

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

SECTION 1. Section 75-03-21-02 is amended as follows:

75-03-21-02. Application.

1. An application for a license to operate a home must be made to the county agency in the county where the applicant proposes to provide foster care for adults.
2. An application must be made in the form and manner prescribed by the department.
3. A fee of twenty-five dollars must accompany the application for a license to operate a family foster home for adults. The fee will be retained by the county agency and used for training and education of the county agency staff who administer the license program.
4. An application for a license must be filed immediately upon change of provider or location.
5. 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;
 - 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 foster care for adults as provided in ~~subsection 8~~ of 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; ~~and~~
 - m. Examples of service logs to be used to account for service time and tasks performed for each resident; and
 - n. A family evacuation disaster plan.

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

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

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

SECTION 2. Section 75-03-21-04 is amended as follows:

75-03-21-04. Facility.

1. The home 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 home;
 - 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 home through windows;
 - e. Equipped with handrails in all stairways;
 - f. Equipped with nonporous surfaces for shower enclosures; and
 - g. Equipped with safety mats or slip-preventing materials on the bottom of tubs and floors of showers.
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.
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.
7. Bedrooms occupied by residents may not be located in a level of the home below grade level unless there are two means of egress, one of which leads to the outside of the home.
8. At least one toilet and bathing facility must be available on the same floor as any bedroom occupied by a resident.
9. The home must have a telecommunication device on the main floor available for use by residents.
10. Mobile home units used as a home 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.

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

Law Implemented: NDCC 50-11-03

SECTION 3. Section 75-03-21-09.1 is amended as follows:

75-03-21-09.1. Criminal conviction - Effect on licensure and operation of home.

1. An applicant may not be an individual who has, and may not permit an individual, except a resident, to reside in the home or act as a caregiver in the home 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 chapters 12.1-16, homicide; 12.1-17, ~~assaults—threats—coercion~~ assaults - threats - coercion - harassment; or 12.1-18, kidnapping; North Dakota Century Code sections 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; 12.1-20-11, incest; 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; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; ~~or~~ 12.1-31-05, child procurement; or 12.1-31.07.1, exploitation of a vulnerable adult; 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, in the case of a provider, or the provider, in the case of a substitute caregiver,~~ determines that the individual has not been sufficiently rehabilitated.
2. For purposes of subdivision b of subsection 1, ~~a provider~~ the department shall treat 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 from imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
3. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on ~~the~~ 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.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11

SECTION 4. Section 75-03-21-10 is amended as follows:

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

1. A substitute caregiver or respite care provider must:
 - a. Be eighteen years of age or older;
 - b. Not be a resident of the home;

- c. 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 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. If a qualified service provider's enrollment 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 foster care of residents at all times, even though the duties or tasks of furnishing resident care have been delegated to a substitute caregiver or respite care provider.
 3. Respite care providers who are caring for residents whose services are funded by the county or state are limited to the respite care service funding cap. Adult family foster care residents whose care is being paid for by the county or state can only receive respite care from an individual who is enrolled by the department as a qualified service provider of respite care ~~by the department~~. Respite care providers ~~must~~ shall bill the department for time spent caring for residents whose care is being paid for by a county or state agency.
 4. Substitute caregivers or respite care providers who are providing care to private pay residents may not be left in charge of the home for more than ~~sixty-one hundred and ninety two~~ one hundred and ninety two calendar days during the twenty-four-month period ~~immediately following the date of issuance of the license~~ renewal date of the initial license or for more than ~~thirty ninety six~~ 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 is left in charge of a family foster home for adults for more than eight hours during a calendar day, the calendar day will be counted toward the ~~sixty-calendar-day~~ one hundred and ninety-two-calendar-day or ~~thirty-calendar-day~~ ninety six-calendar-day limit a substitute caregiver or respite care provider may be in charge of a family foster care home for adults.
 6. Employing individuals other than those who meet the definition of substitute caregiver or respite care provider to provide services to adult family foster care residents is prohibited.

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

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

Law Implemented: NDCC 50-11-03

SECTION 5. Section 75-03-21-13 is amended as follows:

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

1. The provider shall terminate care of a resident when such care is no longer required or when the provider is no longer qualified to provide the care needed by the resident receiving care.
2. The provider who anticipates the termination of care to a resident shall provide the resident and the resident's representative, if any, with at least thirty days'

written notice of the termination, and shall refer or transfer the resident to a setting more appropriate to the resident's needs.

3. If an emergency placement outside of the home 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 home would negatively impact the health and well-being of the resident, other residents living in the home, or the provider. The Department staff responsible for AFFC licensing must be contacted by the regional human service center AFFC representative prior to making the decision to waive the thirty-day requirement.

History: Effective May 1, 1992; amended effective May 1, 1995; January 1, 2009.

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

Law Implemented: NDCC 50-11-03

