CHAPTER 75-03-17
PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN

SECTION 1. Section 75-03-17-01 is amended as follows:

75-03-17-01. Definitions.

1. "Applicant" means the entity requesting licensure as a psychiatric residential treatment facility for children under this chapter.

2. "Child" or "children" means a person or persons under the age of twenty-one.

3. "Clinical supervision" means the oversight responsibility for individual treatment plans and individual service delivery provided by ~~qualified~~ mental health professionals.

4. "Department" means the department of human services.

5. "Diagnostic assessment" means a written summary of the history, diagnosis, and individual treatment needs of a person with a mental illness

using diagnostic, interview, and other relevant assessment techniques provided by a mental health professional.

6. "Discharge planning" means the multidisciplinary process that begins at the time of admission that identifies the child's and family's needed services and supports upon discharge.

7. "Employee" means an individual compensated by the facility to work and does not include contracted service providers who conduct onsite training, treatment groups, individual therapy, or other program services.

8. "Family-driven" means the family has a primary decision making role in the care of its own children.

~~8~~9. "Individual person-centered treatment plan" means a written plan of intervention, treatment, and services that is developed under the clinical supervision of a mental health professional on the basis of a diagnostic assessment.

~~9~~10. "Initial license" means a license for a new facility that is in effect for one year.

~~10~~11. "Mental health professional" means:

a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota state board of psychologist examiners;

b. A social worker with a master's degree in social work from an accredited program;

c. A registered nurse, with a master's degree in psychiatric and mental health nursing from an accredited program;

d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse, as defined by subdivision c, or an expert examiner;

e. A licensed addiction counselor; ~~or~~

f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond a master's degree, as required by the national academy of mental health counselors, or a minimum of two years of clinical experience in a mental health

agency or setting under the supervision of a psychiatrist or psychologist.; or

g. A licensed marriage and family therapist.

12. "Nonemployee" means an individual, including a volunteer or student intern, who is not compensated by the facility.

13. "Out-based program" means a sequence of planned activities designed to provide therapeutic outdoor physical, environmental educational, athletic, or other activities which:

a. Involve physical and psychological challenges;

b. Are designed to:

(1) Stimulate competence and personal growth;

(2) Expand individual capabilities;

(3) Develop self-confidence and insight; or

(4) Improve interpersonal skills and relationships; and

c. Take place in a setting of twenty-four-hour participant supervision.

~~11~~14. "Person with a mental illness" means an individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Person with a mental illness" does not include an individual with intellectual disabilities of significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior, although an individual who has intellectual disabilities may ~~suffer from a mental illness~~ also be an individual who has a mental illness. ~~Chemical dependency~~ A substance use disorder does not per se constitute mental illness, although ~~an individual suffering from that condition may be suffering from~~ an individual who has a substance use disorder may also be an individual who has a mental illness.

~~12~~15. "Psychiatric residential treatment facility for children" means a facility or a distinct part of a facility that provides to children and adolescents a total, twenty-four-hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment and an individualized treatment plan that meets the needs of the child and family. The services

are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting. The facility must be in compliance with requirements for psychiatric residential treatment facilities under 42 U.S.C. 1396d [Pub. L. 89-97; 79 Stat. 351] and title 42, Code of Federal Regulations, part 441.

~~13. "Qualified mental health professional" means a licensed physician who is a psychiatrist, a licensed clinical psychologist who is qualified for listing on the national register of health service providers in psychology, a licensed certified social worker who is a board-certified diplomat in clinical social work, or a nurse who holds advanced licensure in psychiatric nursing.~~

~~14~~16. "Residential treatment" means a twenty-four-hour a day program under the clinical supervision of a mental health professional, in a community residential setting other than an acute care hospital, for the active treatment of persons with mental illness.

~~15~~17. "Serious injury" means any significant impairment of the physical condition of the child as determined by qualified medical personnel. This includes burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.

~~16~~18. "Serious occurrence" means an incident in which a resident has died, has sustained a serious injury, ~~or~~ has attempted suicide, has been exposed to inappropriate sexual contact, or has been the subject of seclusion or restraint.

19. "Solo activity" means an experience in which an individual cares for himself or herself in a solitary setting away from others, but under employee supervision.

~~17~~20. "Special treatment procedures" are defined as follows:

a. "Drug used as a restraint" means any drug that:

(1) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;

(2) Has a temporary effect of restricting the resident's freedom of movement; and

(3) Is not a standard treatment for the resident's medical or psychiatric condition.

b. "Emergency safety interventions" means the use of restraint or seclusion as an immediate response to an emergency safety situation.

c. "Emergency safety situation" means unanticipated resident behavior that places the resident or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention.

d. "Mechanical restraint" means any device attached or adjacent to the resident's body that the resident cannot easily remove that restricts freedom of movement or normal access to the resident's body.

e. "Personal restraint" means the application of physical force without the use of any device, for the purposes of restraining the free movement of a resident's body. The term personal restraint does not include briefly holding without undue force a resident in order to calm or comfort the resident, or holding a resident's hand to safely escort a resident from one area to another.

f. "Physical escort" means the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a resident who is acting out to walk to a safe location.

g. "Restraint" means a personal restraint, mechanical restraint, or drug used as a restraint.

h. "Seclusion" means the ~~voluntary~~ confinement of a resident alone in a room or an area from which the resident is physically prevented from leaving.

i. "Timeout" means the ~~restriction~~ voluntary option of a resident ~~for a period of time~~ to move to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control.

~~18~~21. "Trauma-informed" means an understanding of the prevalence of traumatic experiences in a child who receives mental health services and of the profound neurological, biological, psychological, and social effect of trauma and violence on the child being treated.

~~19~~22. "Youth-guided" means a child has the right to be empowered, educated, and given a decision making role in the care of the child's own life.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; July 1, 2012; April 1, 2014; April 1, 2016.

General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-01, 25-03.2-03

SECTION 2. Subdivision e of subsection 1 of section 75-03-17-02 is amended as follows:

75-03-17-02. Procedures for licensing.

1. **Application.** An application for license or for renewal as a facility must be submitted to the department. The department shall determine the suitability of the applicant for licensure under this chapter. The application must contain any materials the department may require, including:

   e. A list of ~~qualified mental health professionals and~~ mental health ~~professional staff~~ professionals employed or to be employed by the facility.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-02, 25-03.2-03, 25-03.2-05

SECTION 3. Subdivision b of subsection 1 and subsections 5, 6, and 7 of section 75-03-17-03 are amended as follows:

75-03-17-03. Organization and administration.

1. **Governing body.** The applicant must have a governing body that designates or assigns responsibility for the operation, policies, program, and practice of the facility. The governing body shall:

   b. Ensure that all policies and procedures required by this chapter are in writing and on file at the facility and are accessible to all ~~staff~~ employees and residents;

5. **Quality ~~assurance~~ improvement.** The applicant and facility shall implement a quality ~~assurance~~ improvement program ~~approved by the department for assessing and improving the quality of services and care provided to residents~~. The applicant and facility shall submit the quality improvement program and evaluations of the program to the department for review at a minimum of every six months. The applicant shall create policies and procedures and have them in place to implement its facility's quality ~~assurance~~ improvement program. The program must monitor and evaluate the quality and appropriateness of care of children, and ~~provide a method for problem identification, corrective action, and outcome monitoring~~ identify performance indicators that will be monitored to assess

the program's effectiveness. The quality ~~assurance~~ improvement program must include:

a. A plan for child and ~~staff~~ employee safety and protection;

b. A method to evaluate personnel performance and the utilization of personnel;

c. A plan to ensure the facility accesses and maintains copies of the current license of all employees, contract workers, and consultants when relevant for that person's role or function;

d. A system of credentialing, granting, and withholding ~~staff~~ employee privileges;

~~d~~e. A method to review and update policies and procedures assuring the usefulness and appropriateness of policies and procedures;

~~e~~f. A method to review the appropriateness of admissions, care provided, and ~~staff~~ employee utilization;

~~f~~g. A plan for the review of individual treatment plans that ensures compliance with paragraph 4 of subdivision b of subsection 3 of section 75-03-17-05;

~~g~~h. A plan for program evaluations that includes measurements of progress toward the facility's stated goals and objectives; and

~~h~~i. A method to evaluate and monitor standards of resident care.

6. **Outcomes and data collection.** The department shall require a facility to engage in data management practices to collect and report outcomes every six months. Data collection efforts will offer facilities a continuous quality improvement process that measures and monitors the safety, well-being, and service delivery provided to children in placement. Facilities must have written policy to identify a plan to implement, collect, and measure outcomes data requirements. The policy must also include how a facility will respond to identified data outcomes by utilizing one or more facility improvement plans every six months.

~~6~~7. **Children's case records.** The facility shall establish and implement policies and procedures to ensure the facility maintains a confidential record for each child which must be current and reviewed monthly. Each record must contain:

a. An application for service;

b. A social history;

c. A release of information and medical treatment consent form signed by a person who may lawfully act on behalf of the child and any consent for the use of psychotropic medications as required under subdivision d of subsection 10 of section 75-03-17-07;

d. The name, address, and telephone number of individuals to be contacted in an emergency;

e. Reports on medical examinations, including immunizations, any medications received, allergies, dental examinations, and psychological and psychiatric evaluations which occurred prior to the placement;

f. An explanation of custody and legal responsibility for the child and relevant court documents, including custody or guardianship papers;

g. Documentation on all medical examinations, including immunizations, all medications received, allergies, dental examinations, and psychological and psychiatric evaluations received during placement;

h. Documentation of medical care given during placement as a result of an admission to the hospital or inpatient care, including:

   (1) Hospitalization admission and discharge records to include history and physical;

   (2) Medications administered, with the quantity, directions, physician's name, date of issue, and name of the pharmacy indicated; and

   (3) Significant illnesses or accidents;

i. Records of the annual medical examination required under section 75-03-17-07; and

j. A written agreement between a person who may lawfully act on behalf of the child and the facility and a record that the person who acted on behalf of the child received a copy. The agreement must include:

   (1) A statement as to who has financial responsibility;

(2) How payments are to be made to cover the cost of care;

(3) Which items are covered by the normal or regular facility charges for care;

(4) Medical arrangements, including the cost of medical care;

(5) Visiting arrangements and expectations;

(6) Arrangements for clothing and allowances;

(7) Arrangements for therapeutic leave;

(8) Regulations about gifts permitted;

(9) Arrangements for participation by the person who acted on behalf of the child through regularly scheduled interviews with designated ~~staff~~ employee;

(10) The facility's policy on personal monetary allowance to be provided to the child at the facility;

(11) Records of special treatment orders; and

(12) Educational arrangements.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

SECTION 4. Section 75-03-17-04 is amended as follows:

75-03-17-04. Admissions.

1. Certificate of need required. A child may be admitted to a psychiatric residential treatment facility for children if the child has been diagnosed by a psychiatrist or psychologist as suffering from a mental illness or emotional disturbance and the child is in need of and is able to respond to active psychotherapeutic intervention and cannot be effectively treated in the child's family, in another home, or in a less restrictive setting. ~~The facility shall take into account the age and diagnosis of the child in order to provide an environment that is safe and therapeutic for all children. The facility may admit only those children who are found eligible according to the facility's admission policies. Every facility shall have specific admission policies that describe which professional staff have admission authority~~

~~and describe the membership of the facility's admission committee or committees. Admission committee membership must include a psychiatrist.~~

~~2.~~ a. A facility providing rehabilitative services to individuals under the age of twenty-one must obtain a certification of need from an independent review team:

(1) Prior to admitting an individual who is eligible for medical assistance;

(2) For an individual who applies for medical assistance while in the facility; or

(3) For an individual who applies for medical assistance after receiving services.

b. Before issuing a certification of need an independent review team shall demonstrate that:

(1) Ambulatory care resources available in the community do not meet the treatment needs of the individual;

(2) Proper treatment of the individual's psychiatric condition requires services on an inpatient basis under the direction of a physician; and

(3) The requested services can reasonably be expected to improve the individual's condition or prevent further regression to a point where services may no longer be needed.

c. An independent review team must:

(1) Be composed of individuals who have no business or personal relationship with the facility requesting a certification of need;

(2) Include a physician;

(3) Have competence in diagnosis and treatment of mental illness; and

(4) Have adequate knowledge of the situation of the individual for whom the certification is requested.

d. A facility shall follow the approved and accepted under twenty-one screening procedures which are developed in conjunction with the department and the independent team as identified in title 42, Code of Federal Regulations, part 441, section 153, and section 75-02-02-10.1.

2. The facility shall take into account the age and diagnosis of the child to provide an environment that is safe and therapeutic for all children. The facility may admit only those children who are found eligible according to the facility's admission policies. Every facility shall have specific admission policies that describe which professional employees have admission authority and describe the membership of the facility's admission committee or committees. The facility shall also base all admission decisions ~~upon~~ on:

~~(1)~~a. A social history which includes presenting problems, family background, developmental history, educational history, and employment;

~~(2)~~b. A psychosocial history which includes current status, any relevant findings of previous physical or psychiatric evaluations, and a list of the child's current medications and allergies;

~~(3)~~c. Prior psychological and addiction evaluations; and

~~(4)~~d. Other assessments, including trauma, suicide, substance use or abuse, and eating disorders.

~~b~~3. The facility shall obtain the child's known history and prior evaluations from the referral source before admission.

~~3~~4. The facility shall grant or deny admission within fourteen days of receipt of a completed universal application.

~~4~~5. If admission is denied, the facility shall indicate the reason in writing to the individual or referral source making the application for placement.

6. No child may be denied admission to a facility on the basis of race, color, creed, religion or national origin.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016.
General Authority: NDCC 25-03.2-10, 50-24.1-04; 42 CFR Part 456
Law Implemented: NDCC 25-03.2-03, 25-03.2-06

SECTION 5. Subsections 1 and 3 of section 75-03-17-05 are amended as follows:

75-03-17-05. Diagnosis and treatment while at the facility.

1. **Duties of the facility.** The facility shall:

   a. Provide for a medical and psychological assessment of each child within seventy-two hours of admission and thereafter as needed by the child;

   b. Keep the child in contact with the child's family and relatives by initiating family therapy upon admission and developing a plan for continued family therapy throughout placement for timely reunification of the child with the family. The plan must include therapeutic telemedicine options, such as web cam, polycom access, telephone therapy, or other means of electronic contact to provide ongoing therapeutic connection with the child's family;

   c. Involve the families and the person who may lawfully act on behalf of the child in the person-centered treatment plan;

   d. Provide ongoing and consistent family therapy for all residents with supporting documentation that ties therapeutic treatment to the person-centered plan. When family therapy is not occurring or is not in the best interest of the child, the child's case file must include documentation explaining why family therapy is not occurring;

   e. Provide conferences involving the facility, the person who may lawfully act on behalf of the child, the referring agency, and when appropriate, the child, to review the case status and progress on a monthly basis;

   f. Provide a progress report to the referring agency, and the person who lawfully may act on the child's behalf every ~~three~~ two months;

   g. Complete for each child admitted for care within five business days an individual person-centered treatment plan that includes:

      (1) A psychiatric history;

      (2) A mental status examination, including a suicide screening;

      (3) A trauma screening;

      (4) Intelligence and projective tests, as necessary; ~~and~~

      (5) A behavioral rating scale completed by the custodian, facility and child, when applicable;

(6) A brain injury screening; and

(7) A ~~behavior appraisal~~ family and child substance use history; and

h. Therapeutic leave such as weekend overnight visits or day passes with family must be documented in the child's case file and be tied to family therapy and therapeutic goals of the child and family, or it must be documented in the child's case file why weekend overnight visits or day passes are not tied to therapy and therapeutic goals of the child and family.

3. **Individual person-centered treatment plan.**

a. The facility shall develop and implement an individual person-centered treatment plan that includes the child's input giving the child a voice and a choice in the treatment planning and interventions used. The plan must be based upon a comprehensive interdisciplinary diagnostic assessment, which includes the role of the family, identifies the goals and objectives of the therapeutic activities and treatment and it must be developed by an interdisciplinary team. The plan provides a schedule for accomplishing the therapeutic activities and treatment goals and objectives, and identifies the individuals responsible for providing services to children consistent with the individual person-centered treatment plan. Clinical supervision for the individual person-centered treatment plan must be accomplished by full-time or part-time employment of or contracts with ~~qualified~~ mental health professionals. Clinical supervision must be documented by the ~~qualified~~ mental health professionals cosigning individual person-centered treatment plans and by entries in the child's record regarding supervisory activity. The child, and the person who lawfully may act on the child's behalf, must be involved in all phases of developing and implementing the individual person-centered treatment plan. The child may be excluded from planning if excluding the child is determined to be in the best interest of the child and the reasons for the exclusion are documented in the child's plan

b. The plan must be:

(1) Developed by a team that includes:

(a) A board eligible or board certified psychiatrist; a clinical psychologist who has a doctoral degree and a

physician licensed to practice medicine or osteopathy; or a physician licensed to practice medicine or osteopathy with specialized training and experience in the diagnosis and treatment of mental diseases, and a psychologist who has a master's degree in clinical psychology or who has been certified by the State or by the State psychological association; and

(b) A psychiatric social worker; a registered nurse with specialized training or one year's experience in treating people who have a mental illness; an occupational therapist who is licensed, and who has specialized training or one year of experience in treating people who have a mental illness; or a psychologist who has a master's degree in clinical psychology or who has been certified by the state or by the state psychological association.

(2) Based on a determination of a diagnosis using the ~~first three axes of the multiaxial classification of the~~ current ~~Diagnostic~~ diagnostic and ~~Statistical Manual~~ statistical manual of ~~Mental Disorders~~ mental disorders and a biopsychosocial assessment. In cases where a current diagnosis by a mental health professional has been completed within thirty days preceding admission, only updating is necessary;

~~(2)~~(3) Developed within five business days of admission; and

~~(3)~~(4) Reviewed at least monthly and updated or amended to meet the needs of the child by an interdisciplinary team including one ~~qualified~~ mental health professional.

c. The person-centered treatment plan must identify:

(1) Treatment goals that address the therapeutic treatment needs of the child and family;

(2) Timeframes for achieving the goals;

(3) Indicators of goal achievement;

(4) The individuals responsible for coordinating and implementing child and family treatment goals;

(5) Therapeutic intervention or techniques or both for achieving the child's treatment goals;

(6) The projected length of stay and discharge plan; and

(7) Referrals made to other service providers based on treatment needs, and the reasons referrals are made.

History: Effective December 1, 1989, amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

SECTION 6. Section 75-03-17-06 is amended as follows:

75-03-17-06. Special treatment procedures. A facility shall have written policies and procedures regarding implementation of special treatment procedures. Special treatment procedures must be therapeutic and meaningful interventions and may not be used for punishment, for the convenience of ~~staff~~ employees, or as substitute for therapeutic programming. Upon admission, the facility must inform the child and the person who may lawfully act on behalf of the child of the facility policy on restraint and seclusion procedures during an emergency safety situation. The facility shall provide education to the children, providing each child the opportunity to express the child's opinion and educating the child on alternative behavior choices to avoid the use of special treatment procedures. Alternatives to behaviors must be documented in each child's individual person-centered treatment plan. The health, safety, and well-being of children receiving care and treatment in the facility must be properly safeguarded. A physician shall review the use of special treatment procedures.

1. Timeout. ~~Staff~~ Employees shall supervise the use of timeout procedures at all times, and shall document the use of timeout procedures in the child's file. The use of the resident's bedroom for timeout is prohibited.

2. Physical escort. ~~Staff~~ Employees shall supervise the use of physical escort procedures at all times and shall document the use of physical escort in the child's file.

3. Physical restraints.

   a. Physical restraints must be ordered by a physician ~~and~~, or in the absence of a physician by a mental health professional trained in the use of emergency interventions as long as a physician reviews and signs the order within forty-eight hours after the mental health professional has ordered the physical restraints. Physical restraints may be imposed only in emergency circumstances and must be used with extreme caution to ensure the immediate physical safety of the child, ~~a staff member~~ an employee, or others after all other less intrusive alternatives have failed or have been deemed inappropriate;

b. All physical restraints must be applied by ~~staff~~ employees who are certified in the use of restraints and emergency safety interventions; and

c. The facility ~~staff~~ shall have established protocols that require:

(1) Entries made in the child's file as to the date, time, ~~staff~~ employee involved, reasons for the use of, and the extent to which physical restraints were used, and which identify less restrictive measures attempted;

(2) Notification within twenty-four hours of the individual who lawfully may act on behalf of the child; and

(3) Face-to-face assessment of children in physical restraint completed by a physician, registered nurse, or other licensed health care professional or practitioner who is trained in the use of safety, emergency interventions. The face-to-face assessment must be documented in the child's case file and include assessing the mental and physical well-being of the child. The face-to-face assessment must be completed as soon as possible, and no later than one hour after the initiation of physical restraint ~~or seclusion~~.

4. Seclusion. Seclusion must be ordered by the attending physician ~~and~~ or in the absence of a physician by a mental health professional trained in the use of emergency interventions as long as a physician reviews and signs the order within forty-eight hours after the mental health professional has ordered the physical restraints. Seclusion may be imposed only in emergency circumstances after all other less intrusive alternatives have failed or have been deemed inappropriate. Seclusion is to be used with extreme caution, and only to ensure the immediate physical safety of the child, ~~a staff member~~ an employee, or others. A child's bedroom may not be used for seclusion. If seclusion is indicated, the facility shall ensure that:

a. The proximity of the ~~staff~~ employee allows for visual and auditory contact with the child at all times;

b. ~~Staff~~ Employees conduct assessments of the child every fifteen minutes and document the assessments in the child's case file;

c. The seclusion room is not locked, or is equipped with a lock that only operates with ~~staff~~ an employee present such as a push-button lock that only remains locked while it is being pushed;

d. All nontherapeutic objects are removed from the area in which the seclusion occurs;

e. All fixtures within the room are tamperproof, with switches located outside the room;

f. Smoke-monitoring or fire-monitoring devices are an inherent part of the seclusion room;

g. Security mattresses used are made of fire-resistant material;

h. The room is properly ventilated;

i. Notification of the individual who lawfully may act on behalf of the child is made within twenty-four hours of a seclusion and is documented in the child's case file;

j. A child under special treatment procedures is provided the same diet that other children in the facility are receiving;

k. No child remains in seclusion:

(1) For more than four hours in a twenty-four-hour period; and

(2) Without physician approval;

l. Seclusion is limited to the maximum timeframe per episode for fifteen minutes for children aged nine and younger and one hour for children aged ten and older; and

m. Face-to-face assessment of children in seclusion is completed by a physician, registered nurse, or other licensed health care professional or practitioner who is trained in the use of safety, emergency interventions and is documented in the child's case file. The face-to-face assessment must include assessing the mental and physical well-being of the child. The face-to-face assessment must occur no later than one hour after the initiation of ~~restraint or~~ seclusion.

5. Within twenty-four hours of each use of seclusion or physical restraint, the facility shall conduct a ~~debriefing~~ face-to-face discussion which includes ~~appropriate personnel and~~ the child and all employees involved in the emergency intervention, except when the involvement of a particular employee may jeopardize the wellbeing of the child, and which:

a. Evaluates and documents in the child's case file the well-being of the child served and identifies the need for counseling or other therapeutic services related to the incident;

b. Identifies antecedent behaviors and modifies the child's individual person-centered treatment plan as appropriate; and

c. Analyzes the incident and identifies needed changes to policy and procedures, ~~staff~~ employee training, ~~or both~~ and strategies that could have been used by an employee, by the child, or by others that could prevent the future use of seclusion or physical restraint.

6. Within twenty-four hours after the use of physical restraint or seclusion, all employees involved in the emergency safety intervention, and appropriate supervisory and administrative employees, must conduct a debriefing session that includes, at a minimum a review and discussion of:

a. Precipitating factors to the emergency situation;

b. Alternative techniques that might have prevented the use of physical restraint or seclusion;

c. The procedures, if any, that employees are to implement to prevent any recurrence of the use of physical restraint or seclusion; and

d. The outcomes of the intervention, including any injuries that may have resulted from the use of the physical restraint or seclusion.

7. Employees must document in the child's record both the face-to-face discussion and debriefing sessions identified in subsections 5 and 6 and the names of employees involved, employees excused, and any changes to the child's treatment plan as a result of the face-to-face discussion and debriefing. The facility must also document that the person who may lawfully act on behalf of the child was notified.

8. Special treatment procedure training. Each facility must have policies and procedures regarding annual training in the use of all special treatment procedures listed in this section, which comply with the standards set forth by the facility's accrediting body.

~~7~~9. Reporting requirement for serious occurrences that include a death, serious injury, or suicide attempt.

a. Each facility shall notify the medical services ~~division~~ and the behavioral health divisions of the department of each serious occurrence that occurs at the facility as follows:

(1) The report must include the name and date of birth of the child involved.

(2) The facility shall provide the report within twenty-four hours of the serious occurrence.

(3) The report must contain information on the use of any specialized treatment procedures for the child involved preceding the serious occurrence.

b. Each facility shall notify its accrediting body of any serious occurrence.

c. Each facility shall notify the regional supervisor of child welfare programs at the human service center serving the region within which the facility is located of any serious occurrence.

d. Each facility shall report all deaths to the committee on protection and advocacy, unless prohibited by state law, by the close of business the day following the date the death was discovered.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 50-11-03, 50-11-03.2

SECTION 7. Subsection 5 and subdivisions a and c of subsection 9 of section 75-03-17-07 are amended as follows:

75-03-17-07. Medical care. The facility shall institute policies and procedures to address the medical and psychiatric care for each child during placement at the facility, including:

5. **~~Staff~~ Employee instruction.** The facility shall train ~~staff members~~ employees what medical care, including first aid, may be given by ~~staff~~ employees without specific orders from a physician. The facility shall instruct ~~staff~~ employees how to obtain further medical care and how to handle emergency cases.

9. **Administration of medications.**

a. The facility shall institute policies and procedures for guidance in the administration of all medications. Medications must be administered by a designated ~~staff person~~ employee who is medication-certified. All medications must be labeled and stored in a locked cabinet, with the keys for the cabinet kept under the

supervision of the designated ~~staff person~~ employee assigned to administer the medications. The medication cabinet must be equipped with separate cubicles, plainly labeled with each child's name.

c. The facility may possess a limited quantity of nonprescription medications. The medications must be ordered by a physician and administered under the supervision of medication-certified ~~staff~~ employee.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

SECTION 8. Subsections 2 and 3 of section 75-03-17-10 are amended as follows:

75-03-17-10. Education and training.

2. ~~**Staff**~~ **Employee training.** The facility shall provide quarterly training to ~~staff~~ employee which is relevant to address the changing needs of the milieu and according to the requirements of the facility's accrediting body.

   a. All ~~staff members~~ employees on duty must have satisfactorily completed annual training on current first aid, therapeutic crisis intervention or crisis prevention intervention, suicide awareness and prevention training, standard precautions as used by the centers for disease control and prevention, and cardiopulmonary resuscitation training and have on file at the facility a certificate of satisfactory completion prior to having direct contact with residents. A certificate must be provided to each employee demonstrating their competencies in cardiopulmonary resuscitation on an annual basis and therapeutic crisis intervention on a semi-annual basis. ~~A staff member~~ An employee who is in orientation status, who has successfully completed the background check, and who is in the process of completing the required trainings may be allowed to job shadow with ~~a staff member~~ an employee who has a minimum of one year of experience at the facility and who has successfully completed all of the required training. The facility ensures that ~~staff~~ employees who are in orientation status are always under the supervision of experienced ~~staff~~ employees and are not left alone with the children until all required training has been completed.

   b. Each ~~staff member~~ employee must be able to recognize the common symptoms of illnesses of children, signs and symptoms of an overdose, and to note any marked physical defects of children.

The facility shall ensure a sterile clinical thermometer and a complete first-aid kit are available.

3. **Discipline.** A facility shall create a trauma-informed culture that promotes respect, healing, and positive behaviors and which minimizes the use of restrictive behavior management interventions to the extent possible. Discipline must be constructive or educational in nature and follow the discipline guidelines of the facility's accrediting body. A facility shall adopt and implement written policies and procedures for discipline and behavior management consistent with the following:

   a. Only ~~staff members~~ employees of the facility may prescribe, administer, or supervise the discipline of children. Authority to discipline may not be delegated to children~~, volunteers,~~ or ~~interns~~ nonemployees.

   b. A child may not be slapped, punched, spanked, shaken, pinched, roughly handled, struck with an object, or receive any inappropriate physical treatment.

   c. Verbal abuse and derogatory actions or remarks about the child, the child's family, religion, or cultural background may not be used or permitted.

   d. A child may not be locked in any room.

   e. The facility shall develop and implement a youth-guided, family-driven plan of discipline as part of the child's person-centered treatment planning, to include therapeutic interventions, that promote an effective means of discipline. Daily documentation must reflect whether the interventions are effective and if they need revising.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

SECTION 9. Subsections 2, 5, and 6 of section 75-03-17-12 are amended as follows:

75-03-17-12. Discharge.

2. Seven days prior to discharge a team meeting involving the child, the person who lawfully may act on behalf of the child, the facility treatment team, and related community services providers must take place to ensure the continuity of services consistent with the child's treatment needs after discharge. As part of the discharge planning requirements, facilities shall

ensure the child has a seven-day supply of needed medication and a written prescription for medication to last through the first outpatient visit in the community with a prescribing provider. Prior to discharge, the facility must identify a prescribing provider in the community and schedule an outpatient visit. The facility shall include documentation of the medication plan and arrangements for the outpatient visit in the medical records in the child's case file. If medication has been used during the child's treatment in the facility but is not needed upon discharge, the reason the medication is being discontinued must be documented in the medical records in the child's case file.

5. The facility treatment team shall develop a discharge plan that ensures that appropriate appointments are scheduled, based on the child's needs and input from the person who lawfully may act on behalf of the child, as part of the post discharge plan. Appointments must support continuity of care addressing needs for individual therapy, psychiatric services and educational services, and other services or supports that may be appropriate. The facility treatment team shall provide a copy of the plan to the person who lawfully may act on behalf of the child and a copy must remain in the chart.

6. A child's discharge from the facility may not be based on the child's need for short-term inpatient treatment at a psychiatric facility.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014, April 1, 2016.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

SECTION 10. Section 75-03-17-14 is amended as follows:

75-03-17-14. Employee health qualifications.

1. All ~~personnel~~ employees, including ~~volunteers and interns~~ nonemployees, must be in good health and physically and mentally capable of performing assigned tasks.

2. All ~~personnel~~ employees must have a health screening that includes a test for tuberculosis, performed by or under the supervision of a physician not more than one year prior to or thirty days after employment. The individual performing the screening shall sign a report indicating the presence of any health condition that would create a hazard to children of the facility or other ~~staff members~~ employees.

3. Unless effective measures are taken to prevent transmission, an employee or nonemployee suffering from a serious communicable

disease shall be isolated from other employees, nonemployees, and children of the facility who have not been infected.

4. Information obtained concerning the medical condition or history of an employee must be collected and maintained on forms and in medical files separate from other forms and files and must be treated as a confidential medical record.

5. The facility shall develop a policy regarding health requirements for ~~volunteers, interns, and student placements~~ nonemployees that addresses tuberculin testing.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-04, 25-03.2-07

SECTION 11. Section 75-03-17-15 is amended as follows:

75-03-17-15. ~~Staff-to-child~~ Employee-to-child ratio.

1. The ratio of ~~staff~~ employee to children must meet the standards of the facility's accredited body and be included in the facility's policies and procedures. The facility shall follow the ~~staff-to-child~~ employee-to-child ratio set by its accrediting body, or the ratios set forth in this subsection, if the ratios set forth in this subsection require a greater number of ~~staff~~ employee to children than the ratios set by the accrediting body. The ~~staff-to-child~~ employee-to-child ratio on the premises during waking hours Monday through Friday is dependent on the needs of the children and the requirements of the individual person-centered treatment plans, but may not be less than:

   a. Two ~~staff~~ employees present who are qualified to provide direct care for one to six residents

   b. Three ~~staff~~ employees present who are qualified to provide direct care for seven to nine residents.

   c. Four ~~staff~~ employees present who are qualified to provide direct care for ten to twelve residents.

   d. Five ~~staff~~ employees present who are qualified to provide direct care for thirteen to sixteen residents.

2. On evenings, nights, weekends, and holidays, during non-programming hours, the ratio of ~~staff~~ employees to children is dependent on the needs of the children and the requirements of the individual person-centered

treatment plans. Additionally, the ratio of ~~staff-to-children~~ employee-to-children must meet the minimum standards of the accrediting body but may not be less than two ~~staff~~ employees on premises qualified to provide direct care. The facility shall implement a policy that if there is an emergency, and additional ~~staff~~ employees are not available to respond to the facility within fifteen minutes, the facility will call for law enforcement or emergency medical assistance.

3. All night ~~staff~~ employees must be awake and within hearing distance of children. ~~Staff~~ Employees shall perform bedroom checks at a minimum of every fifteen minutes to assure that each sleeping child is in that child's assigned room and is safe.

4. The minimum ratio of employees-to-children must be the same for out-based activities unless the activity and participating client needs would indicate a need for a higher ratio of employees-to-children to ensure the children's health and safety.

5. The facility shall maintain a ratio of one employee to each child engaged in a solo activity.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; July 1, 2014; April 1, 2016.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

SECTION 12. Section 75-03-17-16 is amended as follows:

75-03-17-16. Personnel policies and employee and nonemployee files.

1. The facility shall have clearly written personnel policies. The policies must be made available to each employee and nonemployee and must include:

   a. ~~A staff~~ An employee training and development plan;

   b. Procedures for reporting suspected child abuse and neglect for employees and nonemployees;

   c. Procedures for ~~staff~~ employee evaluation, disciplinary actions, and termination;

   d. A prohibition of sexual contact between ~~staff~~ employees and nonemployees and children in accordance with the Prison Rape Elimination Act of 2003 [Pub. L. 108-79];

   e. Procedures for employee grievances;

Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures.

4. ~~For purposes of subdivision c of subsection 2, an offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.~~

5. ~~The department has determined that the offenses enumerated in subdivisions a and b of subsection 2 have a direct bearing on an individual's ability to serve the public as a facility operator or employee.~~

6. ~~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.~~

7. ~~Interns, volunteers, and student placement workers are subject to this section.~~

8. a. ~~The facility shall ensure that a prospective employee shall consent to and have completed background checks in criminal conviction records and child abuse or neglect records prior to direct care and contact with children residing in the facility.~~

   b. ~~All employees of psychiatric residential treatment facilities shall have background checks to determine whether the employee is disqualified from employment under subsection 2.~~

9. ~~If a prospective employee has previously been employed by one or more group homes, residential child care facilities, or facilities, the facility shall request a reference from all previous group home, residential child care facility, and facility employers regarding the existence of any determination or incident of reported child abuse or neglect in which the prospective employee is the perpetrator subject.~~

10. ~~The facility shall perform a background check for reported suspected child abuse or neglect each year on each facility employee. Each employee, including direct care staff, supervisors, administrators, administrative, and facility maintenance staff, shall complete a department-approved~~

authorization for child abuse and neglect background check form no later than the first day of employment and annually thereafter to facilitate the background checks required under this subsection.

a. The application for employment, including a record of previous employment, and the applicant's answer to the question, "Have you been convicted of a crime?";

b. Annual performance evaluations;

c. Annual staff development and training records, including first-aid training, cardiopulmonary resuscitation training, universal infection control precautions training, and therapeutic crisis intervention or crisis prevention intervention training records. "Record" means documentation, including with respect to development or training presentations the:

(1) Name of presenter;

(2) Date of presentation;

(3) Length of presentation; and

(4) Topic of presentation;

d. Results of background checks for criminal conviction records, motor vehicle violations, and child abuse or neglect records;

e. Any other evaluation or background check deemed necessary by the administrator of the facility;

f. Documentation of the existence of any license or qualification for position or the tasks assigned to the employee; and

g. All direct care staff not currently under orientation status must have satisfactorily completed first aid, therapeutic crisis intervention or crisis prevention intervention, universal infection control precautions, and cardiopulmonary resuscitation and have on file at the facility a certificate of completion.

12. a. A facility shall maintain an individual personnel file on each volunteer, student, and intern which must include:

(1) Personal identification information; and

~~(2) Results of background checks for criminal conviction records, motor vehicle violations, and child abuse or neglect records.~~

~~b. When a position involves transporting children by motor vehicle, the prospective employee must authorize release of a complete motor vehicle operator's license background report.~~

~~13.~~ The facility shall adopt a policy regarding the retention of ~~personnel records~~ employee and nonemployee files.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

SECTION 13. Subsections 1 and 4 of section 75-03-17-16.1 are amended as follows:

75-03-17-16.1. Child abuse and neglect reporting.

1. All facility employees~~, interns, volunteers, and student placement workers~~ and nonemployees shall certify having read the law requiring the reporting of suspected child abuse or neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect reporting procedures.

4. The facility shall cooperate fully with the department throughout the course of an investigation of an allegation of child abuse or neglect concerning care furnished to a child. The facility shall, at a minimum, provide the investigators or reviewers with all documents and records available to the facility and reasonably relevant to the investigation, and shall permit confidential interviews with both ~~staff~~ employees and children.

History: Effective September 1, 1998; amended effective April 1, 2008; April 1, 2014; April 1, 2016.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

SECTION 14. Section 75-03-17-16.2 is created as follows:

75-03-17-16.2 Criminal conviction – Effect on operation of facility or employment by facility.

1. A facility operator may not be, and a facility may not employ, in any capacity that involves or permits contact between the employee, contracted service providers, or nonemployee and any child cared for by

the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:

a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults – threats – coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 14-09-22, abuse or neglect of a child;

b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or

c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.

(1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, has elapsed.

(2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.

2. A facility shall establish written policies, and engage in practices that conform to those policies, to effectively implement subsection 1.

3. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of foster care to children.

4. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction. The department may not be compelled to make such determination.

5. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

6. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

   a. Common knowledge in the community;

   b. Acknowledged by the individual; or

   c. Discovered by the facility, authorized agent, or department as result of a background check.

7. The facility shall ensure that a prospective employee and nonemployee shall consent to and have completed background checks in criminal conviction records and child abuse or neglect records prior to offers of employment or placement or direct care and contact with children residing in the facility.

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

9. If a prospective employee has previously been employed by one or more group homes, residential child care facilities, or facilities, the facility shall request a reference from all previous group home, residential child care facility, and facility employers regarding the existence of any determination or incident of reported child abuse or neglect in which the prospective employee is the perpetrator subject.

10. The facility shall perform a background check for reported suspected child abuse or neglect each year on each facility employee. Each employee, including direct care staff, supervisors, administrators, administrative, and facility maintenance staff, shall complete a department-approved authorization for child abuse and neglect background check form no later

than the first day of employment and annually thereafter to facilitate the background checks required under this subsection.

11. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

12. A facility shall establish written policies and engage in practices that conform to those policies, to effectively implement this section.

History: Effective April 1, 2016.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

SECTION 15. Section 75-03-17-17 is amended as follows:

75-03-17-17. Facility ~~staff~~ employees.

1. The facility's ~~staff~~ employees shall include:

   a. An executive director who has a bachelor's degree in a behavioral science, or a bachelor's degree in any field and two years of experience in administration;

   b. A program director who has a master's degree in social work, psychology, or in a related field with two years of professional experience in the treatment of children suffering from mental illnesses or emotional disturbances;

   c. Facility care ~~staff~~ employees who are at least twenty-one years of age and have sufficient training and demonstrated skills experience to perform assigned duties;

   d. The clinical services of a psychologist, psychiatrist, alcohol and drug addiction counselor, nurse, and physician, which may be obtained on a consultation basis; and

   e. Educators, where onsite education is provided.

2. ~~Volunteer services~~ Nonemployees may be used to augment and assist other ~~staff~~ employees in carrying out program or treatment plans. ~~Volunteers~~ Nonemployees shall receive orientation training regarding the program, ~~staff~~ employees, and children of the facility, and the functions to be performed.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2016.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07

SECTION 16. Subdivisions f and h of subsection 3 of section 75-03-17-18 are amended as follows:

75-03-17-18. Safety, buildings, and grounds.

3. **Buildings and grounds.** The facility must have sufficient outdoor recreational space, and the facility's buildings must meet the following standards:

   f. ~~Staff~~ Employee quarters must be separate from those of children, although near enough to assure proper supervision of children.

   h. A facility shall lock all outbuildings on the property at all times when not in use by facility ~~staff~~ employees.

History: Effective December 1, 1989; amended effective September 1, 1998; April 1, 2008; April 1, 2014; April 1, 2016.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-07