-11-04	Effect of Licensing and Display of License
75-03-11-05	Denial or Revocation of License
75-03-11-06	Provisional License
75-03-11-06.1	Restricted License
75-03-11-07	Application for and Nontransferability of Preschool License
75-03-11-08	Duties of Preschool Operator
75-03-11-08.1	Minimum Qualifications of a Preschool Director
75-03-11-08.2	Minimum Qualifications of a Preschool Teacher
75-03-11-08.3	Minimum Qualifications of a Preschool Assistant
75-03-11-09	Staffing Requirements
75-03-11-10	Duties of a Preschool Director
75-03-11-11	Duties of a Preschool Teacher
75-03-11-12	Minimum Qualifications of Volunteers
75-03-11-13	Minimum Health and Training Requirements for Applicants, Operators, and Staff Members
75-03-11-14	Minimum Requirements for Facility
75-03-11-15	Minimum Standards for Provision of Transportation
75-03-11-16	Minimum Emergency Evacuation and Disaster Plan
75-03-11-17	Fire Inspections
75-03-11-18	Minimum Sanitation and Safety Requirements
75-03-11-19	Minimum Requirements Regarding Space
75-03-11-20	Program Requirements
75-03-11-21	Minimum Standards for the Provision of Snacks
75-03-11-22	Records
75-03-11-23	Discipline - Punishment Prohibited
75-03-11-24	[Reserved]
75-03-11-25	Minimum Requirements for Care of a Child With Special Needs
75-03-11-26	Minimum Provisions Regarding Emergency Care for Children
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 39.** 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. "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. "Assistant" means any individual who works directly with children in a preschool under the supervision of a teacher or a director.
23. "Attendance" means the total number of children present at any one time at the facility.
34. "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.
45. "Director" means an individual responsible for supervising and organizing program activities in a preschool.
56. "Emergency designee" means an individual designated by the operator to be a backup staff member for emergency assistance or to provide substitute care.
67. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
78. "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a preschool.
89. "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.
910. "Substitute staff" means staff who work less than thirty-two hours per month, and are not regularly scheduled for work.
1011. "Teacher" means an individual with the responsibility of implementing program activities, either as the director or under the supervision of the director.



4412. "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.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

**SECTION 40.** Subsections 18, 19, and 20 of section 75-03-11-08 are amended as follows:

**75-03-11-08. Duties of preschool operator.** The operator of a preschool is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator shall:

18. Report to the authorized agent within twenty-four hours:
  - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the preschool or attributable to care received in the preschool;
  - b. An injury to any child which occurs while the child is in the care of the preschool which requires medical treatment;
  - c. Poisonings or errors in the administering of medication;
  - d. Closures or relocations due to emergencies; and
  - e. Fire that occurs or explosions that occur in or on the premises of the preschool; ~~and~~
19. Ensure that children do not depart from the child care premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for the age and development of the child. The provider shall obtain written parental consent for the child to leave the child care premises unsupervised, which must specify the activity, time the child is leaving and length of time the child will be gone, method of transportation, and parental responsibility for the child once the child leaves the child care premises; and
20. Ensure that each child is released 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.

**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, 2016.

**General Authority:** NDCC 50-11.1-08

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

**SECTION 41.** Subsections 4 and 5 of section 75-03-11-13 are amended as follows:

**75-03-11-13. Minimum health and training requirements for applicants, operators, and staff members.**

4. All staff members responsible for caring for or teaching children shall certify completion of department-approved training related to child care annually.
  - a. A staff member working thirty or more hours per week shall certify a minimum of thirteen hours of department-approved training annually.
  - b. A staff member working fewer than thirty hours and at least twenty hours per week shall certify a minimum of eleven hours of department-approved training annually.
  - c. A staff member working fewer than twenty hours and at least ten hours a week shall certify a minimum of nine hours of department-approved training annually.
  - d. A staff member working fewer than ten hours per week shall certify a minimum of seven hours of department-approved training annually.
  - e. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course.
  
5. All staff members responsible for caring for or teaching children shall successfully complete a department-approved basic child care course within the first three months of employment, with the exception of substitute staff and emergency designees.

**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.

**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 42.** Section 75-03-11-18 is amended as follows:

**75-03-11-18. Minimum sanitation and safety requirements.**

1. The operator shall ensure that the preschool's bathroom sinks, toilets, tables, chairs, and floors are cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.
2. The operator shall ensure that the preschool's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and staff members.
3. The operator shall ensure that in preschools where meals are prepared, the state department of health conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.
4. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys and equipment are kept clean and in a sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
5. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by the local fire authorities. When the preschool is occupied by children, the room temperature may not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
6. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
7. The operator shall ensure that potential hazards, such as noncovered electrical outlets, guns, cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.

8. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
9. The operator shall ensure that elevated areas including stairs and porches have railings and safety gates where necessary to prevent falls.
10. The operator shall take steps to keep the preschool free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the preschool. Insect repellent may be applied outdoors on children with written parental permission.
11. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
12. The operator shall ensure that exit doorways and pathways are not blocked.
13. An operator shall ensure that all preschool buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.
14. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the preschool and shall empty, clean, and sanitize wading pools daily.
15. All swimming pools used by children must be approved annually by the local health unit.
16. Aquatic activities:
  - a. An operator shall have policies which 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 children

participating in aquatic activities, and additional safety precautions to be taken.

- b. The operator 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.

17. Pets and animals.

- a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
- b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
- c. The operator shall ensure parents are aware of the presence of pets and animals in the preschool.
- d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
- e. A staff member responsible for caring for or teaching children shall closely supervise all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
- f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
- g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
- h. The operator shall ensure that the preschool is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

4718. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids.

**History:** Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; 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.

**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 43.** 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 chapters chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code ~~sections~~ section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, 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 or neglect of a child;
  - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
  - c. An offense, other than an offense identified in subdivision a or b, if the department 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; 12.1-17-07.1, stalking; 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. ~~If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the~~ An operator shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. The operator shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and every five years after initial approval. 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 ~~statewide~~ 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.

**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 44.** Subsection 1 of section 75-03-10-28 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 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 determination under North Dakota Century Code chapter 50-25.1 ~~and under chapter 75-03-19~~ 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 and to the director of the



regional human service center or the director's designee for consideration and action on the preschool application or license.

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

**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

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

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**SECTION 45.** 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. "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. "Attendance" means the total number of children present at any one time at the facility.
23. "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.
34. "Director" means an individual responsible for overseeing the general operation of, and implementing the policies and procedures of, the school-age child care program.
45. "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.
56. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
67. "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.
78. "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. 8. "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.
910. "Substitute staff" means staff who work less than thirty-two hours per month and are not regularly scheduled for work.
4011. "Supervisor" means any person with the responsibility for organizing and supervising daily program activities.

4412. "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.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

**SECTION 46.** Section 75-03-11.1-08 is amended as follows:

**75-03-11.1-08. Duties of school-age child care program operator.** The operator of a school-age child care program is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator:

25. Shall ensure that each child is released 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.

**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.

**General Authority:** NDCC 50-11.1-08

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

**SECTION 47.** Section 75-03-11.1-08.4 is amended as follows:

**75-03-11.1-08.4. Minimum qualifications for all school-age child care program staff members responsible for caring for or teaching children.**

1. Each staff member shall be at least sixteen years of age, shall be an individual of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care.
2. a. Each staff member shall certify the staff member's own annual completion of department-approved training related to child care as set forth below:
  - a-(1) Staff members working more than thirty hours per week shall certify a minimum of thirteen hours of department-approved training annually;

b.(2) Staff members working fewer than thirty hours and at least twenty hours per week shall certify a minimum of eleven hours of department-approved training annually;

e.(3) Staff members working fewer than twenty hours and at least ten hours per week shall certify a minimum of nine hours of department-approved training annually; and

d.(4) Staff members working fewer than ten hours per week shall certify a minimum of seven hours of department-approved training annually.

b. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course.

3. All staff members responsible for caring for or teaching children shall successfully complete a department-approved basic child care course within their first three months of employment, with the exception of substitute staff and emergency designees.

4. The director shall provide newly hired staff members with responsibilities for caring for or teaching children a two-day onsite orientation to the child care program during the first week of employment. The director shall document orientation of each staff member on an orientation certification form. The orientation must address:

a. Emergency health, fire, and safety procedures for the school-age child care program;

b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;

c. Any special health or nutrition problems of the children assigned to the staff member;

d. Any special needs of the children assigned to the staff member;

e. The planned program of activities at the school-age child care program;

f. Rules and policies of the school-age child care program; and

g. Child abuse and neglect reporting laws.

45. Staff members shall ensure safe care for children under supervision. For the school-age child, supervision means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety are protected.
56. A staff member may not place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health.

**History:** Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016.

**General Authority:** NDCC 50-11.1-08

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

**SECTION 48.** Section 75-03-11.1-18 is amended as follows:

**75-03-11.1-18. Minimum sanitation and safety requirements.**

1. In school-age child care programs where meals are prepared, the operator shall ensure that the state department of health conducts an annual inspection. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent. If only snacks or occasional cooking projects are prepared, a health inspection is not required.
2. The operator shall ensure that the school-age child care program's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and the staff members.
3. The operator shall ensure that the school-age child care program ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
4. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
5. The operator shall ensure that garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.

6. The operator shall ensure that wading pools used by the school-age child care program are strictly supervised and are emptied, cleaned, and sanitized daily.
7. The operator shall ensure that all swimming pools are approved annually by the local health unit.
8. Aquatic activities:
  - a. The operator shall have policies which 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 children participating in aquatic activities, and additional safety precautions to be taken.
  - b. The operator 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.
9. The operator shall ensure that all school-age child care program buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.
910. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys are kept clean and in a sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
4011. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
4412. The operator shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.

- ~~42~~13. If the school-age child care program is providing care to children in wheelchairs, the operator shall provide doors of sufficient width and construction to accommodate any children in wheelchairs who are receiving care.
- ~~43~~14. The operator shall ensure that exit doorways and pathways are not blocked.
- ~~44~~15. The operator shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.
- ~~45~~16. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
- ~~46~~17. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the school-age child care program is occupied by children, the room temperature must not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
- ~~47~~18. The operator shall ensure that school-age child care program bathroom sinks, toilets, tables, chairs, and floors are cleaned daily. Cots and mats must be individually designated and cleaned and sanitized at least weekly. If different children use the same cots or mats, the cots or mats must be cleaned thoroughly and sanitized between each use. The operator shall provide separate storage for personal blankets or coverings.
- ~~48~~19. The operator shall ensure that personal items including combs and toothbrushes are individually identified and stored in a sanitary manner.
- ~~49~~20. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and paper towels, sanitary hand-drying equipment, or single-use cloth towels must be available at each sink.
- ~~20~~21. The operator shall ensure that potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.



2122. Water supply standards:

- a. The operator shall ensure that the school-age child care program has a drinking supply from an approved community water system or from a source tested and approved annually by the state , department of health;
- b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups; and
- c. The school-age child care program must have hot and cold running water.

2223. Toilet and sink facilities:

- a. The operator shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff members;
- b. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping;
- c. A minimum of one flush toilet must be provided for each fifteen children;
- d. The operator shall provide separate restrooms for boys and girls and shall ensure that partitions are installed to separate toilets in these restrooms;
- e. The operator shall provide at least one handwashing sink per toilet room facility; and
- f. The operator shall provide safe step stools to allow children to use standard-size toilets and sinks or the operator shall ensure the availability of child-size toilets and sinks.

2324. The operator of a school-age child care program not on a municipal or public water supply or wastewater disposal system shall ensure the school-age child care program's sewage and wastewater system has been approved by the state department of health.

2425. Laundry:

- a. If the school-age child care program provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation;
- b. The operator shall ensure that soiled linens are placed in closed containers or hampers during storage and transportation;
- c. The operator shall ensure that in all new or extensively remodeled school-age child care programs, the handling, sorting, or washing of soiled linens or blankets takes place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas;
- d. The operator shall ensure that in an existing school-age child care program where physical separation of laundry and kitchen areas is impractical, procedures are developed to prohibit the washing or transportation of laundry while meals are being prepared or served;
- e. The operator shall ensure that sorting of laundry is not allowed in food preparation, serving, or kitchen areas;
- f. If the school-age child care program provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the water temperature must be greater than one hundred forty degrees Fahrenheit [60 degrees Celsius]; and
- g. The operator shall ensure that if the water temperature is less than one hundred forty degrees Fahrenheit [60 degrees Celsius], bleach or sanitizer is used in the laundry process during the rinse cycle or the program shall use a clothes dryer that reaches a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius].

2526. The operator shall take steps to keep the school-age child care program free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the school-age child care program. Insect repellent may be applied outdoors on children with written parental permission.

2627. Pets and animals:

- a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children.

The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.

- b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
- c. The operator shall ensure parents are aware of the presence of pets and animals in the school-age child care program.
- d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
- e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
- f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
- g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
- h. The operator shall ensure that the school-age child care program is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

**History:** Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016.

**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 49.** Subsection 2 of section 75-03-11.1-22 is amended as follows:

**75-03-11.1-22. Records.**

- 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 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.

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

**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 50.** 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 chapters chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code ~~sections~~ section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, 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 or neglect of a child;

- b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
  - c. An offense, other than an offense identified in subdivision a or b, if the department 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; 12.1-17-07.1, stalking; 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. ~~If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is~~

~~appropriate, the~~ An operator shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. The operator shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and every five years after initial approval. 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 statewide-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.

**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 51.** Subsection 1 of 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 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 determination under North Dakota Century Code chapter 50-25.1 ~~and under chapter 75-03-19~~ 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 and to the director of the regional human service center or the director's designee for consideration and action on the application or license.

**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.

**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