

## **ARTICLE 75-04 DEVELOPMENTAL DISABILITIES**

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### **CHAPTER 75-04-01 LICENSING OF PROGRAMS AND SERVICES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES - DEVELOPMENTAL DISABILITIES**

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#### **75-04-01-01. Definitions.**

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

1. "Accreditation" means recognition by a national organization of a licensee's compliance with a set of specified standards.
2. "Applicant" means an entity which has requested licensure from the North Dakota department of human services pursuant to North Dakota Century Code chapter 25-16.
3. "Basic services" means those services required to be provided by an entity in order to obtain and maintain a license.
4. "Client" means an individual found eligible as determined through the application of North Dakota Administrative Code chapter 75-04-06 for services coordinated through intellectual disabilities - developmental disabilities program management, on whose behalf services are provided or purchased.
5. "Client-authorized representative" means a person who has legal authority, either designated or granted, to make decisions on behalf of the client.
6. "Day habilitation" means a day program of scheduled activities, formalized training, and staff supports to promote skill development for the acquisition, retention, or improvement in self-help, socialization, and adaptive skills. Activities should focus on improving a client's sensory, motor, cognitive, communication, and social interaction skills.
7. "Department" means the North Dakota department of human services.
8. "Developmental disability" means a severe, chronic disability of an individual which:
  - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments, including Down syndrome;
  - b. Is manifested before the individual attains age twenty-two;
  - c. Is likely to continue indefinitely;
  - d. Results in substantial functional limitations in three or more of the following areas of major life activity:
    - (1) Self-care;
    - (2) Receptive and expressive language;
    - (3) Learning;

- (4) Mobility;
  - (5) Self-direction;
  - (6) Capacity for independent living; and
  - (7) Economic sufficiency; and
- e. Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.
9. "Employment support" means ongoing supports to assist clients in obtaining and maintaining paid employment in an integrated setting. Services are designed for clients who need intensive ongoing support to perform in a work setting. Service includes on-the-job or off-the-job employment-related support for clients needing intervention to assist them in maintaining employment, including job development. Employment support includes individual employment support and small group employment support.
  10. "Family member" means relatives of a client to the second degree of kinship.
  11. "Family support services" means a family-centered support service contracted based on the client's or primary caregiver's need for support in meeting the health, developmental, and safety needs to remain in an appropriate home environment. Family support services includes parenting support, extended home health care, in-home supports, and family care option.
  12. "Generic service" means a service that is available to any member of the population and is not specific to meeting specialized needs of individuals with intellectual disabilities or developmental disabilities.
  13. "Governing body" means the individual or individuals designated in the articles of incorporation of a corporation or constitution of a legal entity as being authorized to act on behalf of the entity.
  14. "Group home" means any community residential service facility, licensed by the department pursuant to North Dakota Century Code chapter 25-16, housing more than three individuals with developmental disabilities. "Group home" does not include a community complex with self-contained rental units.
  15. "Infant development" means a systematic application of an individualized family service plan designed to alleviate or mediate developmental delay of the client from birth through age two.
  16. "Intellectual disability" means a diagnosis of the condition of intellectual disability, based on an individually administered standardized intelligence test and standardized measure of adaptive behavior as accepted by the American psychiatric association, and made by an appropriately licensed professional.
  17. "Intermediate care facility for individuals with intellectual disabilities" means a residential health facility operated pursuant to title 42, Code of Federal Regulations, parts 442 and 483, et seq.
  18. "License" means authorization by the department to provide a service to individuals with developmental disabilities, pursuant to North Dakota Century Code chapter 25-16.
  19. "Licensee" means that entity which has received authorization by the department, pursuant to North Dakota Century Code chapter 25-16, to provide a service or services to individuals with developmental disabilities.

20. "Prevocational services" means formalized training, experiences, and staff supports designed to prepare clients for paid employment in integrated community settings. Services are structured to develop general abilities and skills that support employability in a work setting. Services are not directed at teaching job-specific skills, but at specific habilitative goals outlined in the client's person-centered service plan.
21. "Primary caregiver" means a responsible person providing continuous care and supervision to an eligible individual that prevents institutionalization in meeting the needs of the client and who is not employed by or working under contract of a provider agency licensed pursuant to this chapter.
22. "Principal officer" means the presiding member of a governing body, a chairperson, or president of a board of directors.
23. "Program management" means a process of interconnected steps which will assist a client in gaining access to needed services, including medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.
24. "Provider agency" means the organization or individual who has executed a Medicaid agreement with the department to provide services to individuals with developmental disabilities.
25. "Resident" means an individual receiving services provided through any licensed residential facility or service.
26. "Residential services" means formalized training and supports provided to clients to assist with and develop self-help, socialization, and adaptive skills that improve the client's ability to independently reside and participate in an integrated community. Residential services include residential rehabilitation and independent habilitation.
27. "Standards" means requirements which result in accreditation by the council on quality and leadership in supports for people with disabilities, certification as an intermediate care facility for individuals with intellectual disabilities, or for employment supports results in accreditation by the commission on accreditation of rehabilitation facilities.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; July 1, 2001; July 1, 2012; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 25-01.2-18, 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-01.2-18, 25-16-06

#### **75-04-01-02. License required.**

No individual, association of individuals, partnership, limited liability company, or corporation shall offer or provide a service or own, manage, or operate a facility offering or providing a service to more than two individuals with developmental disabilities without first having obtained a license from the department unless the facility is:

1. Exempted by North Dakota Century Code section 15.1-34-02; or
2. Operated by a nonprofit corporation that receives no payments from the state or any political subdivision and provides only day supports for six or fewer individuals with developmental disabilities. "Payment" does not include donations of goods and services or discounts on goods and services.

Licensure does not create an obligation for the state to purchase services from the licensed facility.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 2001; July 1, 2012; April 1, 2018.

**General Authority:** NDCC 25-01.2-18, 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-01.2-18, 25-16-02

#### **75-04-01-03. Single or multiple license.**

A single license may be issued authorizing the conduct of multiple services by one applicant or single licenses may be issued authorizing the conduct of each discrete service, at the discretion of the department.

**History:** Effective April 1, 1982.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

#### **75-04-01-04. License denial or revocation.**

The department may deny a license to an applicant or revoke an existing license upon a finding of noncompliance with the rules of the department.

1. If the department denies a license, the applicant may not reapply for a license for a period of six months from the date of denial. After the six-month period has elapsed, the applicant may submit a new application to the department.
2. If the department revokes a license, the licensee may not reapply for a license for a period of one year from the date of the revocation. After the one-year period has elapsed, the licensee may submit a new application to the department.
3. A license denial or revocation may affect all or some of the services and facilities operated by a licensee, as determined by the department.

**History:** Effective April 1, 1982; amended effective June 1, 1986; April 1, 2018.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03, 25-16-08

#### **75-04-01-05. Notification of license.**

1. The department shall, within sixty days from the date of the receipt of an application for a license, or upon finding a licensee in noncompliance with the rules of the department, notify the applicant or licensee's principal officer of the department's intent to grant, deny, or revoke a license.
2. The department shall notify the applicant or licensee in writing. Notification is made upon deposit with the United States postal service. The notice of denial or revocation shall identify any rule or standard alleged to have been violated and the factual basis for the allegation, the specific service or facility responsible for the violation, the date after which the denial or revocation is final, and the procedure for appealing the action of the department.
3. The applicant or licensee may appeal the denial or revocation of a license by written request for an administrative hearing, mailed or delivered to the department within ten days of receipt of the notice of intent to deny or revoke. The hearing must be governed by the provisions of chapter 75-01-03.
4. The licensee may continue to provide services until the final appeal decision is rendered. If clients have been removed from the licensed facility or service because of a health, welfare, or safety issue, they shall remain out of the facility or service while the appeal is pending.

5. The licensee, upon final revocation notification, shall return the license to the department immediately.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2018.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-08

#### **75-04-01-06. Disclosure of criminal record.**

1. Each member of the governing body of the applicant, the chief executive officer, and any employees, volunteers, or agents who receive and disburse funds on behalf of the governing body, or who provide any direct service to clients, shall disclose to the department if they have been found guilty of, pled guilty to, or pled no contest to a criminal offense.
2. The applicant or licensee shall conduct federal and state criminal background checks on all persons employed who work with clients, including volunteers. If the applicant or licensee is contracting or subcontracting with other entities, there must be an agreement ensuring federal and state criminal background checks have been completed on all persons employed who work with clients, including volunteers.
3. The applicant or licensee shall disclose to the department the names, type of offenses, dates of having been found guilty of, pled guilty to, or pled no contest to a criminal offense, and position and duties within the applicant's organization of employees and volunteers with a criminal record.
4. Such disclosure must not disqualify the applicant from licensure or an individual from employment or volunteering, unless having been found guilty of, pled guilty to, or pled no contest to, a crime having direct bearing on the capacity of the applicant, employee, or volunteer to provide a service under the provision of this chapter or the convicted applicant, employee, or volunteer is not sufficiently rehabilitated.
5. The department shall determine the effect of an applicant, employee, or volunteer having been found guilty of, pled guilty to, or pled no contest to, a criminal offense.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; April 1, 2018.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03.1

#### **75-04-01-06.1. Criminal conviction - Effect on operation of provider agency or employment by provider agency.**

1. A provider agency may not employ in any capacity that involves or permits contact between the employee or volunteer and any individual cared for by the provider agency, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
  - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 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 a police 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; 12.1-20-07, sexual assault; 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; 14-09-22, abuse of child; or 14-09-22.1, neglect of child; 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, an offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.
3. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of services to individuals with developmental disabilities.
4. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
5. 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;
  - c. Reported to the provider agency as the result of an employee background check; or
  - d. Discovered by the department.

**History:** Effective July 1, 2001; amended effective April 1, 2018.

**General Authority:** NDCC 25-01.2-18, 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03, 25-16-03.1

#### **75-04-01-07. Content of license.**

A license issued by the department must include the legal name of the licensee, the address or location where services are provided, the occupancy or service limitations of the licensee, the unique services authorized for provision by the licensee, and the expiration date of the license.

**History:** Effective April 1, 1982; amended effective December 1, 1995; April 1, 2018.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-05

#### **75-04-01-08. Types of licenses.**

1. A license issued pursuant to this chapter must be denominated "unrestricted license", "restricted license", or "provisional license".

2. An "unrestricted license" may be issued to an applicant who complies with the rules and regulations of the department and North Dakota Century Code section 25-16-03, and who is accredited by the accreditation council for services for individuals with disabilities, or for employment supports accredited by the rehabilitation accreditation commission (CARF) for existing provider agencies initially and continuously licensed prior to April 1, 2018. The license is nontransferable, expires not more than one year from the effective date of the license, and is valid for only those services or facilities identified thereon.
3. A "restricted license" may be issued subject to the provision of section 75-04-01-09.
4. A "provisional license" may be issued subject to the provision of section 75-04-01-10.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2018.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

#### **75-04-01-09. Restricted license.**

1. A restricted license may be issued to a licensee with an acceptable plan of correction notwithstanding a finding of noncompliance with the rules of the department and North Dakota Century Code section 25-16-03. A restricted license must not be issued to a licensee whose practices or facilities pose a clear and present danger to the health and safety of individuals with developmental disabilities, including fire safety requirements as evidenced in writing by the fire marshal, negligent or intentional misrepresentations to the department regarding any aspect of the licensee's operations, or any violation that places a client's life in danger.
2. A restricted license may be issued for any or all services provided or facilities operated by an applicant or licensee as determined by the department.
3. Upon a finding that the licensee is not in compliance, the department shall notify the licensee, in writing, of its intent to issue a restricted license. The notice must provide the reasons for the action, the specific services that are affected by the restricted license, and describe the corrective actions required of the licensee.
4. The licensee shall, within ten days of the receipt of notice under subsection 3, submit to the department, on a form provided, a plan of correction. The plan of correction must include the elements of noncompliance, a description of the corrective action to be undertaken, and a date certain of compliance. The department may accept, modify, or reject the licensee's plan of correction and shall notify the licensees of their decision within thirty days. If the plan of correction is rejected, the department shall notify the licensee that the license has been revoked. The department may conduct periodic inspection of the facilities and operations of the licensee to evaluate the implementation of a plan of correction.
5. The department shall terminate a restricted license and issue an unrestricted license to the licensee upon successful completion of an accepted plan of correction, as determined by the department.
6. A restricted license may be issued for any period not exceeding one year. A restricted license may be renewed for an additional six months only upon the department's determination the licensee has made significant progress toward meeting the standards identified in the plan of correction or the licensee has shown good cause for failure to implement the plan of correction. A restricted license is nontransferable and valid only for the facilities or services identified thereon. Notice of the granting of a restricted license, or of a decision to modify or reject a plan of correction, may be appealed in the same manner as a notice of revocation of a license.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2018.



**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

**75-04-01-10. Provisional license.**

1. An applicant may submit an application, on a form provided, for a provisional license, permitting the provision of a new provider agency.
2. A "provisional license" may be issued to an applicant who complies with the rules and regulations of the department and North Dakota Century Code section 25-16-03 and who is accredited by the council on quality and leadership for services for individuals with disabilities. The license is nontransferable, expires not more than one year from the effective date of the license, and is valid for only those services or facilities identified thereon.
3. A provisional license may be renewed for an additional six months only upon the department's determination the licensee has made significant progress toward meeting the standards.
4. Notice of a denial of a provisional license may be appealed in the same manner as a notice of revocation of a license.

**History:** Effective April 1, 1982; amended effective December 1, 1995; April 1, 2018.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

**75-04-01-11. License renewal.**

The licensee shall submit to the department, on a form or forms provided, an application for a license not later than sixty days prior to the expiration date of a valid license. If the provider agency continues to meet all standards established by the rules under this chapter, the department shall issue a license renewal annually on the expiration date of the previous year's license.

**History:** Effective April 1, 1982; amended effective April 1, 2018.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

**75-04-01-12. Display of license.**

The licensee shall place the license in an area accessible to the public and where it may be readily seen. Licenses need not be placed on display in residences or residential areas of a facility, but must be available to the public or the department upon request.

**History:** Effective April 1, 1982; amended effective April 1, 2018.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

**75-04-01-12.1. Provider agreement.**

Licensees shall sign a Medicaid provider agreement and required addendums with the department to provide services to individuals with developmental disabilities.

**History:** Effective April 1, 2018.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

#### **75-04-01-13. Purchase of service or recognition of unlicensed entities.**

The department may not recognize or approve the activities of unlicensed entities in securing public funds from the United States, North Dakota, or any of its political subdivisions. The department may not purchase any service from such entities.

**History:** Effective April 1, 1982; amended effective June 1, 1986; April 1, 2018.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-18-03

#### **75-04-01-14. Unlicensed entities - Notification.**

Upon a determination that activities subject to licensure are occurring or have occurred, the department shall notify the parties that the activities are subject to licensure. The notice must include a citation of the applicable provisions of these rules, an application for a license, a date by which the application must be submitted, and, if applicable, a request for the parties to explain that the activities identified in the notification are not subject to licensure. The parties must receive notification within seven days and the entity is required to submit a complete application to the department within thirty days of notice.

**History:** Effective April 1, 1982; amended effective December 1, 1995; April 1, 2018.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-02

#### **75-04-01-15. Standards of the department.**

The department herein adopts and makes a part of these rules for all licensees the current standards used for accreditation by the council on quality and leadership in supports for people with disabilities, additionally, for intermediate care facilities for individuals with intellectual disabilities, standards for certification under title 42, Code of Federal Regulations, parts 442 and 483 et seq., or for employment supports, by the rehabilitation accreditation commission (CARF) for existing provider agencies initially and continuously licensed prior to April 1, 2018. If a licensee fails to meet an accreditation standard, the department may analyze the licensee's failure using the appropriate current standards of the council on quality and leadership in supports for people with disabilities. Infant development licensees who have attained accreditation status by the council on quality and leadership in supports for people with disabilities are not required to maintain accreditation status.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; May 1, 2006; July 1, 2012; April 1, 2018.

**General Authority:** NDCC 25-01.2-18, 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-01.2-18, 25-16-06

#### **75-04-01-16. Imposition of the standards.**

Unaccredited applicants issued a provisional license shall provide the department with a plan to secure accreditation. The licensee, upon request of the department, shall submit copies of reports generated by the accreditation process.

**History:** Effective April 1, 1982; amended effective June 1, 1986.

**General Authority:** NDCC 25-01.2-18, 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-01.2-18, 25-16-06

#### **75-04-01-17. Identification of basic services subject to licensure.**

Services provided to eligible clients must be identified and licensed by the following titles:

1. Residential services:

- a. Residential habilitation; or
  - b. Independent habilitation;
- 2. Day habilitation;
- 3. Intermediate care facility for individuals with intellectual disabilities;
- 4. Employment supports:
  - a. Individual employment supports; or
  - b. Small group employment supports;
- 5. Prevocational services;
- 6. Family support services:
  - a. Parenting supports;
  - b. In-home supports;
  - c. Extended home health care; or
  - d. Family care option; or
- 7. Infant development services.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 1996; July 1, 2001; July 1, 2012; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-06

**75-04-01-18. Identification of ancillary services subject to registration.**

Repealed effective June 1, 1986.

**75-04-01-19. Licensure of intermediate care facilities for the developmentally disabled.**

Repealed effective June 1, 1986.

**75-04-01-20. Applicant guarantees and assurances.**

- 1. Applicants shall submit, in a manner prescribed by the department, evidence that policies and procedures approved by the governing body are written and implemented in a manner which:
  - a. Guarantees each client a person-centered service plan pursuant to the provisions of North Dakota Century Code section 25-01.2-14;
  - b. Guarantees that each client, client-authorized representative, or advocate receives written notice of the client's rights in the manner provided by North Dakota Century Code section 25-01.2-16;
  - c. Guarantees that each client admission is subject to a multidisciplinary determination that placement is appropriate pursuant to North Dakota Century Code section 25-01.2-02;
  - d. Guarantees the client the right to receive authorized services and supports included in his or her person-centered service plan in a timely manner and the opportunity to fully

participate in the benefits of community living, vote, worship, interact socially, freely communicate and receive guests, own and use personal property, unrestricted access to legal counsel, and guarantees that all rules regarding such conduct are posted or made available pursuant to North Dakota Century Code sections 25-01.2-03, 25-01.2-04, and 25-01.2-05;

- e. Guarantees that such restrictions as may be imposed upon a client relate solely to capability and are imposed pursuant to the provisions of a person-centered service plan;
- f. Guarantees the confidentiality of all client records;
- g. Guarantees that the client receives adequate remuneration for compensable labor, that subminimum wages are paid only pursuant to title 29, Code of Federal Regulations, part 525, et seq., that the client has the right to seek employment in integrated settings, that restrictions upon client access to money are subject to the provisions of a person-centered service plan, that assets managed by the applicant on behalf of the client inure solely to the benefit of that client, that each client has a money management plan or documented evidence of the client's capacity to manage money, and that, in the event the applicant is a representative payee of a client, the informed consent of the client is obtained and documented;
- h. Guarantees the client access to appropriate and timely medical and dental care and adequate protection from infectious and communicable diseases, and guarantees effective control and administration of medication, as well as prevention of drug use as a substitute for programming;
- i. Guarantees the client freedom from corporal punishment, imposition of isolation, seclusion, chemical, physical, or mechanical restraint, except as prescribed by North Dakota Century Code section 25-01.2-10 or these rules, and guarantees the client freedom from psychosurgery, sterilization, medical behavioral research, pharmacological research, and electroconvulsive therapy, except as prescribed by North Dakota Century Code sections 25-01.2-09 and 25-01.2-11;
- j. Guarantees, where applicable, that a nutritious diet, approved by a qualified dietitian, will be provided in sufficient quantities to meet the client's dietary needs;
- k. Guarantees the client the right to choose and refuse services, who provides the services, the right of the client and the client's representatives to be informed of the possible consequences of the refusal, alternative services available, and specifically, the extent to which such refusal may harm the client or others;
- l. Assures the client safe and sanitary living and working arrangements and provides for emergencies or disasters and first-aid training for staff;
- m. Assures the existence and operation of both behavior management and human rights committees;
- n. Assures that residential provider agency will coordinate with the developmental and remedial services outside the residential setting in which a client lives;
- o. Assures that adaptive equipment, where appropriate for personal hygiene, self-care, mobility, or communication is provided in the service for use by individuals with disabilities consistent with the person-centered service plan;
- p. Assures that all service staff demonstrate basic professional competencies as required by their job descriptions and complies with all required trainings, credentialing, and professional development activities;

- q. Assures that annual evaluations that measure program outcomes against previously stated goals and objectives are conducted;
  - r. Assures that all vehicles transporting clients are subject to routine inspection and maintenance, licensed by the department of transportation, equipped with a first-aid kit and a fire extinguisher, carry no more individuals than the manufacturer's recommended maximum capacity, handicapped accessible, where appropriate, and are driven by individuals who hold a valid state driver's license;
  - s. Assures that an annual inspection with a written report of safety program and practices is conducted in facilities providing day services;
  - t. Guarantees that incidents of alleged abuse, neglect, and exploitation are thoroughly investigated and reported to the governing body, chief executive officer, client-authorized representative, or advocate, the protection and advocacy project, and the department with written records of these proceedings being retained for three years; guarantees that all incidents of restraint utilized to control or modify a client's behavior are recorded and reported to the governing body; guarantees that any incident resulting in injury to the client or agency staff that requires medical attention or hospitalization must be recorded and reported to the governing body immediately, and as soon thereafter as possible to the client-authorized representative or advocate; and guarantees that incidents resulting in injury to the client or agency staff that requires extended hospitalization, endangers life, or results in permanent disability must also be reported to the department immediately; and guarantees that corrective action plans are implemented;
  - u. Guarantees that a grievance procedure, reviewed and approved by the department, affords the client or the client's authorized representative or advocate the right to a fair hearing of any complaint; and guarantees that records of such hearings are maintained and must note therein the complaint, the names of the individuals complaining, and the resolution of the grievance;
  - v. Assures that policies and procedures are established and maintained for the management and maintenance of property and equipment purchased or depreciated with state funds. The applicant shall make the records, and items identified in them, available for inspection by the department, or designee, upon request to facilitate a determination of the adequacy with which the applicant is managing property and equipment;
  - w. Assures that policies and procedures regarding admission to their services and termination of services are in conformance with the rules of the department;
  - x. Assures that all documentation, data reporting requirements, rules, regulations, and policies are conducted as required by the department; and
  - y. Assures that all applicable federal and state laws and regulations are being abided by.
2. Accredited applicants shall submit evidence, satisfactory to the department, of accreditation.
  3. The department shall determine the degree to which the unaccredited applicant's policies and procedures are in compliance with the standards.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2018.

**General Authority:** NDCC 25-01.2-18, 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-01.2-18, 25-16-06

#### **75-04-01-20.1. Wages of individuals with developmental disabilities.**

Licensees generating income from the direct labor of individuals with developmental disabilities and paying subminimum wages shall submit to the department a true, correct, and current copy of a certificate from the United States department of labor authorizing the payment of subminimum wages.

**History:** Effective December 1, 1995.

**General Authority:** NDCC 25-01.2-18, 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-01.2-18, 25-16-06

#### **75-04-01-20.2. Recording and reporting abuse, neglect, exploitation, and use of restraint.**

1. Licensees shall implement policies and procedures to assure that incidents of alleged abuse, neglect, exploitation, and restraints:
  - a. Are reported to the governing body, chief executive officer or designee of the provider agency, client-authorized representative, advocate, and the protection and advocacy project;
  - b. Are thoroughly investigated, the findings reported to the governing body, chief executive officer or designee of the provider agency, client-authorized representative, advocate, and the protection and advocacy project and that the report and the action taken are recorded in writing and retained for three years; and
  - c. Are immediately reported to the department.
2. Incidents resulting in injury to the staff of the licensee or an individual with developmental disabilities, requiring medical attention, hospitalization, endangering life, or result in a permanent disability must be recorded and reported to the governing body, chief executive officer or designee of the provider agency, and to the department immediately, and as soon thereafter as possible to the client-authorized representative or advocate.

**History:** Effective December 1, 1995; amended effective April 1, 2018.

**General Authority:** NDCC 25-01.2-18, 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-01.2-18, 25-16-06, 50-25.1-02

#### **75-04-01-21. Legal status of applicant.**

The applicant shall submit, in a form or manner prescribed by the department, the following items:

1. A correct and current statement of their articles of incorporation, bylaws, license issued by a local unit of government, partnership agreement, or any other evidence of legal registration of the entity;
2. A correct and current statement of tax exempt or taxable status under the laws of North Dakota or the United States;
3. A current list of partners or members of the governing body and any advisory board with their address, telephone number, principal occupation, term of office, and status as a client or client representative and any changes in this list since last submission;
4. A statement disclosing the owner of record of any buildings, facilities, or equipment used by the applicant, the relationship of the owner to the applicant, and the cost, if any, of such use to the applicant and the identity of the entity responsible for the maintenance and upkeep of the property;
5. A statement disclosing any financial benefit which may accrue to the applicant or applicants to be diverted to personal use, including director's fees or expenses, dividends, return on

investment, rent or lease proceeds, salaries, pensions or annuities, or any other payments or gratuities; and

6. The amount of any payments made to any member or members of the governing board of the applicant or board of a related organization, exclusive of reimbursement for actual and reasonable personal expenses.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2018.

**General Authority:** NDCC 25-01.2-08, 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-01.2-08, 25-16-06

#### **75-04-01-22. Applicant's buildings.**

Applicants occupying buildings, whether owned or leased, shall provide the department with a license or registration certificate properly issued pursuant to North Dakota Century Code chapter 15.1-34 or 50-11 or with:

1. The written report of an authorized fire inspector, following an initial or subsequent annual inspection of a building pursuant to section 75-04-01-23, which states:
  - a. Rated occupancy and approval of the building for occupancy; or
  - b. Existing hazards and recommendations for correction which, if followed, would result in approval of the building for occupancy;
2. A written statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances; and
3. For existing buildings, floor plans drawn to scale showing the use of each room or area and a site plan showing the source of utilities and waste disposal; or
4. Plans and specifications of buildings and site plans for facilities, proposed for use, but not yet constructed, showing the proposed use of each room or area and the source of utilities and waste disposal.

**History:** Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2018; January 1, 2022.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-06

#### **75-04-01-23. Safety codes.**

1. Applicant's intermediate care facilities for individuals with intellectual disabilities shall meet the provisions of either the health care occupancies chapters or the residential board and care occupancies chapter of the Life Safety Code of the national fire protection association, 2000 edition, as determined by the department.
2. Applicant's group home facilities which are not intermediate care facilities for individuals with intellectual disabilities shall meet the applicable life safety standards established by the local governing municipality's ordinances. If the local governing municipality has no ordinances establishing life safety standards, the group home facilities shall meet the one-family and two-family dwellings chapter of the Life Safety Code of the national fire protection association, 2000 edition, as determined by the department.
3. Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from any specific requirement of the Life Safety Code, upon

terms the department may prescribe, except no variance may permit or authorize a danger to the health or safety of the residents of the facility.

4. Applicant's facilities housing individuals with multiple physical disabilities or impairments of mobility shall conform to American National Standards Institute Standard No. A117.1 (1980), or, if remodeled or newly constructed after July 1, 1995, with appropriate standards as required by the Americans with Disabilities Act of 1990, Public Law 101-336.
5. Applicant's and licensee's buildings used to provide day services must conform to the appropriate occupancy chapters of the Life Safety Code of the national fire protection association, 2000 edition, as determined by the department and must meet applicable accessibility standards as required by the Americans with Disabilities Act of 1990, Public Law 101-336. The selection of an appropriate Life Safety Code chapter shall be determined considering:
  - a. Primary activities in the facility;
  - b. The ability of clients occupying the facility to take action for self-preservation in an emergency; and
  - c. Assistance available to clients occupying the facility for evacuation in an emergency.
6. All licensed day service facilities must be surveyed for Life Safety Code compliance at least annually. The department must be notified and a resurvey may be required if any of the following conditions are present between annual inspections:
  - a. Occupancy increases of ten percent or more;
  - b. Primary usage of the facility changes;
  - c. Hazardous materials or processes are introduced into the facility;
  - d. Building alterations or modifications take place;
  - e. Clients requiring substantial assistance to evacuate in an emergency are enrolled;
  - f. There are public or client concerns about safety conditions; or
  - g. Other changes occur in physical facilities, activities, materials and contents, or numbers and capabilities of clients enrolled which may affect safety in an emergency.

**History:** Effective April 1, 1982; amended effective June 1, 1986; August 1, 1987; December 1, 1995; April 1, 2000; May 1, 2004; July 1, 2012; April 1, 2020.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-06

#### **75-04-01-24. Entry and inspection.**

1. The applicant shall affirm the right of the department, or designee, to enter any of the applicant's buildings or facilities and access to its records to determine the extent to which the applicant is in compliance with the rules of the department, to facilitate verification of the information submitted with an application for licensure, and to investigate complaints. Inspections must be scheduled for the mutual convenience of the department and the provider agency unless the effectiveness of the inspection would be substantially diminished by prearrangement.
2. The provider agency shall authorize the department, or designee, entry to its facilities and access to its records in the event the provider agency declares bankruptcy, transfers



ownership, ceases operations, evicts residents of its facilities, or the contract with the department is terminated by either of the parties. The department's entry is for the purpose of facilitating the orderly transfer of clients to an alternative service or the maintenance of appropriate service until an orderly transfer can be made.

**History:** Effective April 1, 1982; amended effective December 1, 1995; April 1, 2018.

**General Authority:** NDCC 25-01.2-08, 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-01.2-08, 25-16-06

#### **75-04-01-25. Access to records.**

The applicant shall affirm the right of duly authorized representatives of the department to inspect the records of the applicant, to facilitate verification of the information submitted with an application for licensure, and to determine the extent to which the applicant is in compliance with the rules of the department.

**History:** Effective April 1, 1982.

**General Authority:** NDCC 25-01.2-08, 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-01.2-08, 25-16-06

#### **75-04-01-26. Denial of access to facilities and records.**

Any applicant or licensee which denies the department, or designee, access to a facility or its records, shall have its license revoked or its application denied.

**History:** Effective April 1, 1982; amended effective December 1, 1995; April 1, 2018.

**General Authority:** NDCC 25-01.2-08, 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-01.2-08, 25-16-06

#### **75-04-01-27. Group home design.**

1. Group home facilities shall be small enough and of a modest design, minimizing the length of hallways, the number of exterior corners, and the complexity of construction, to ensure the development of meaningful interpersonal relationships and the provision of proper programming, services, and direct care. New or remodeled homes completed after July 1, 1985, are limited to occupancy by no more than eight individuals with developmental disabilities.
2. Group home facilities shall simulate the most homelike atmosphere possible in order to encourage a personalized environment.
3. Group home facilities shall provide, at a minimum, enough living space, based on the needs of both males and females, with provisions for privacy and appropriate access to quiet areas where an individual can be alone.
4. Group home facilities shall provide arrangement of space to permit clients to participate in different kinds of activities, both in groups and singly. Space must be arranged to minimize noise and permit communication at normal conversational levels.
5. Group home facilities shall be accessible to nonambulatory visitors and employees.

**History:** Effective June 1, 1986; amended effective December 1, 1995.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

#### **75-04-01-28. Group home location.**

1. Group home facilities shall be located at least three hundred feet [91.44 meters] from hazardous areas, including bulk fuel or chemical storage, anhydrous ammonia facilities, or other fire hazards or sources of noxious or odoriferous emissions.
2. Group home facilities shall not be located in areas subject to adverse environmental conditions, including mud slides, harmful air pollution, smoke or dust, sewage hazards, rodent or vermin infestations, excessive noise, vibrations, or vehicular traffic.
3. Group home facilities shall not be located in an area within the one-hundred-year base flood elevations unless:
  - a. The facility is covered by flood insurance as required by 42 U.S.C. 4101; or
  - b. The finished lowest floor elevation is above the one-hundred-year base flood elevation and the facility is free from significant adverse effects of the velocity of moving water or by wave impact during the one-hundred-year flood.
4. Group home facilities shall be located in residential neighborhoods reasonably accessible to shops, commercial facilities, and other community facilities; and shall be located not less than six hundred feet [182.88 meters] from existing group homes or day service facilities licensed by the department to serve individuals with developmental disabilities, schools for the disabled, long-term care facilities, or other institutional facilities. Upon written application, and good cause shown, the department may grant a variance from the provisions of this subsection upon terms the department may prescribe.

**History:** Effective June 1, 1986; amended effective December 1, 1995.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

#### **75-04-01-29. Group home bedrooms.**

1. Bedrooms in group home facilities must accommodate no more than two individuals.
2. Bedrooms in group home facilities must provide at least eighty square feet [7.43 square meters] per individual in a single occupancy bedroom, and at least sixty square feet [5.57 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space. Bedrooms in newly constructed homes or existing homes converted to group home facilities completed after July 1, 1985, must provide at least one hundred square feet [9.29 square meters] per individual in a single occupancy bedroom, and at least eighty square feet [7.43 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space.
3. Bedrooms in group home facilities must be located on outside walls and separated from other rooms and spaces by walls extending from floor to ceiling and be at or above grade level.
4. Bedrooms in group home facilities must not have doors with vision panels and must be capable of being locked from the inside of the bedroom, except when justified by a specific assessed need and documented in the person-centered service plan.
5. Each client must have the opportunity to furnish and decorate their bedrooms as they choose, such as a chest of drawers, table, or desk.
6. Bedrooms in group home facilities must provide storage space for clothing in the bedroom which is accessible to all, including nonambulatory individuals.

7. Group home facilities shall provide space outside the bedrooms to be equipped for out-of-bed activities for all individuals not yet mobile, except for those who have a short-term illness or those for whom out-of-bed activity is a threat to life.

**History:** Effective June 1, 1986; amended effective December 1, 1995; April 1, 2018.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

#### **75-04-01-30. Group home kitchens.**

1. Kitchens in group home facilities must provide sufficient space to permit participation by both staff and clients in the preparation of food.
2. Kitchens in group home facilities must provide appropriate space and equipment, including a two-compartment sink, to adequately serve the food preparation and storage requirements of the facility.
3. Kitchens in group home facilities must have hot water supplied to sinks in the range of one hundred ten to one hundred forty degrees Fahrenheit [47.22 to 60 degrees Celsius], as controlled by a tempering valve, located to preclude client access.

**History:** Effective June 1, 1986; amended effective December 1, 1995.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

#### **75-04-01-31. Group home bathrooms.**

1. Bathrooms in group home facilities must be located in places that facilitate maximum self-help by clients.
2. Bathrooms in group home facilities must provide showers, bathtubs, and lavatories approximating normal patterns found in homes, unless specifically contraindicated by program needs.
3. Bathrooms in group home facilities must serve only up to four individuals each.
4. At least one bathroom per group home facility must be accessible and usable by nonambulatory visitors and employees.
5. Bathrooms in group home facilities must have hot water supplied to lavatories and bathing facilities in the range of one hundred ten to one hundred forty degrees Fahrenheit [47.22 to 60 degrees Celsius], as controlled by a tempering valve, located to preclude client access.

**History:** Effective June 1, 1986; amended effective December 1, 1995.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

#### **75-04-01-32. Group home laundry.**

1. Laundry space within group home facilities must provide a washer and dryer, storage for laundry supplies, accommodations for ironing, and counterspace for folding clothing and linen.
2. Hot water supplied to clothes washers must be in the range of one hundred thirty-five to one hundred forty degrees Fahrenheit [57.22 to 60 degrees Celsius].

**History:** Effective June 1, 1986; amended effective December 1, 1995.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

#### **75-04-01-33. Group home use of space.**

1. Group home facilities shall provide free use of space within the living unit, with due regard for privacy, personal possessions, and programs; with limitations of personal areas of supervisory staff.
2. Group home facilities shall provide for an individual to personalize the individual's portion of the living unit and mount pictures on the walls.

**History:** Effective June 1, 1986; amended effective December 1, 1995.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

#### **75-04-01-34. Group home staff accommodations.**

Repealed effective December 1, 1995.

#### **75-04-01-35. Water supply.**

1. Group home facilities for individuals with developmental disabilities shall be located in areas where public or private water supplies approved by the department of environmental quality are available. Approved public water supplies must be used where available.
2. When a private water supply is used, water samples must be submitted at the earliest possible date prior to occupancy and every six months thereafter to determine chemical and bacteriological acceptability.

**History:** Effective June 1, 1986; amended effective December 1, 1995.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

#### **75-04-01-36. Sewage disposal.**

1. Group home facilities for individuals with developmental disabilities shall be located in areas where public or private sewage disposal systems approved by the department of environmental quality are available. Approved public sewage disposal systems must be used, where available.
2. Plans and specifications for proposed private sewage disposal system or alteration to such systems must be approved by the department of environmental quality prior to the construction, maintenance, and operation of such systems.

**History:** Effective June 1, 1986; amended effective December 1, 1995.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

#### **75-04-01-37. Emergency plans.**

There must be written plans and procedures, which are clearly communicated to and periodically reviewed with staff and clients for meeting emergencies, including fire, serious illness, severe weather, and missing individuals. Applicable requirements of state law and regulations by the state fire marshal and applicable licensing authorities must be met.

**History:** Effective June 1, 1986; amended effective December 1, 1995.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

#### **75-04-01-38. Insurance and bond requirements.**

1. Licensees shall secure and maintain insurance and bonds appropriate for the size of the programs, including:
  - a. A blanket fidelity bond equal to not less than ten percent of the total operating costs of the program;
  - b. Property insurance covering all risks at replacement costs and costs of extra expense for loss of use;
  - c. Liability insurance covering bodily injury, property damage, personal injury, teacher liability, professional liability, and umbrella liability as applicable; and
  - d. Automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no fault.
2. The department shall determine the adequacy of the insurance coverages maintained by the applicant.

**History:** Effective June 1, 1986; amended effective December 1, 1995.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03

#### **75-04-01-39. Variance.**

Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance, to an institutional intermediate care facility for individuals with intellectual disabilities, or group homes, from subsection 1 of section 75-04-01-27, subsections 1, 2, and 3 of section 75-04-01-29, and subsection 3 of section 75-04-01-31, except no variance may permit or authorize a danger to the health or safety of an individual served by the facility.

**History:** Effective July 1, 1996; amended effective July 1, 2012; April 1, 2018.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-06

#### **75-04-01-40. Documentation and data reporting requirements.**

1. Licensee shall submit and retain all requisite documentation to demonstrate the right to receive payment for all services and supports and comply with all federal and state laws, regulations, and policies necessary to disclose the nature and extent of services provided and all information to support claims submitted by, or on behalf of, the provider agency.
2. The department may require a licensee to submit a statement of policies and procedures, and evidence of the implementation of the statement, in order to facilitate a determination the licensee is in compliance with the rules of the department and with North Dakota Century Code chapters 25-01.2 and 25-16.
3. Licensee shall maintain program records, fiscal records, and supporting documentation, including:
  - a. Authorization from the department for each client for whom service is billed;
  - b. Attendance sheets and other records documenting the days and times the clients received the billed services from the licensee; and
  - c. Records of all bills submitted to the department for payment.

4. Licensee shall report the results of designated quality and performance indicators, as requested by the department.
5. Licensee shall retain a copy of the records required for six years from the date of the bill unless an audit in process requires a longer retention.
6. The department maintains the right to withhold a payment for services or suspend or terminate Medicaid enrollment if the licensee has failed to abide by terms of the Medicaid contract, federal and state laws, regulations, and policies regarding documentation or data reporting.

**History:** Effective April 1, 2018.

**General Authority:** NDCC 25-16-06, 50-06-16

**Law Implemented:** NDCC 25-16-03