CHAPTER 75-03-14
FAMILY FOSTER HOME FOR CHILDREN

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75-03-14-01. Definitions.

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

1. "Authorized licensing agent" means the department or entity identified or licensed by the department to complete the foster care for children license, certification, or approval home study assessment.

2. "Background check" means a fingerprint-based criminal history record investigation inclusive of a child abuse and neglect index check in each state or tribal jurisdiction that the individual has resided in the previous five years.

3. "Certified foster care provider" means an individual residing in a private dwelling providing temporary care and safety services to no more than three children placed out of the home, unless otherwise approved by the department.

4. "Dwelling" means a home, townhouse, apartment, condominium, or manufactured home where an applicant resides and is approved by the department.

5. "Foster care provider" means an individual residing in a private dwelling who maintains a license, certification, or approval from the department to provide family foster care to children in need of temporary safety services when placed out of the home.

6. "Identified relative foster care provider" means an individual residing in a private dwelling providing temporary care and safety services to no more than six relative children placed out of the home, unless otherwise approved by the department.

7. "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child participating in extracurricular, enrichment, cultural, and social activities.

8. "Supervising agency" means the human service zone, division of juvenile services, or tribe having care, custody, and control of the child in foster care as ordered by a court of competent jurisdiction or the designee of that agency or person.

History: Effective December 1, 1984; amended effective January 1, 2014; April 1, 2016; October 1, 2019; July 1, 2020; April 1, 2024.
General Authority: NDCC 50-11-03

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

75-03-14-02. License, certification, or approval.

1. Application to provide foster care for children license, certification, or approval must be made as prescribed by the department.

2. The licensing or certification process requires completion and documentation of the following items:

   a. Application;

   b. Intial background check;

   c. Initial and annual child abuse and neglect index check;

   d. Training requirements;

   e. Home visits completed by the authorized licensing agent; and

   f. Home study assessment completed by the authorized licensing agent. The assessment may include interviews with each household member determined age appropriate.

3. The license, certification, or approval must be issued to the applicant for a specific number, age, and gender of children eligible to be served in the foster care provider's dwelling.

4. The duration of the license, certification, or approval may not exceed two years.

5. The department may issue a license, certification, or approval with stated limitations, restrictions, and conditions.

6. The license, certification, or approval is not transferable and is valid only for the applicants residing at a physical location noted at the time of issuance, unless otherwise approved by the department. Only one license, certification, or approval may be permitted for each physical location.

7. After reviewing an application, the department may deny a license or certification if:

   a. The application contains fraudulent information;

   b. After completing the home study, the department determines the dwelling is unsanitary;

   c. After completing the home study, the department determines the applicant or dwelling is not properly equipped to provide for the health and safety of the children served; or

   d. The applicant is not in compliance with the regulations prescribed for licensing or certification by the department.

8. If the facility located on or near, as defined by the tribe, a recognized Indian reservation in this state is identified as a foster care provider, and is not subject to the jurisdiction of the state of North Dakota for licensing or certification purposes, the department, with a signed agreement with the tribe, shall accept an affidavit from an agent of the tribal child welfare agency or an appropriate tribal officer in lieu of completing the foster care for children licensing or certification procedure. The department shall issue an approval of the license or certification if the affidavit represents the following:

   a. A home study of the foster care provider was completed by the tribe's child welfare agency or tribal council; and

b. The foster care provider is in compliance with the standards adopted by the tribe for family foster care for children licensing or certification, as described in the agreement signed by the tribe and the department; or

c. The foster care provider is in compliance with the standards required by North Dakota Century Code section 50-11-02, as described in the agreement signed by the tribe and the department.

9. The department may withdraw its approval if the provisions in subsection 8 are no longer met.

History: Effective December 1, 1984; amended effective April 1, 2004; January 1, 2014; October 1, 2019; April 1, 2024.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-01, 50-11-02, 50-11-02.2

75-03-14-03. Minimum physical standards.

The foster care provider shall reside in a dwelling occupied by an individual or a single family. The foster care provider's dwelling must be in compliance with applicable state or local zoning requirements and must meet the following criteria:

1. General dwelling areas must include:

   a. Cleanliness, neatness, and may not include hazards that jeopardize health and safety;

   b. Adequate light, heat, ventilation, and plumbing;

   c. A kitchen with operating sink, refrigerator, stove, and oven;

   d. A bathroom with sink, toilet, and bathtub or shower;

   e. Interior doors that allow for entry from the outside in an emergency when locked;

   f. Exterior doors maintained to permit easy exit;

   g. Doors that prevent a child from being trapped, including closet doors that can open from the inside;

   h. An operational telecommunications device; and

   i. Proper storage of medications, alcohol, poisonous materials, cleaning supplies, and other hazardous materials to prevent access to children, which is appropriate for the age and development of the children in placement.

2. Sleeping space in the dwelling must:

   a. Accommodate the size of the household, including an individual bed and bedding for each child in foster care;

   b. Prohibit co-sleeping or bed sharing with a child in foster care; and

   c. Have more than one exit, including an accessible window that opens to the outside.

3. Fire safety parameters in the dwelling must include:

   a. Compliance with local building code and guidelines prescribed by the local fire department or state fire marshal regarding fire safety in a dwelling;

   b. Completion of a fire safety self-declaration;

(1) The department may request the foster care provider satisfactorily complete a fire inspection by the local fire inspector or, in the absence of a local fire inspector, the state fire marshal; and

(2) If an inspection is required, the foster care provider shall ensure all deficiencies noted during the inspection are remedied in efforts to obtain a license, certification, or approval;

c. Smoke detectors installed and maintained in accordance with the manufacturer's instructions and located in areas defined in the fire code;

d. Carbon monoxide detectors, where applicable, installed and maintained in accordance with the manufacturer's instructions and located in areas defined in the fire code; and

e. 2A 10BC fire extinguishers certified by Underwriters' Laboratories maintained in accordance with the manufacturer's instructions and located in areas defined in the fire code.

4. Food, water, and milk consumption in the dwelling must include:

a. Food in wholesome condition, free from spoilage or contamination, and safe for human consumption;

b. Water supply in compliance with regulations for human consumption as noted in North Dakota Century Code chapter 33.1-16. Water must be from an approved municipal water system where available. If a municipal system is not available, a water sample must pass the approved drinking water standard bacteriological water analysis testing. The foster care provider shall obtain results from an environmental protection agency laboratory approved by the department; and

c. The milk supply consumed in the family foster home for children must be obtained from a department-approved source.

5. Firearms must be kept in locked storage or trigger locks must be used, and ammunition must be kept separate from firearms.

6. Transportation must be available, reliable, legal, and safe to transport children in placement.

7. Pets belonging to the foster care provider must be properly vaccinated per veterinary guidelines.

8. Swimming pools must meet safety standards prescribed by the department. In the ground or aboveground swimming pools with a depth of four feet or greater must have a barrier on all sides to minimize unsupervised access.

9. Hot tubs on the premises must have a safety cover that is locked when not in use.

History: Effective December 1, 1984; amended effective July 1, 1993; April 1, 2004; January 1, 2014; April 1, 2016; October 1, 2019; April 1, 2024.
General Authority: NDCC 50-11-03, 50-11-04
Law Implemented: NDCC 50-11-02

75-03-14-04. Qualifications of individuals residing in the dwelling.

1. An applicant for licensure, certification, or approval must:

a. Be age twenty-one years or greater;

b. Be financially stable with reasonable income or resources available to the foster care provider to properly care for children; and

c. Have functional literacy, demonstrating their ability to read communications delivered by the authorized licensing agent or supervising agency, policy, child care plans, and medication labels.

2. An individual may not smoke or vape in the foster care provider's dwelling or in an enclosed area when the child in foster care is present.

3. A household member, not including a child in foster care, may not exhibit symptoms of a mental health or behavioral health condition, including substance use, that inhibit the applicant's ability to provide care to children.

   a. Upon initial licensing, certification, or approval, an applicant or household member may not have symptoms of a mental health or behavioral health condition, including substance use, inhibiting the applicant's ability to provide care to children for a period of at least twelve months.

   b. Throughout licensing, certification, or approval periods, if an applicant or household member is experiencing symptoms of a mental health or behavioral health condition, including substance use, and a child in foster care is in placement, every effort should be made to keep the placement intact if safety has been assessed and the household member is receiving treatment or services. The authorized licensing agent must reassess the foster care provider's protective capacities to ensure the symptoms do not inhibit the applicant's ability to provide care.

4. A household member, not including a child in foster care, may not have been the subject of a child abuse or neglect assessment where a confirmed decision was made unless the department, after making appropriate consultation with child protective services, approves the issuance of a license, certification, or approval; and

   a. The household member has followed the recommendations of the child protection assessment; or

   b. The household member can demonstrate the elimination of underlying factors precipitating the confirmed decision.

5. The department may require psychological testing for any household member, as determined necessary. The cost of any psychological testing required pursuant to this subsection is the responsibility of the department.

6. Prior to the department approving an initial license, certification, or approval, the applicant shall submit the results of a physical examination dated within twelve months of the date of application. All foster care providers, annually thereafter, shall discuss the health of the provider and all other individuals residing in the dwelling as part of the home study assessment. Any foster care provider continuously licensed prior to October 1, 2019, is exempt from having to submit a physical examination. Identified relative foster care providers are exempt from completing the initial physical exam, unless otherwise determined by the department.

7. The department may require proof of immunizations for all individuals residing in the foster care provider's dwelling, except a child in foster care. It is recommended all members of the household be up to date on immunizations as recommended by a health care professional, unless the immunization is contrary to the individual's health as documented by a licensed health care professional or the individual provides written documentation that immunizations are against the individual's religious, philosophical, or moral beliefs.

8. The department or supervising agency may require a foster care provider specializing in the care of medically fragile children to receive specific vaccines if the needs of the child require such precaution.

9. Physical disabilities or age of a foster care provider does not affect licensing, certification, or approval provided that the applicant can show that these factors do not inhibit the ability to care for children in foster care.

10. A foster care provider shall comply with the department's approved preservice training competencies and demonstrate the ability to apply the skills when caring for children in foster care.

11. A foster care provider shall comply with the department's reasonable and prudent parent standard by allowing children in foster care the opportunity to participate in developmentally and age appropriate activities.

12. A foster care provider shall meet the training requirements defined by the department.

History: Effective December 1, 1984; amended effective April 1, 2004; July 1, 2006; January 1, 2014; April 1, 2016; October 1, 2019; July 1, 2020; April 1, 2022; April 1, 2024.
General Authority: NDCC 50-11-03, 50-11-03.4
Law Implemented: NDCC 50-11-02

75-03-14-04.1. Background checks and criminal conviction - Effect on licensure, certification, or approval.

1. The department requires an initial fingerprint-based criminal background check for each applicant and adult household member residing in the dwelling. Subsequent fingerprint-based background checks are not required when a foster care provider maintains continuous licensure, certification, or approval, unless the authorized licensing agent, supervising agency, or the department determines a need exists to conduct a subsequent investigation.

2. The department requires a child abuse and neglect index check as part of the initial fingerprint-based background check. An annual child abuse and neglect index must be completed and placed in the licensing, certification, or approval file.

3. A foster care provider, or adult household members residing in the dwelling must not be known to have been found guilty of, pled guilty to, or pled no contest to:

   a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or 19-03.1, Uniform Controlled Substance Act, if class A, B, or C felony under that chapter; 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; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery, if a class A or B felony under subsection 2 of that section; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;

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

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

(1) The department may 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 for all other criminal convictions has elapsed.

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

4. The department has determined that the offenses enumerated in subdivisions a and b of subsection 3 have a direct bearing on an individual's ability to provide foster care for children.

5. In the case of offenses described in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-22-01, robbery, if a class C felony; or 12.1-31-07.1, exploitation of an eligible adult - penalty, if a class B or C felony or a class A misdemeanor; or chapter 19-03.1, Uniform Controlled Substance Act, if a class A, B, or C felony; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that an 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 for all other criminal convictions. The department may not be compelled to make such determination.

6. 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.

7. 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 authorized agent or department as a result of a background check.

8. The department may request a fingerprint-based criminal background check whenever a licensed, certified, or approved foster care provider or adult household member is known to have been involved in, charged with, or convicted of an offense.

9. The department shall review fingerprint-based criminal background check results as follows:

a. If an individual disputes the accuracy or completeness of the information contained in the fingerprint-based criminal background check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

b. The department shall assign the individual's request for review to a department review panel.

c. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

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

e. The final decision of the review panel may not be appealed.

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

11. A foster care provider consecutively licensed or approved prior to August 1, 1999, is not required to have a record of a fingerprint-based background check on file.

History: Effective April 1, 2004; amended effective January 1, 2014; April 1, 2016; October 1, 2019; April 1, 2024; October 1, 2024.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02, 50-11-06.8

75-03-14-05. Provisions of service.

Foster care providers shall ensure the health and safety of children placed in their dwelling and provide a safety service to best meet the needs of the child in foster care. The provision of service may be accomplished in many ways, including meeting the daily needs of the child, supporting family connections, and complying with goals and tasks to assist the child in achieving timely permanency. The foster care provider shall:

1. Participate in the child and family team meetings. Child and family team meetings are held at least quarterly, facilitated by the supervising agency to address and review the permanency plan of the child.

2. Cooperate in carrying out the objectives and goals of the permanency plan for the child developed and implemented in collaboration with the supervising agency and child and family team. Foster care providers shall meet the needs of the child while placed in the foster care provider's dwelling.

3. Acknowledge their role as a service provider and recognize, as a foster care provider, they may be considered, but are not guaranteed, to be a permanent option for the child. Foster care providers shall sign an acknowledgment that federal law establishes a permanency preference for children eligible under the Indian Child Welfare Act and North Dakota Century Code chapter 27-19.1 and with identified relatives of the child.

4. If requested by the supervising agency or the juvenile court, provide information concerning the child in foster care and the child's family.

5. Allow public officials to enter the provider's dwelling as determined necessary by the public official to ensure child safety.

6. Allow personnel of the authorized licensing agent or supervising agency to enter the provider's dwelling at any reasonable time. For the purposes of this subsection, "any reasonable time" means a time mutually convenient to the foster care provider and authorized licensing agent or supervising agency personnel or any time the authorized licensing agent or supervising agency determines that a child in foster care's health, safety, or welfare requires the admittance.

7. Cooperate with the supervising agency to make efforts to maintain and improve the relationships between the child in foster care and the child's family, whenever appropriate and

possible. The foster care providers may not attempt to diminish the relationship between the child in foster care and the child's parents or between the supervising agency and the child in foster care.

8. Cooperate with the supervising agency to develop an approved visitation plan with the child's parents or guardian. If it is appropriate, visitation may take place in the foster care provider's dwelling or in a community setting to allow for formal or informal mentoring and support by the foster care provider. If visitation occurs in the foster care provider's dwelling, the provider does not have to allow entry to any individual who has been using alcohol, drugs, or any other intoxicating substance, or who attempts a visit in a manner that is not in accordance with the approved visitation plan.

9. Inform the authorized licensing agent if a child or adult is moving into the dwelling. All changes in the number of individuals living in the foster care provider's dwelling must be reported immediately.

10. Communicate with the supervising agency if a child in foster care is in need of substitute care during the absence of the foster care provider. Prior approval of the substitute care must be given by the supervising agency, not to exceed fourteen calendar days. Prior approval is not required for short periods of substitute care such as a portion of one day. A child in foster care may not be removed from this state without the prior approval of the supervising agency.

11. Make opportunities available for a child in foster care to attend religious ceremonies chosen by the child in foster care, or that child's parents, within the community in which the foster family resides. The foster care provider must respect and not interfere with the religious belief of the child in foster care and the child's family.

12. Engage in appropriate discipline that is constructive or educational in nature and may include diversion, separation, discussions with the child in foster care about the situation, praise for appropriate behavior, and gentle therapeutic physical restraint, for providers with proper training.

    a. No child in foster care may be kicked, bitten, punched, spanked, shaken, pinched, roughly handled, or struck with an object by a foster care provider or any other individual residing in the family foster provider's dwelling.

    b. Cruel and unusual punishments are prohibited.

    c. Authority to discipline may not be delegated to or be accomplished by children.

    d. Separation, when used as discipline, must be brief and appropriate to the age and circumstances of the child in foster care, and when used to discipline a child in foster care, must be within hearing of an adult in a safe, lighted, well-ventilated room. A child in foster care may not be separated from the household in a locked room or closet.

    e. A child in foster care may not be disciplined for lapses in toilet training.

    f. Verbal abuse or derogatory remarks about a child in foster care, the child's family, race, religion, sexual orientation, gender identity, or cultural background may not be used and are not permitted.

    g. A child in foster care may not be force fed unless medically prescribed and administered under a physician's care.

    h. Deprivation of means, including food, clothing, shelter, hygiene, and medical care is not permitted.

13. Maintain confidentiality of all information given to the foster care provider by the supervising agency or the child in foster care's family. Information may not be disclosed to any person without prior approval of the supervising agency.

14. Utilize foster care maintenance payments to meet the needs of the child in foster care.

History: Effective December 1, 1984; amended effective April 1, 2004; January 1, 2014; October 1, 2019; April 1, 2024.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-14-06. Child and family team meeting.

Repealed effective April 1, 2024.

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

Repealed effective April 1, 2024.

75-03-14-08. Fingerprints excused.

Repealed effective April 1, 2024.

75-03-14-09. Identified relative licensing, approval, and waiver.

Applicants who meet the definition of identified relative, who apply to be an identified relative foster care provider shall comply with this chapter and standards for relative licensing prescribed by the department. The department may grant a waiver from a provision of this chapter to an applicant to provide foster care for children if the applicant is an identified relative of a child in foster care. A waiver may not be issued if it would result in a danger to the health and safety of any child in foster care cared for by the child's identified relatives. The department shall prescribe the terms of the waiver. A refusal to grant or revoke an identified relative waiver is not subject to appeal.

History: Effective January 1, 2014; amended effective April 1, 2024.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-14-10. Certification.

Applicants who apply to be a certified foster care provider offering time limited foster care for children shall comply with the standards for certification prescribed by the department.

History: Effective April 1, 2024.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02