

**CHAPTER 75-03-21**  
**LICENSING OF FOSTER HOMES FOR ADULTS**

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**75-03-21-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Abuse" means any willful act or omission of a caregiver or any other individual which results in physical injury, mental anguish, unreasonable confinement, sexual abuse, or exploitation to or of a resident.
2. "Agency" means an organization which monitors the facility.
3. "Applicant" means the individual or individuals completing and submitting to the department an application to be licensed to provide care.
4. "Care" means foster care for adults as defined by North Dakota Century Code section 50-11-00.1 and includes the provision of personal, nonmedical services provided to assist a resident with tasks of a personal nature that are performed daily and which involve such activities as bathing, dressing, toileting, transferring from bed or chair, continence, eating or feeding, and mobility inside the facility.
5. "Department" means the North Dakota department of human services.
6. "Exploitation" means the act or process of a provider using the income, assets, or person of a resident for monetary or personal benefit, profit, gain, entertainment, or gratification.
7. "Facility" means a foster care home for adults.

8. "Home- and community-based setting experience interview" means an instrument used to record information about a resident's experiences in the facility.
9. "License" means a document issued by the department authorizing an applicant to operate a facility.
10. "Mental anguish" means psychological or emotional damage that requires medical treatment or medical care, or is characterized by behavioral changes or physical symptoms.
11. "Monitoring" means overseeing the care provided to a resident by a provider and verifying compliance with laws, rules, and standards pertaining to care and the resident's rights related to the facility.
12. "Neglect" means the failure of the provider to provide the goods or services necessary to avoid physical harm, mental anguish, or mental illness.
13. "Person-centered service plan" means a plan that describes the Medicaid waiver recipient resident's assessed needs, outcomes, and goals and how the services and natural supports provided will assist the resident in achieving their outcomes and live safely and successfully in the community.
14. "Provider" means a primary caregiver in active charge of a facility who has documented qualifications in providing care and is enrolled as a qualified service provider.
15. "Qualified service provider" means an individual who has met all standards and requirements for that status established under chapter 75-03-23.
16. "Resident" means any adult who is receiving care in a facility for compensation on a twenty-four-hour basis, but does not mean any other individual who lives or stays in the facility.
17. "Respite care" means care provided by a respite care provider or substitute caregiver to a resident for the purpose of providing temporary relief to the provider from the stresses and demands associated with daily care or emergencies.
18. "Respite care provider" means an individual enrolled as a qualified service provider who provides respite care to residents, whose care is funded by the state, in the absence of the provider.
19. "Sexual abuse" means conduct directed against a resident which constitutes any of those sex offenses defined in North Dakota Century Code sections 12.1-20-02, 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-06.1, 12.1-20-07, 12.1-20-11, 12.1-20-12.1, and 12.1-20-12.2 and North Dakota Century Code chapter 12.1-41.
20. "Substitute caregiver" means an individual who meets qualified service provider standards and provides respite care to private pay residents in the absence of the provider.

**History:** Effective May 1, 1992; amended effective May 1, 1995; April 1, 1999; September 1, 2004; October 1, 2012; October 1, 2016.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-02. Application.**

1. An application for a license to operate a facility must be made to the department.
2. An application must be made in the form and manner prescribed by the department.

3. An application for a license must be filed immediately upon change of provider or location.
4. An application is not complete until all required information and verifications are submitted to the department, including:
  - a. Fire inspections by the state fire marshal or local fire inspector, if required under subsection 7 of section 75-03-21-06;
  - b. A self-declaration of medical history and, when requested by the department, a report of a physician's examination;
  - c. A report of psychological examinations, when requested by the department;
  - d. Proof of age and relationship, when requested by the department;
  - e. Sanitation and safety inspection reports, when requested by the department;
  - f. Completed application form;
  - g. Drug and alcohol evaluation report, when requested by the department;
  - h. Licensing study report assessing the applicant's compliance with this chapter and North Dakota Century Code chapter 50-11;
  - i. Documentation of completion of a course related to fire prevention and safety;
  - j. Fire safety self-declaration form;
  - k. Evidence that all caregivers are properly qualified to provide care as provided in section 75-03-21-08;
  - l. A successfully completed criminal background check as specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9;
  - m. Examples of service logs to be used to account for service time and tasks performed for each resident;
  - n. An evacuation disaster plan; and
  - o. A sample menu plan compliant with dietary guidelines outlined in subsection 4 of section 75-03-21-11.

**History:** Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; January 1, 2009; October 1, 2012; October 1, 2016; July 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-01-09(6), 50-11-03

#### **75-03-21-03. License.**

1. Issuance of a license to operate a facility indicates compliance with the required standards, rules, and laws at the time of issuance.
2. A license is nontransferable.
3. A license is valid only for the individual or individuals named and the premises described on the license.
4. A license is valid only for the maximum number of residents and gender makeup for which the facility is licensed.

5. An initial license is valid for no longer than twelve months from the date of issuance.
6. A license that is issued after the initial licensing period has expired is valid for no longer than twenty-four months from the date of issuance or the date of expiration of the provider's status as a qualified service provider, whichever occurs first.
7. A provider may obtain both a license to operate a facility and a license as a family foster care home for children, but may not provide services to both adults and children simultaneously without prior written approval from the department.
8. If the private residence of a native American family, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized Indian reservation in North Dakota, an affidavit from an agent of the tribal agency or an appropriate tribal officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:
  - a. That an investigation of the facility was completed by the tribe's agency or tribal council.
  - b. That the prospective facility is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter.
9. If the private residence of an active duty military family, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized military base in North Dakota, an affidavit from an agent of the base agency or other appropriate military officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:
  - a. That an investigation of the facility was completed by the military base's agency.
  - b. That the prospective facility is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter.

**History:** Effective May 1, 1992; amended effective May 1, 1995; March 1, 1997; April 1, 1999; September 1, 2004; October 1, 2012.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-04. Facility.**

1. The facility must be:
  - a. Free of warped or damaged floors, loose or unsecured floor coverings, loose tiles, broken or damaged windows, loose or broken handrails, broken light bulbs, and other hazards that would affect the safety of an adult residing in the facility;
  - b. Maintained free of offensive odors, vermin, and dampness;
  - c. Maintained by a central heating system at a temperature of at least sixty-eight degrees Fahrenheit [20 degrees Celsius];
  - d. Maintained so as to prevent crawling and flying pests from entering the facility through windows;
  - e. Equipped with handrails in all stairways;
  - f. Equipped with nonporous surfaces for shower enclosures;
  - g. Equipped with safety mats or slip-preventing materials on the bottom of tubs and floors of showers; and

- h. Physically accessible for the resident.
- 2. Bedrooms for all residents must be constructed as a bedroom with walls or partitions of standard construction which extend from floor to ceiling and which provide privacy for the resident.
- 3. Bedrooms occupied by one resident must have no less than seventy square feet [6.50 square meters] of usable floor space.
- 4. Bedrooms occupied by two residents must have no less than one hundred twenty square feet [11.15 square meters] of usable floor space and provide for privacy in the sleeping area.
- 5. Bedroom ceilings must be at least six feet and eight inches [203.20 centimeters] above the finished floor surface at the ceiling's lowest point.
- 6. No more than two residents may be assigned to one bedroom and residents sharing a bedroom must have a choice of roommates in that facility.
- 7. Bedroom and bathroom doors must be lockable by the resident for privacy, with only the resident and appropriate staff having keys to the bedroom doors. Any restrictions on having a lockable bedroom or bathroom door must be documented and justified in the person-centered service plan or service and rental agreement.
- 8. Bedrooms occupied by residents may not be located in a level of the facility below grade level unless there are two means of egress, one of which leads to the outside of the facility.
- 9. At least one full bathroom must be available on the same floor as any bedroom occupied by a resident.
- 10. The facility must have a telecommunication device on the main floor available for use by residents.
- 11. Use of video surveillance equipment in the resident's bedroom and bathroom is prohibited.
- 12. Mobile home units used as a facility must:
  - a. Have been constructed since 1976;
  - b. Have been designed for use as a dwelling, rather than as a travel trailer;
  - c. Meet the flame spread rate requirements; and
  - d. Have a manufacturer's label permanently affixed stating the mobile home meets the requirements of the department of housing and urban development or the American national standards institute.

**History:** Effective May 1, 1992; amended effective May 1, 1995; January 1, 2009; October 1, 2012; October 1, 2016.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-05. Sanitation.**

- 1. Septic tanks or other nonmunicipal sewage disposal systems must comply with chapter 62-03.1-03, private sewage disposal systems.
- 2. Rubbish, garbage, and other refuse must be stored in readily cleanable containers and removed from the facility at least every second day. Rubbish, garbage, and other refuse kept

outside of the facility must be stored in readily cleanable, rodent-proof containers and disposed of weekly.

3. The facility must be kept reasonably free of animal feces, urine, and hair.
4. Drinking water must be obtained from an approved community water system or from a source tested by a certified laboratory and approved by the department of environmental quality. A copy of the test report must be submitted to the department. The water and wastewater plumbing systems must comply with article 62-03.1, plumbing installation standards.
5. Milk must be obtained from an approved commercial source.

**History:** Effective May 1, 1992; amended effective September 1, 2004; October 1, 2012; October 1, 2016.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-06. Safety - Inspections.**

1. Pets not confined in enclosures must not present a danger to a resident or the resident's guests based upon the size, temperament, or obedience of the pet. Proof of pet vaccination is required and shall be submitted to the department.
2. The facility must be located where a community or rural fire department is available.
3. Firearms must be stored, unloaded, in a locked cabinet. Any firearms cabinet must be located in an area of the facility that is not readily accessible to residents.
4. Interior doors with a locking mechanism must be provided with a means to unlock the door from either side.
5. The heating and electrical system must be inspected for operability and safety at the time of the initial license application and periodically thereafter if requested by the department.
6. Food preparation areas, equipment, and food storage areas must be clean, free of offensive odors, and in sound working condition.
7. The department may require that the facility be inspected by a local fire inspector or the state fire marshal at the time of initial license application and periodically thereafter if the department suspects that the facility is not fire safe or when structural changes are made to the facility.
8. Deficiencies noted during an inspection must be corrected within sixty days after the issuance of the inspection report.
9. Any fees for the inspections required by the department or costs associated with correcting deficiencies noted during an inspection must be the responsibility of the applicant or provider.

**History:** Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; October 1, 2012.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-07. Insurance.**

The provider shall maintain adequate liability insurance, uninsured motorist coverage, and underinsured motorist coverage, according to the terms and conditions of North Dakota Century Code sections 39-16.1-11, 26.1-40-15.2, and 26.1-40-15.3, on all vehicles operated by the provider or members of the provider's household in which residents may be a passenger.

**History:** Effective May 1, 1992; amended effective May 1, 1995; October 1, 2012.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-08. Provider qualifications.**

1. The provider shall:
  - a. Be twenty-one years of age or older;
  - b. Live continuously in the facility;
  - c. Possess the physical health necessary to provide care;
  - d. Be literate and capable of understanding instructions and communicating in the English language;
  - e. Be free of communicable diseases;
  - f. Be in good physical health, emotionally and functionally stable, and not abusing drugs or alcohol;
  - g. Be a qualified service provider; and
  - h. Successfully complete criminal background check requirements as specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9.
2. In addition to the requirements of subsection 1, the provider shall also:
  - a. Provide evidence of competence in:
    - (1) The generally accepted procedure for infection control and proper handwashing methods;
    - (2) The generally accepted procedure for handling and disposing of body fluids;
    - (3) The generally accepted procedure for tub, shower, and bed bathing techniques;
    - (4) The generally accepted procedure for hair care techniques, bed and sink shampoo, and shaving;
    - (5) The generally accepted procedure for oral hygiene techniques of brushing teeth and cleaning dentures;
    - (6) The generally accepted procedure for caring for an incontinent resident;
    - (7) The generally accepted procedure for feeding or assisting a resident with eating;
    - (8) The generally accepted procedure for basic meal planning and preparation;
    - (9) The generally accepted procedure for assisting a resident with the self-administration of medications;
    - (10) The generally accepted procedures and techniques, which include dusting, vacuuming, sweeping, floor care, garbage removal, changing linens, and other similar tasks, for maintaining a kitchen, bathroom, and other rooms used by residents in a clean and safe condition;

- (11) The generally accepted procedures in laundry techniques, which include mending, washing, drying, folding, putting away, ironing, and related work;
  - (12) The generally accepted procedure for assisting a resident with bill paying and balancing a check book;
  - (13) The generally accepted procedure for dressing and undressing a resident;
  - (14) The generally accepted procedure for assisting with toileting;
  - (15) The generally accepted procedure for routine eye care;
  - (16) The generally accepted procedure for proper care of fingernails;
  - (17) The generally accepted procedure for caring for skin, including giving a back rub;
  - (18) The generally accepted procedure for turning and positioning a resident in bed;
  - (19) The generally accepted procedure for transfer using a belt, standard sit, bed to wheelchair;
  - (20) The generally accepted procedure for assisting a resident with ambulation; and
  - (21) The generally accepted procedure for making beds; or
- b. Meet developmental disability competency standards for homes in which the responsible service provider is licensed according to chapter 75-04-01 and services are provided according to chapter 75-04-07.

**History:** Effective May 1, 1992; amended effective May 1, 1995; April 1, 1999; September 1, 2004; October 1, 2012.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-08.1. Verification and demonstration of competence.**

- 1. A physician, registered nurse, occupational therapist, physical therapist, or other individual with a professional degree in specialized areas of care shall verify in writing, on forms furnished by the department, that a provider is competent to perform each procedure specified in subsection 9 of section 75-03-21-08. Verification that a provider is competent to perform a procedure is evidence of competence with respect to that procedure.
- 2. Competence may be demonstrated in the following ways:
  - a. A demonstration of the procedure being performed;
  - b. A detailed verbal explanation of the procedure; or
  - c. A detailed written explanation of the procedure.

**History:** Effective April 1, 1999; amended effective September 1, 2004; October 1, 2012.

**General Authority:** NDCC 50-06-16

**Law Implemented:** NDCC 50-11-03

**75-03-21-09. General practices.**

The provider:



1. Shall permit a representative of the department, human service zone, or other individual or organization serving a resident entry into the facility without prior notice;
2. Shall provide information about the residents to the department, human service zone, or other individual or organization serving a resident with reasonable promptness;
3. Shall report illness, hospitalization, or unusual behavior of a resident to the individual or organization serving the resident, or to the resident's representative, whichever is appropriate;
4. Shall assure that information related to the resident is kept confidential, except as may be necessary in the planning or provision of care or medical treatment, as related to an investigation or license review under this chapter, or as authorized by the resident;
5. May not practice, condone, facilitate, or collaborate with any form of illegal discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical handicap;
6. Shall accept direction, advice, and suggestions concerning the care of residents from the department, human service zone, or other individual or organization serving a resident;
7. Shall assure that residents receiving care are not subjected to abuse, sexual abuse, neglect, or exploitation;
8. Shall undergo a medical examination, psychological evaluation, or drug and alcohol evaluation when requested by the department when there is reason to believe that such an examination or evaluation is reasonably necessary;
9. Shall authorize the release of a report of any examination or evaluation, required under subsection 8, to the department;
10. Shall immediately report changes in the identity or number of individuals living in the facility to the department;
11. Shall immediately report an inability to provide care to the resident to the department;
12. Shall allow a representative of the department to enter the premises, examine the facility and records maintained with respect to the residents, and interview the residents, provider, and caregivers in order to evaluate compliance with this chapter;
13. Shall cooperate with the department or human service zone in inspections, complaint investigations, planning for the care of a resident, application procedures, and other necessary activities, and allow access of the department, human service zone, ombudsman, or other authorized individuals to the facility and its residents;
14. May not retaliate against any resident, who has filed a complaint with the department or human service zone, by taking away rights or privileges; threatening to take away rights or privileges; or by abusing or threatening to abuse a resident in any manner;
15. Shall meet criteria established by the department for employment outside of the facility;
16. Must be free of influence, control, and direction in the operation of the facility by the landlord if the private residence is being rented;
17. May not use a transfer of ownership of a resident's possessions or property as payments;
18. May not purchase property or possessions from a resident without providing documented proof to the department that the item or property was purchased at fair market value;

19. May not accept or solicit personal property or a purchased item with a fair market value of at least twenty-five dollars that the resident, resident's family, or both, choose to give to the licensed provider;
20. May not accept or solicit personal property or a purchased item with a fair market value of twenty-five dollars or less that the resident, resident's family, or both, chose to give to the licensed provider exceeding more than two times in a calendar year;
21. For the purpose of this section, fair market value means:
  - a. In the case of a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, one hundred percent of apparent fair market value;
  - b. In the case of real or personal property that is subject to reasonable dispute concerning its value:
    - (1) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or anyone acting on the individual's behalf, seventy-five percent of estimated fair market value; or
    - (2) If conveyed to someone in a confidential relationship with the individual or anyone acting on the individual's behalf, one hundred percent of estimated fair market value; and
  - c. In the case of income, one hundred percent of apparent fair market value;
22. Shall notify the department if the provider holds, or will be accepting, appointment as a power of attorney agent for a resident. The department may revoke the license of a provider who holds, or will be accepting, appointment as a power of attorney agent for a resident if the department considers it to be a conflict of interest or a result of undue influence;
23. Shall notify the resident or the resident's legal representative of their right to manage the resident's finances. The provider shall notify the department in writing if the resident, or the resident's legal representative, requests the provider to act as representative payee;
24. Shall provide the department, upon request, an accounting of the resident's expenses, including receipts, for all deposits and expenditures if the provider is assisting a resident with management of personal funds;
25. Shall provide twenty-four-hour care and supervision of all residents residing in the facility, unless otherwise documented and justified in the person-centered service plan or service and rental agreement; and
26. Use of a respite care provider or a substitute caregiver is required in the absence of the provider if the resident cannot safely be left alone as documented and justified in the person-centered service plan or service and rental agreement. Resident or the resident's legal representative shall be allowed to choose their respite care provider.

**History:** Effective May 1, 1992; amended effective May 1, 1995; March 1, 1997; April 1, 1999; September 1, 2004; October 1, 2012; October 1, 2016.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03, 50-11-04

#### **75-03-21-09.1. Criminal conviction - Effect on licensure and operation of a facility.**

1. An applicant may not be an individual who has, and may not permit an individual, except a resident, to reside in the facility or act as a caregiver in the facility if the individual has been found guilty of, pled guilty to, or pled no contest to:
  - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performance by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or North Dakota Century Code section 12.1-17-01, simple assault, if a class C felony under subdivision a of subsection 2 of that section; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery; or 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; 12.1-31-07, endangering an eligible adult; 12.1-31-07.1, exploitation of eligible adult; sections 14-09-22, abuse of child; 14-09-22.1, neglect of child; subsection 1 of section 26.1-02.1-02.1, fraudulent insurance acts; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or
  - b. An offense, other than an offense identified in subdivision a, if the department determines that the individual has not been sufficiently rehabilitated.
2. For purposes of subdivision b of subsection 1, the department :
  - a. 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 without subsequent charge or conviction has elapsed, unless sufficient evidence is provided of rehabilitation; and
  - b. Shall treat completion of a period of three years after final discharge or release from any term of probation, parole, or other form of community corrections, or from imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
3. In the case of an offense described in North Dakota Century Code section 12.1-17-01, simple assault, if a felony; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence, if a misdemeanor; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-18-03, unlawful imprisonment; 12.1-20-05, corruption or solicitation of minors, if a misdemeanor; 12.1-20-07, sexual assault, if a misdemeanor; 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 convictions.
4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on an individual's ability to serve the public in any capacity involving the provision of foster care to adults.

**History:** Effective April 1, 1999; amended effective September 1, 2004; January 1, 2009; October 1, 2012; October 1, 2016; July 1, 2020.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11

**75-03-21-10. Substitute caregiver and respite care provider qualifications.**

1. A substitute caregiver or respite care provider:
  - a. Must be eighteen years of age or older;
  - b. Must not be a resident;
  - c. Must possess qualifications of a provider specified in subsections 1 and 2 of section 75-03-21-08 excluding subdivision b of subsection 1 of section 75-03-21-08; and
  - d. Successfully shall complete criminal background check requirements specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9. If the substitute caregiver's or respite care provider's enrollment as a qualified service provider lapses for more than thirty days, the criminal background check must be repeated if the individual reapplies for enrollment as a qualified service provider subsequent to the lapse.
2. The provider is responsible for the care of residents at all times, even though the duties or tasks of furnishing care have been delegated to a substitute caregiver or respite care provider.
3. Respite care providers are limited to the respite care service funding cap. Residents whose care is being paid by the state can only receive respite care from a respite care provider. Respite care providers shall bill the department for time spent caring for residents in their care.
4. Substitute caregivers who are providing care to private pay residents may not provide resident care on behalf of a facility for more than one hundred ninety-two calendar days during the twenty-four-month period immediately following the renewal date of the initial license or for more than ninety-six days during the twelve-month period immediately following the date of the issuance of the initial license.
5. For purposes of this section, whenever a substitute caregiver or respite care provider provides resident care on behalf of a facility for more than eight hours during a calendar day, the calendar day will be counted toward the one hundred ninety-two calendar day or ninety-six calendar day limit a substitute caregiver may provide resident care on behalf of a facility or toward the respite care service funding cap to which a respite care provider established by the department for each qualifying resident.
6. Employing individuals other than those who meet the definition of substitute caregiver or respite care provider to provide services to a resident is prohibited.

**History:** Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; January 1, 2009; October 1, 2012; October 1, 2016.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-11. Meals and nutrition.**

1. Three meals must be served daily.
2. Residents must be allowed access to food at any time and meal choices must be provided. Any restrictions on access to or choice of food because of health and safety concerns must

be documented and justified in the person-centered service plan or service and rental agreement.

3. There may be no more than fourteen hours between the conclusion of the evening meal and service of breakfast.
4. Each meal must be nutritious and well-balanced in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences.
5. Adequate amounts of food must be available at all meals.
6. The special dietary needs of the residents must be considered in all menu planning, food selection, and meal preparation.
7. Consideration must be given to residents' cultural, ethnic, and religious backgrounds in food preparation.
8. Meals must be regularly and routinely prepared in the facility where the residents live.
9. Charges imposed for resident meals provided by individuals or businesses other than the provider must be paid by the provider unless the provider made a meal available at the facility.

**History:** Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; October 1, 2012; October 1, 2016.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-12. Service and rental agreement.**

The provider shall furnish each prospective resident, or the resident's legal representative, and the department with a signed copy of the provider's service and rental agreement prior to the resident entering the facility. A copy signed by the resident or legal representative and the provider must be kept in the resident's record.

1. The service and rental agreement must include all of the following information:
  - a. Landlord tenant eviction and appeals process;
  - b. Resident's rights to unrestricted telephone access, unless otherwise documented and justified in the person-centered service plan or service and rental agreement;
  - c. Any relevant expectations with which the resident is expected to comply, including restrictions on the use of alcohol or tobacco in the facility;
  - d. Sample menu plan of meals served;
  - e. Procedure concerning the use and management of resident funds;
  - f. Procedure used for billing, collecting, and reimbursing the charge for board, room, and care;
  - g. Policies concerning the furnishing of nonemergency resident transportation by the provider;
  - h. Resident's right to furnish and decorate their bedroom;

- i. Resident's right to control their own schedules and activities, unless otherwise documented and justified in the person-centered service plan or service and rental agreement;
  - j. Resident's right to have visitors of their choosing at any time, unless otherwise documented and justified in the person-centered service plan or service and rental agreement;
  - k. Accurate and complete information regarding the extent and nature of the care to be provided by the provider, including whether or not the client requires twenty-four-hour supervision or the appropriate length of time the resident may be safely left alone; and
  - l. Resident's right to be free from coercion and restraint.
2. All agreement modifications must be supported by a specific assessed need and documented and justified in the person-centered service plan or service and rental agreement.
  3. All agreement modifications made after the date the initial agreement was signed must be in writing and signed by the resident or the resident's legal representative and the provider. The provider shall furnish the resident, or the resident's legal representative, and the department with a signed copy of the modifications. A copy of the modifications must be kept in the resident's records.

**History:** Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; October 1, 2012; October 1, 2016.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-13. Termination of care.**

1. The provider shall terminate care of a resident when care is no longer required or when the provider is no longer qualified to provide the care needed by the resident.
2. The provider who anticipates the termination of care to a resident shall provide the resident, or the resident's legal representative, and the department with at least thirty days' written notice of the termination. The provider shall assist with the transfer of the resident to a setting more appropriate to the resident's needs. The provider also shall comply with the provider's service and rental agreement and landlord tenant eviction laws.
3. If an emergency placement outside of the facility is needed or a resident is hospitalized and the resident's condition has changed to the extent that the provider is no longer able to provide the resident's care, consideration will be given to waiving the thirty-day written notice required under subsection 2 provided keeping the resident or returning the resident to the facility would negatively impact the health and well-being of the resident, other residents living in the facility, or the provider.

**History:** Effective May 1, 1992; amended effective May 1, 1995; January 1, 2009; October 1, 2012; October 1, 2016; July 1, 2020.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-14. Action on license application.**

The department may deny or grant a license. A license may be granted subject to such reasonable limitations, restrictions, or conditions as the department may determine to be necessary and appropriate to assure safety and adequate care for residents for which application has been made.

**History:** Effective May 1, 1992.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-15. Bases for license action - Permitting operation after notice of revocation.**

The department may revoke or deny a license for any of the reasons permitted in law, or any combination of reasons. A revocation or denial based on more than one reason must be affirmed, on appeal, if the evidence supports any reason given for revocation or denial. A provider who receives a notice of revocation, and who makes a timely appeal of that notice, may continue to operate the facility pending a final administrative appeal decision, unless the revocation is based upon reasons which present an imminent danger to the health, welfare, or safety of residents or unless the license expires.

**History:** Effective May 1, 1992; amended effective October 1, 2012.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

**75-03-21-16. Denial or revocation of license.**

The denial of an application or the revocation of a license applies to all individuals who applied to be licensed at the facility or who are listed as providers on the license. An application for a license may be denied or a license may be revoked if:

1. Any conditions set forth in North Dakota Century Code section 50-11-02 as prerequisites for issuance of the license do not exist;
2. The application contains false or misleading material information or the applicant intentionally withholds material information;
3. The license was issued upon false, misleading, or intentionally withheld material information;
4. A licensee, caregiver, employee, or an agent of the facility has violated a provision of this chapter or any of the rules of the department;
5. An applicant, licensee, caregiver, employee, or agent of the facility has been convicted of an offense determined by the department to have a direct bearing upon the individual's ability to serve the public or residents of the facility, or the department determines, following conviction of any other offense, the individual is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1;
6. The facility, or the premises proposed for the facility, is not being or will not be maintained according to this chapter;
7. The facility, or the premises proposed for the facility, is not in sanitary condition or properly equipped to provide good care for all residents who may be received;
8. The provider or proposed provider is not properly qualified to carry out the duties required;
9. The facility, or the premises proposed for the facility, is not being conducted or is not likely to be conducted for the public good in accordance with sound public policy and with due regard for the health, morality, and well-being of all residents; or
10. The provider or proposed provider is not a reputable and responsible individual.

**History:** Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; October 1, 2012.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-17. Distribution of notice of denial or revocation.**

A copy of a notice of revocation or a notice of denial of a license application may be provided to any resident, any individual who resides in a place under circumstances which may require that place to be licensed as a facility for care of that individual, to any guardian, conservator, human service zone, or individual making placement of that resident or individual.

**History:** Effective May 1, 1992; amended effective September 1, 2004; October 1, 2012.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-18. Reapplication after denial or revocation.**

A provider or proposed provider whose license has been revoked or whose license application has been denied may not reapply, without the written permission of the department:

1. Until a final, unappealable determination has been made with respect to the denial or revocation; and
2. For two years after the date of an unappealed denial of a license application or an unappealed revocation of a license, or the date of a final, unappealable decision affirming the appealed denial of a license application or appealed revocation of a license, whichever occurs latest.

**History:** Effective May 1, 1992.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-19. Provisional license.**

The department may issue a provisional license to an applicant who has previously held an unrestricted license.

1. Any provisional license issued must be accompanied by a written statement identifying in what respect the applicant or the facility does not comply with North Dakota Century Code chapter 50-11 and rules governing the provision of care, signed by the department or its designee, and, in writing, be acknowledged by the provider.
2. The applicant shall comply with North Dakota Century Code chapter 50-11 and the rules of the department within the period of time the provisional license is in effect.
3. A provisional license must:
  - a. Prominently state that the facility has failed to comply with all applicable laws and rules of the department;
  - b. State that the items of noncompliance are set forth in a written statement available upon request made to the licensed provider;
  - c. Expire on a set date, not to exceed six months from the date of issuance; and
  - d. Be replaced by an unrestricted license, if the applicant demonstrates compliance satisfactory to the department with all applicable laws and rules within the period of time the provisional license is in effect.
4. A provisional license must be issued only to an applicant who has, in writing, waived:
  - a. The right of a written statement of changes as to the reasons for the denial of an unrestricted license; and



- b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the denial of an unrestricted license either at the time of application or during the period of operation under a provisional license.
5. Subject to the exceptions contained in this section, a provisional license is equivalent to an unrestricted license.

**History:** Effective May 1, 1995; amended effective October 1, 2012; October 1, 2016.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-20. Time period for correcting deficiencies.**

The following time periods are established for correction of deficiencies identified in a correction order:

1. For a deficiency requiring a provider or substitute caregiver to provide written documentation of qualifications in providing foster care for adults, a period of up to thirty days must be allowed to correct the deficiency;
2. For a deficiency that requires an inspection for compliance with fire, safety, and sanitation, a period of up to thirty days must be allowed to correct the deficiency;
3. For a deficiency that requires obtaining and providing the results of a drug and alcohol evaluation, psychological evaluation, or a physical examination, a period of up to sixty days must be allowed to correct the deficiency;
4. For deficiencies that require building remodeling, renovation, or change, a period of up to sixty days must be allowed to correct the deficiency;
5. For all other deficiencies, a period of up to thirty days must be allowed to correct the deficiency;
6. All time periods must commence with the date the correction order is received by the provider; and
7. The department may grant extensions for a period of one-half the original allowable time to correct a deficiency upon demonstration by the provider that the need for an extension is created by circumstances beyond the control of the provider and that the provider has diligently pursued the correction of the deficiency.

**History:** Effective May 1, 1995; amended effective September 1, 2004.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-21. Penalties.**

A licensed provider, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions.

1. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of twenty-five dollars per day: subsections 1, 3, 4, 5, 8, and 10 of section 75-03-21-04; section 75-03-21-05; subsections 3, 4, 5, and 6 of section 75-03-21-06; subsection 4 of section 75-03-21-09; subsection 1 of section 75-03-21-10; subsections 4 and 5 of section 75-03-21-11; and subsection 1 of section 75-03-21-13.

2. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of fifteen dollars per day: subsections 6 and 9 of section 75-03-21-04; subsections 10, 11, 13, 14, and 17 of section 75-03-21-09; and section 75-03-21-12.
3. A violation of any other provision of this chapter not noted in subsections 1 and 2 subjects the licensed provider to a fiscal sanction of five dollars per day.

**History:** Effective May 1, 1995; amended effective April 1, 1999; September 1, 2004; October 1, 2012; October 1, 2016.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-22. Records.**

The following records must be kept and maintained for each resident in the facility:

1. The resident's full name and birth date;
2. The name, address, and telephone number of the resident's legal representative when one exists and an emergency contact;
3. Names, addresses, and telephone numbers of individuals who can assume responsibility or consent to health care under North Dakota Century Code section 23-12-13 for the resident if the legal representative cannot be reached immediately in an emergency;
4. The daily care needed and provided to the resident and the name of the individual or individuals who provided the care;
5. A record of any matter required to be reported under subsection 3 of section 75-03-21-09 and of any accident resulting in injury to a resident; and
6. An accounting of any real or personal property the resident or the resident's family gives, sells, or otherwise transfers to the provider or provider's family.

**History:** Effective May 1, 1995; amended effective September 1, 2004; October 1, 2012.

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03

#### **75-03-21-23. Monitoring.**

The department shall conduct facility visits at time of licensure, licensure renewal, or upon evidence of noncompliance. Monitoring visits at the time of licensure renewal or upon evidence of noncompliance must include home- and community-based setting experience interviews with all residents.

1. Interviews must be completed in the form and manner described by the department; and
2. Interview results must be provided to the department at time of licensure renewal or upon evidence of noncompliance.

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

**General Authority:** NDCC 50-06-16, 50-11

**Law Implemented:** NDCC 50-11-03