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**Dakota** | Human Services  
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May 9, 2019

Vonette Richter, Legal Division Director  
North Dakota Legislative Council  
State Capitol  
Bismarck, ND 58505

RE: Proposed amendments N.D. Admin. Code chapters 75-03-14, 75-03-15, and 75-03-16 - Family Foster Home for Children, Ratesetting for Providers of Services to Foster Children - Group Homes and Residential Child Care Facilities, and Licensing to Group Homes and Residential Child Care Facilities and the creation of N.D. Admin. Code chapters 75-03-40 and 75-03-41 - Licensing of Qualified Residential Treatment Program Providers and Supervised Independent Living

Dear Ms. Richter:

Enclosed for filing in the office of the Legislative Council is the Notice of Intent to amend Administrative Rules concerning the above proposed rules as required by N.D.C.C. section 28-32-10. Also enclosed is a copy of the proposed rules.

We have requested publication of an abbreviated newspaper publication notice once in each official county newspaper which will notify the public that an oral hearing on these rules will be held on Tuesday, June 11, 2019, beginning at 9:00 a.m. and continuing until 10:30 a.m. or until no further testimony is offered, whichever occurs first.

If you have any questions or concerns, please contact me at 328-2311. Thank you.

Sincerely,



Jonathan Alm  
Legal Advisory Unit

JA/jgl

cc: Kelsey Bless, Children and Family Services

Enclosures

**LEGAL ADVISORY UNIT**

600 E Boulevard Ave Dept 325 | Bismarck ND 58505-0250

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NOTICE OF INTENT TO AMEND  
ADMINISTRATIVE RULES RELATING TO  
N.D.A.C. CHAPTERS 75-03-14, 75-03-15, AND 75-03-16  
FAMILY FOSTER HOME FOR CHILDREN, RATESETTING FOR PROVIDERS OF  
SERVICES TO FOSTER CHILDREN - GROUP HOMES AND RESIDENTIAL CHILD  
CARE FACILITIES, AND LICENSING OF GROUP HOMES AND RESIDENTIAL  
CHILD CARE FACILITIES AND THE CREATION OF N.D.A.C CHAPTERS 75-03-40  
AND 75-03-41 LICENSING OF QUALIFIED RESIDENTIAL TREATMENT  
PROGRAM PROVIDERS AND SUPERVISED INDEPENDENT LIVING

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code chapters 75-03-14, 75-03-15, and 75-03-16 and the creation of N.D. Admin. Code chapters 75-03-40 and 75-03-41 at 9:00 a.m. on Tuesday, June 11, 2019, in Bismarck, N.D. in AV Room 212, located on the second floor of the Judicial Wing of the State Capitol.

The proposed amendments to N.D. Admin. Code chapters 75-03-14, 75-03-15, and 75-03-16, relating to Family Foster Home for Children, Ratesetting for Providers of Services to Foster Children – Group Homes and Residential Child Care Facilities, and Licensing of Group Homes and Residential Child Care Facilities, and the creation of chapters 75-03-40 and 75-03-41, relating to Licensing of Qualified Residential Treatment Program Providers and Supervised Independent Living, are necessary to comply with passage of the federal Family First Prevention Services Act in February 2018 and the requirements of House Bill No. 1102.

The proposed changes are as follows:

**Section 75-03-14-01** is amended to revise definitions relating to family foster homes for children, including removing the definition of “adult” and defining “background check” to include a fingerprint-based criminal history record investigation.

**Section 75-03-14-02** is amended to clarify language regarding licensure of a family foster home for children, to clarify the home study assessment process and approval of temporary locations, and to modify the approval process for a facility located on a near a recognized Indian reservation.

**Section 75-03-14-03** is amended to modify the minimum physical standards for the foster family home for children.

**Section 75-03-14-04** is amended to add additional requirements regarding qualifications of persons residing in the family foster home for

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children, including minimum age, literacy, financially stable, and immunizations.

**Subsection 1 of section 75-03-14-04.1** is amended to update and clarify language regarding criminal history background check direct bearing offenses.

**Section 75-03-14-05** is amended to update language regarding the operation of the family foster home for children including allowing public officials access to the family foster home for children to ensure safety, and to add new language prohibiting verbal abuse regarding sexual orientation of gender identity.

**Section 75-03-14-06** is amended to clarify the operation of a child and family team that reviews the permanency plan of a foster child and permanency options for the foster child.

**Section 75-03-14-07** is amended to clarify language relating to background checks required of adults residing in the family foster home for children, and to create language requiring an annual child abuse and neglect index check of all adults living in the facility.

**Section 75-03-15-01** is amended to update definitions, including changing the definition of a “facility” from a “residential child care facility or group home” to a “qualified residential treatment program”, and to provide a definition of a “qualified residential treatment program” based on the Family First Prevention Services Act.

**Section 75-03-15-03** is amended to clarify information that must be provided within a daily child census record.

**Section 75-03-15-04** is amended to update rate-setting language to remove language stating that a reserved paid bed is counted as an occupied bed, and to add language stating that department shall continue to pay the established rate of a facility previously licensed as a residential child care facility licensed prior to October 1, 2019, upon the facility’s licensure as a qualified residential treatment program, and that the department may subsequently adjust the rate in accordance with this section.

**Section 75-03-15-07** is amended to update language regarding allowable costs for maintenance and administration.

**Section 75-03-15-12.1** is amended to specify that existing language in this section regarding start-up costs don't apply to a facility transitioning from a residential child care facility on October 1, 2019, to a qualified residential treatment program.

**Chapter 75-03-16** is being repealed as a result of the Family First Prevention Services Act as the care currently provided in group homes and residential child care facilities will now be provided by qualified residential treatment providers and supervised independent living programs under newly created chapters 75-03-40 and 75-03-41.

**Section 75-03-40-01** is created to provide definitions relating to licensing of qualified residential treatment program providers.

**Section 75-03-40-02** is created to detail how long a facility license is effective, as well as its validity. This section also provides licensing procedures for facilities that change ownership and for provisionally licensed facilities.

**Section 75-03-40-03** is created to provide requirements for applicants for licensure as a qualified residential treatment program provider.

**Sections 75-03-40-04 and 75-03-40-05** are created to outline the use of correction orders by department to correct violations at a facility, and to provide for fiscal sanctions and other actions if a facility remains out of compliance.

**Section 75-03-40-06** is created to establish a provisional license process if the facility has failed to comply with applicable standards and regulations.

**Section 75-03-40-07** is created to establish a denial and revocation process for failure to meet requirements of N.D. Admin. Code Chapter 75-03-40 and North Dakota Century Code Chapter 50-11.

**Section 75-03-40-08** is created to establish the process for increasing or decreasing residential bed capacity at a facility.

**Section 75-03-40-09** is created to require that a facility shall have a policy to ensure proper and efficient procedures in the event the facility closes.

**Section 75-03-40-10** is created to outline the components of a governing body which shall be required at each facility, and which is responsible for overall operations at the facility.

**Section 75-03-40-11** is created to require that each facility shall have a written disaster plan to accommodate emergencies, and to specify what details must be included in the disaster plan.

**Section 75-03-40-12** is created to require that each facility shall have a performance and quality improvement plan which advances efficient, effective service delivery, effective management practices, and the achievement of strategic and treatment program goals and outcomes. Further requirements for what must be included in the plan are provided within the section.

**Section 75-03-40-13** is created to establish what documents must be included within the individual personnel files of all employees and nonemployees providing services at the facility.

**Section 75-03-40-14** is created to state that the facility shall designate a facility administrator and clearly define the responsibilities of the facility administrator. The section also establishes whether a facility administrator should be employed full-time or part-time, outlines the experience and qualifications needed to qualify to serve as a facility administrator, and outlines duties of the facility administrator.

**Section 75-03-40-15** is created to state that the facility shall clearly define the responsibilities of the clinical director. The section also identifies the duties of the clinical director, and outlines the experience and qualifications needed to qualify to serve as a clinical director.

**Section 75-03-40-16** is created to state that the facility shall clearly define the responsibilities of a treatment coordinator. The section also identifies the duties of a treatment coordinator, and outlines the experience and qualifications needed to qualify to serve as a treatment coordinator.

**Section 75-03-40-17** is created to state that the facility shall clearly define the responsibilities of a direct care employee. The section also outlines the duties of a direct care employee, and outlines the experience and qualifications needed to qualify to serve as a direct care employee.

**Section 75-03-40-18** is created to require the facility to define the duties and responsibilities of a nurse providing services at the facility. Language in the section also requires the presence of an onsite nurse to accommodate medical needs.

**Section 75-03-40-19** is created to state that the facility shall clearly define the responsibilities of family engagement specialists. The section also outlines the tasks that may be performed by the family engagement specialist, and outlines the experience and qualifications needed to qualify to serve as a family engagement specialist.

**Section 75-03-40-20** is created to allow a facility to contract with service providers for professional services not provided by the facility when necessary for implementation of a resident's treatment plan.

**Section 75-03-40-21** is created to establish policies for facilities which use nonemployees.

**Section 75-03-40-22** is created to require a facility to identify all employee and nonemployee positions, and to require a facility to establish clearly written personnel policies that are required by this section.

**Section 75-03-40-23** is created to provide confidentiality protections for facility records concerning residents that have received, are receiving, or seek to receive facility services.

**Section 75-03-40-24** is created to require that all facility employees and nonemployees certify to having read state law on reporting of suspected child abuse and neglect, and to require the facility to have written policies and procedures requiring employees and nonemployees to report cases of suspected child abuse or neglect.

**Section 75-03-40-25** is created to provide language regarding criminal history background check direct bearing offenses.

**Section 75-03-40-26** is created to require a fingerprint based criminal background check and child abuse and neglect index check for prospective employees and nonemployees; to include the requirement that a facility must request a reference from all previous facility employers regarding any incidents or reported child abuse or neglect; and to require the facility to perform an annual child abuse and neglect index check on every employee and nonemployee.

**Section 75-03-40-27** is created to provide personnel health requirements for all employees and nonemployees, including requiring an initial health screening, and requiring facility to develop a policy regarding health requirements for employees and nonemployees.

**Section 75-03-40-28** is created to establish the minimum number of employees that must be at the facility at any given time, to ensure that a proper employee-to-resident ratio exists.

**Section 75-03-40-29** is created to provide for employee professional development for employees in contact with residents.

**Section 75-03-40-30** is created to outline what records must be included within the resident file, and to clarify that the records are confidential unless permitted or required to be disclosed.

**Section 75-03-40-31** is created to outline the program and services which are to be provided by the facility, including that the facility shall have the ability to provide resource information for referral sources; whether the facility offers any primary or secondary education programs; whether the facility offers religious opportunities; and documentation of normalcy activities offered at the facility.

**Section 75-03-40-32** is created to provide that a facility may operate an optional respite care program with approval of the department, and to outline the procedure the facility shall use if it chooses to operate a respite care program.

**Section 75-03-40-33** is created to outline admission policies and procedures to be used at the facility, including an initial thirty-day level of care assessment period. This section also requires initial mental health, suicide risk, and health screenings upon admission of the client.

**Section 75-03-40-34** is created to require that all placements of children made from out-of-state must follow the interstate compact on the placement of the children or the interstate compact on juveniles.

**Section 75-03-40-35** is created to require that a treatment coordinator employee shall develop a written, individualized treatment plan for each resident within thirty days of admission to the facility, and to outline the required elements of each treatment plan.

**Section 75-03-40-36** is created to require that each resident must have their discharge plan developed within thirty days of admission, and that the plan must be reviewed on an ongoing basis as part of the treatment plan. The section

identifies which persons must be involved in discharge planning, and what the discharge plan must address.

**Section 75-03-40-37** is created to require that the facility shall create a written policy detailing how the facility uses concepts of family-driven, resident-guided care into the overall treatment model, and requires that the facility shall document and provide evidence of the family's ongoing involvement in treatment planning. The section also identifies the types of resident and family engagement strategies which may be used.

**Section 75-03-40-38** is created to require that the facility shall have written policies and procedures regarding how the six-month aftercare requirements must be implemented to meet the needs of residents and families. Aftercare policy is required for all residents accepted into the facility for treatment.

**Section 75-03-40-39** is created to require that the facility shall have written policies and procedures for notification to law enforcement, custodian and parent or guardian, and other appropriate parties if a resident has left without permission or fails to return after leave.

**Section 75-03-40-40** is created to require that the facility have written policy for incident and sentinel event reporting.

**Section 75-03-40-41** is created to require that a facility shall develop a suicide prevention plan and identifies components which must be included within the plan.

**Section 75-03-40-42** is created to require that a facility shall adopt a comprehensive written plan of preventive, routine, and emergency medical care for residents including first aid, dental, optical care, and administration of prescription and nonprescription medication.

**Section 75-03-40-43** is created to require that the facility shall adopt comprehensive written policies and procedures for medication administration and monitoring of resident self-administration and requires that each employee involved in medication administration or self-administration shall be required to receive and review the policies.

**Section 75-03-40-44** is created to outline what behavior management practices may be used at the facility and requires that the facility shall adopt and implement written procedures for discipline and behavior management, as well as a policy covering the conduct expected of residents. The section states that discipline must be constructive or educational in nature and outlines both allowable and prohibited disciplinary measures.



**Section 75-03-40-45** is created to outline seclusion methods that may be used at the facility and requires that the facility must obtain approval from department to offer seclusion onsite. This section also outlines the policies and procedures that must be implemented in order to use seclusion, including informed consent from custodian and parent or guardian.

**Section 75-03-40-46** is created to outline use of mechanical restraints at the facility. The section notes that a facility is not required to use mechanical restraints, but that the facility shall request approval from department to opt into the application of mechanical restraints. This section also outlines the policies and procedures that must be implemented in order to use mechanical restraints.

**Section 75-03-40-47** is created to require that the building, grounds, and equipment at the facility shall be required to comply with all state, county, and local building and zoning codes and ordinances, as well as all other relevant regulations. The section requires that the facility must be inspected annually by the local fire department or the state fire marshal's office. This section also outlines other buildings, grounds, and equipment requirements for a facility to comply with.

**Section 75-03-40-48** is created to require that the facility shall appoint an employee to be responsible for complying with requirements for healthy and safe food and nutrition practices and outlines the requirements for food that will be served at the facility.

**Section 75-03-40-49** is created to identify what resident accommodations shall be provided at the facility, including clothing and shoes; appropriate room assignments; personal hygiene items; appropriate household responsibilities; and appropriate recreational activities. This section also requires that facility shall advise resident and their custodian and parent or guardian of the day-to-day rules of the facility.

**Section 75-03-40-50** is created to require the facility to develop a comprehensive transportation policy addressing issues, including driver qualifications; maintenance of a list of approved drivers; vehicle capacity and supervision; and vehicle operation.

**Section 75-03-40-51** is created to provide rules for water safety provisions for residents engaging in aquatic activities.

**Section 75-03-40-52** is created to provide that, upon written application and good cause shown, department may grant a variance regarding a specific provision of this chapter upon such terms as the department may prescribe,

except no variance may permit or authorize a danger to the health or safety of any resident cared for by the facility. The facility shall submit a request for a variance in writing to department.

**Section 75-03-41-01** is created to provide definitions relating to supervised independent living.

**Section 75-03-41-02** is created to detail the application procedure for a supervised independent living program license, as well as the renewal process. The section also specifies that a license is in force for a maximum period of two years and is valid only to the agency providing the program oversight for the number of clients indicated on the license.

**Section 75-03-41-03** is created to provide that the department may deny, suspend, or revoke an application or license upon finding that the agency is not in compliance with licensure requirements, or has made a material misrepresentation to department regarding its operations. The section also provides for an appeal to the department by an agency whose license has been denied or revoked.

**Section 75-03-41-04** is created to outline the use of correction orders by department to correct violations at an agency.

**Section 75-03-41-05** is created to require that an agency shall have a policy to ensure proper and efficient procedure in the event the agency closes.

**Section 75-03-41-06** is created to outline the components of a governing body which shall be required at each agency, and which is responsible for overall operations at the agency.

**Section 75-03-41-07** is created to require that during the initial licensure process, the applicant shall demonstrate that it has sufficient income to operate its program, and also requires the agency to demonstrate ongoing financial stability during re-licensure. The section also requires that the agency shall annually submit a budget to department, and that the agency shall maintain liability insurance.

**Section 75-03-41-08** is created to require that each agency shall have a written disaster plan to accommodate emergencies. The section also specifies what details must be included in the disaster plan.

**Section 75-03-41-09** is created to provide confidentiality protections for agency records concerning residents that have received, are receiving, or seek to receive agency services.

**Section 75-03-41-10** is created to require that each agency shall have a performance and quality improvement plan which advances efficient, effective service delivery, effective management practices, and the achievement of strategic and treatment program goals and outcomes.

**Section 75-03-41-11** is created to require the agency to employ staff with sufficient qualifications to perform the necessary functions to operate the programs. The section also requires the agency to comply with minimum employee-to-client ratios.

**Section 75-03-41-12** is created to state that the agency shall clearly define the responsibilities of the program administrator. The section also outlines the experience and qualifications needed to qualify to serve as a program administrator and outlines duties of the program administrator.

**Section 75-03-41-13** is created to state that the agency shall clearly define the responsibilities of a transition coordinator. The section also identifies the duties of a transition coordinator; outlines the experience and qualifications needed to qualify to serve as a transition coordinator; and states that the agency shall have sufficient transition coordinators employed to meet minimum employee-to-client ratios under this chapter.

**Section 75-03-41-14** is created to provide requirements regarding nonemployees that work directly with clients, including requiring a fingerprint based criminal background check and child abuse and neglect index check; detailing policy and procedure specific to nonemployees; and requiring nonemployees to be at least two years older than the client.

**Section 75-03-41-15** is created to require employee professional development for employees in contact with residents.

**Section 75-03-41-16** is created to establish what documents must be included within the individual personnel files of all employees and nonemployees providing services at the agency.

**Section 75-03-41-17** is created to require a fingerprint based criminal background check and child abuse and neglect index check for prospective employees and nonemployees with direct contact with clients; to provide for a subsequent background check if the agency or department determines such a check is needed; and to require the agency to perform an annual child abuse and neglect index check on every employee and nonemployee.

**Section 75-03-41-18** is created to provide language regarding criminal history background check direct bearing offenses.

**Section 75-03-41-19** is created to require that all agency employees and nonemployees shall certify to having read state law on reporting of suspected child abuse and neglect, and to require the agency to have written policies and procedures requiring employees and nonemployees to report cases of suspected child abuse or neglect.

**Section 75-03-41-20** is created to specify what type of supervised independent living settings may be provided by the agency, including detailed descriptions of: an individual apartment; shared housing; and a college dorm room. The section also provides that the setting must be in compliance with all applicable provisions of state and local laws, ordinances, rules, and regulations concerning health, safety, and nondiscrimination for housing.

**Section 75-03-41-21** is created to provide eligibility requirements for acceptance into the supervised independent living program. The section details individuals who are eligible for acceptance, including clients currently in the placement and care of a public agency, actively participating in continued foster care services; clients pregnant or parenting a child; and clients in need of supervised independent living programming.

**Section 75-03-41-22** is created to provide that an agency shall define in writing policy and procedures specific to acceptance of a client into the program, including the creation of a program acceptance committee. The section also provides that each client shall receive orientation upon acceptance into the supervised independent living program.

**Section 75-03-41-23** is created to outline the program and services which are to be provided by the agency, including requiring the agency to adopt a written program policy to include a description of the agency's plan for the provision of services required in this chapter. The section also outlines service components which may be provided to clients, including academic support, budget financial management, career preparation, and other support.

**Section 75-03-41-24** is created to require that each client must have their transition plan developed by the agency within thirty days of admission, and that the plan must be developed in collaboration with the client, transition coordinator, and if applicable, the child and family team. The section identifies what documentation must be included in the transition plan.

**Section 75-03-41-25** is created to outline client rights and the responsibilities of agency in preserving client rights.

**Section 75-03-41-26** is created to outline what records must be included within the client file, and to clarify that the records are confidential unless permitted or required.

**Section 75-03-41-27** is created to require that the agency have written policy for incident and sentinel event reporting.

**Section 75-03-41-28** is created to provide that, upon written application and good cause shown, department may grant a variance regarding a specific provision of this chapter upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of any resident cared for by the agency. The section also provides that the agency shall submit a request for a variance in writing to department.

The proposed amendments are not anticipated to have an impact on the regulated community in excess of \$50,000. No taking of real property is involved in this rulemaking action.

Copies of the proposed rules are available for review at county social services offices and at human service centers. Copies of the proposed rules and the regulatory analysis relating to these rules may be requested by telephoning (701) 328-2311. Written or oral data, views, or arguments may be entered at the hearing or sent to: Rules Administrator, North Dakota Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Dept. 325, Bismarck, ND 58505-0250. Written data, views, or arguments on the proposed rules must be received no later than 5:00 p.m. on Friday, June 21, 2019.

**ATTENTION PERSONS WITH DISABILITIES:** If you plan to attend the hearing and will need special facilities or assistance relating to a disability, please contact the Department of Human Services at the above telephone number or address at least two weeks prior to the hearing.

Dated this 9<sup>th</sup> day of May, 2019.

May 9, 2019

RE: Proposed amendments to N.D. Admin. Code chapters 75-03-14, 75-03-15, and 75-03-16 - Family Foster Home for Children, Ratesetting for Providers of Services to Foster Children - Group Homes and Residential Child Care Facilities, and Licensing of Group Homes and Residential Child Care Facilities, and the creation of N.D. Admin. Code chapters 75-03-40 and 75-03-41 - Licensing of Qualified Residential Treatment Program Providers and Supervised Independent Living

TO WHOM IT MAY CONCERN:

The Department of Human Services is proposing amendments to N.D. Admin. Code chapters 75-03-14, 75-03-15, and 75-03-16 - Family Foster Home for Children, Ratesetting for Providers of Services to Foster Children - Group Homes and Residential Child Care Facilities, and Licensing of Group Homes and Residential Child Care Facilities, and the creation of N.D. Admin. Code chapters 75-03-40 and 75-03-41 - Licensing of Qualified Residential Treatment Program Providers and Supervised Independent Living. The department has adopted procedures to assure public input into the formulation of the rules prior to adoption.

In conformity with those procedures, we are providing you with a copy of the proposed rules and are requesting that you provide any written data, views, or arguments no later than 5:00 p.m. on Friday, June 21, 2019.

The department has scheduled an oral hearing for Tuesday, June 11, 2019. Further information concerning the public hearing is included in the attached notice of proposed rulemaking and public hearing.

Your participation is welcomed, as are your suggestions. Please send all written data, views, or arguments to: Rules Administrator, Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Bismarck, ND 58505-0250.

Sincerely,

  
Christopher Jones,  
Executive Director

CDJ/jgl

Enclosures

cc: Vonette Richter, Legislative Council  
Kelsey Bless, Children and Family Services

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