CHAPTER 75-03-10
CHILD CARE CENTER EARLY CHILDHOOD SERVICES

Section
75-03-10-01 Purpose [Repealed]
75-03-10-02 Authority and Objective [Repealed]
75-03-10-03 Definitions
75-03-10-04 Effect of Licensing and Display of License
75-03-10-05 Denial or Revocation of License
75-03-10-06 Provisional License
75-03-10-06.1 Restricted License
75-03-10-07 Application for and Nontransferability of Child Care Center License
75-03-10-08 Staffing and Group Size Requirements
75-03-10-09 Duties of Child Care Center Operator
75-03-10-10 Minimum Qualifications of Child Care Center Director
75-03-10-11 Duties of Child Care Center Director
75-03-10-11.1 Minimum Qualifications of Child Care Center Supervisor
75-03-10-11.2 Duties of the Child Care Center Supervisor
75-03-10-12 Minimum Qualifications for All Staff Members Responsible for Caring for or Teaching Children
75-03-10-13 Minimum Health Requirements for All Applicants, Operators, and Staff Members
75-03-10-14 Minimum Qualifications for Volunteers
75-03-10-15 Minimum Standards for Provision of Transportation
75-03-10-16 Minimum Emergency Evacuation and Disaster Plan
75-03-10-17 Fire Inspections
75-03-10-18 Minimum Sanitation and Safety Requirements
75-03-10-19 Minimum Requirements Regarding Space and Lighting
75-03-10-20 Program Requirements
75-03-10-21 Minimum Standards for Food and Nutrition
75-03-10-22 Records
75-03-10-23 Discipline - Punishment Prohibited
75-03-10-24 Specialized Types of Care and Minimum Requirements
75-03-10-25 Minimum Requirements for Care of a Child With Special Needs
75-03-10-26 Minimum Provisions Regarding Emergency Care for Children
75-03-10-27 Effect of Conviction on Licensure and Employment
75-03-10-28 Child Abuse and Neglect Decisions
75-03-10-29 Correction of Violations
75-03-10-30 Fiscal Sanctions
75-03-10-31 Appeals
75-03-10-32 Penalties [Repealed]

75-03-10-01. Purpose.

Repealed effective January 1, 1999.

75-03-10-02. Authority and objective.

Repealed effective January 1, 1999.

75-03-10-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Annual" is defined as the provider's licensing year.

2. "Application" means all forms the department requires when applying or reapplying for a license.

3. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.

4. "Attendance" means the total number of children present at any one time at the facility.

5. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk of chronic physical, developmental, behavioral, or emotional conditions.

6. "Director" means the individual responsible for overseeing the general operation and implementing the policies and procedures of the child care center.

7. "Emergency designee" means an individual designated by the operator to be a backup staff member for emergency assistance or to provide substitute care.

8. "Infant" means a child who is less than twelve months of age.

9. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.

10. "Operator" means the person that has operational responsibility for the early childhood program and premises at which the early childhood service operates.

11. "Owner" means the person that has legal responsibility for the early childhood program and premises at which the early childhood service operates.

12. "Substitute staff" means staff who work less than thirty-two hours per month and are not regularly scheduled for work.

13. "Supervisor" means any individual with the responsibility for organizing and supervising daily child care center activities.

14. "Volunteer" means an individual who visits or provides an unpaid service, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022; January 1, 2023; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-02

75-03-10-04. Effect of licensing and display of license.

1. The issuance of a license to operate a child care center is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.

2. The current license must be displayed prominently in the premises to which it applies.

3. The license must specify the maximum number of children who may be cared for by the center. The child care center may not admit a greater number of children than the license allows.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-10-05. Denial or revocation of license.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.

2. If an action to revoke a license is appealed, the operator may continue the operation of the child care center pending the final administrative determination or until the license expires, whichever occurs first; provided, however, that this subsection does not limit the actions the department may take pursuant to North Dakota Century Code sections 50-11.1-07.8 and 50-11.1-12.

3. The department may revoke a license to operate a child care center without first issuing a correction order or simultaneously with a suspension if continued operation would jeopardize the health and safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

75-03-10-06. Provisional license.

1. The department may issue a provisional license for the operation of a child care center although the applicant or operator fails to, or is unable to, comply with all applicable standards and rules of the department.

2. A provisional license must:

   a. State that the owner has failed to comply with all applicable standards and rules of the department;

   b. State the items of noncompliance;

   c. Expire at a set date, not to exceed six months from the date of issuance; and

   d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance of the provisional license, after the applicant or owner demonstrates compliance, satisfactory to the department, with all applicable standards and rules.

3. The department may issue a provisional license only to an applicant or owner who has waived, in writing:

   a. The right to a written statement of charges 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 nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.

4. Any provisional license issued must be accompanied by a written statement of violations signed by the department and must be acknowledged in writing by the owner.

5. Subject to the exceptions contained in this section, a provisional license entitles the holder to all rights and privileges afforded the holder of an unrestricted license.

6. The department may not issue a provisional license if the child care center is not in compliance with section 75-03-10-17 or 75-03-10-18.

7. The owner shall display prominently the provisional license and agreement.

8. The owner shall provide parents written notice that the child care center is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2020; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-10-06.1. Restricted license.

The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;

2. To restrict a pet or animal from areas accessible to children; or

3. When necessary to inform parents that the owner is licensed, but is restricted to operating in certain rooms or floors or restricted from using specific outdoor space.

History: Effective January 1, 2011; amended effective April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04

75-03-10-07. Application for and nontransferability of child care center license.

An application for a license must be submitted to the department.

1. An applicant shall submit an application for a license to the department. Application must be made in the form and manner prescribed by the department.

2. A license issued under this chapter is nontransferable and is valid only for the premises that are indicated on the license.

3. An application for a new license must be filed by the owner upon change of owner or location.

4. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; July 1, 2020; January 1, 2022; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-10-08. Staffing and group size requirements.

1. The number of staff members and their responsibilities must reflect program requirements and individual differences in the needs of the children enrolled, and may permit mixed-age groups, if necessary. Service personnel engaged in housekeeping and food preparation may not be counted in the child to staff ratio for periods of time when they are engaged in housekeeping or food preparation.

2. a. The operator shall ensure that the child care center is sufficiently staffed at all times to meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at one time. The minimum ratio of staff members responsible for caring for or teaching children to children in child care centers and maximum group size of children must be:

   (1) For children less than eighteen months of age, one staff member may care for four children, a ratio of .25 in decimal form, with a maximum group size of ten children;

   (2) For children eighteen months of age to thirty-six months of age, one staff member may care for five children, a ratio of .20 in decimal form, with a maximum group size of fifteen children;

   (3) For children three years of age to four years of age, one staff member may care for seven children, a ratio of .14 in decimal form, with a maximum group size of twenty children;

   (4) For children four years of age to five years of age, one staff member may care for ten children, a ratio of .10 in decimal form, with a maximum group size of twenty-five children;

   (5) For children five years of age to six years of age, one staff member may care for twelve children, a ratio of .08 in decimal form, with a maximum group size of thirty children; and

   (6) For children six years to twelve years of age, one staff member may care for twenty children, a ratio of .05 in decimal form, with a maximum group size of forty children.

   b. When there are mixed-age groups in the same room, the operator shall ensure:

      (1) The maximum group size is consistent with the:

         (a) Age of the majority of the children; or

         (b) Highest number of children in the youngest age group;

      (2) When children age zero to eighteen months are in the mixed-age group, the maximum group size does not exceed ten children;

      (3) The mixed-age group does not exceed the acceptable ratio pursuant to subdivision d of subsection 2 of section 75-03-10-08 and the maximum number of children per staff member pursuant to subdivision a of subsection 2 of section 75-03-10-08; and

      (4) If the mixed-age group contains the maximum number of children per staff member pursuant to subdivision a of subsection 2 of section 75-03-10-08, the mixed-age group may only contain additional older children.

   c. When there is a mixed-age group, the number of children in each age category is multiplied by the corresponding ratio number, converted to decimal form, and carried to

the nearest hundredth. To determine the number of staff members responsible for caring for or teaching children necessary at any given time, numbers of staff members for all age categories are added, and any fractional staff member count is then rounded to the next highest whole number whenever the fractional staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.

3. If a child with special needs is admitted to the child care center, the child's developmental age level must be used to determine into which age group the child should be placed for determining child to staff ratios.

4. The operator shall ensure that a child with special needs requiring more than usual care and supervision has adequate care and supervision without adversely affecting care provided to the other children in the child care center.

5. An operator licensed for at least two years may apply for a waiver of the required ratio and maximum group size, not to exceed .25 decimal point per group. The department shall consider demonstration of need, health and safety of children, age of children, number of children, and licensing history of the operator in determining whether to approve the application for a waiver. The department may deny an application for waiver and may revoke a waiver granted under this subsection. The decision to deny or revoke a waiver is not an appealable decision. The department shall review each waiver granted under this subsection annually to determine if the circumstances which led to granting the waiver continue to exist.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2013; April 1, 2014; January 1, 2022; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

75-03-10-09. Duties of child care center operator.

The operator is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator shall:

1. Designate a qualified director and shall delegate appropriate duties to the director:

   a. The operator shall ensure that the director or a designated acting director is present at the child care center at least sixty percent of the time when the child care center is open;

   b. The operator shall ensure that the individual designated as an acting director meets the qualifications of a supervisor and for an ongoing period of more than thirty days meets the qualifications of a director; and

   c. The operator shall ensure that when the director and acting director are not present at the center, an individual who meets the qualifications of a supervisor is on duty;

2. Provide an environment that is physically and socially adequate for children;

3. Notify the department of any major changes in the operation, ownership, or governing body of the child care center, including staff member changes;

4. Ensure that liability insurance is carried to insure against bodily injury and property damage for the child care center;

5. Formulate written policies and procedures for the operation of the child care center. Policies must include:

a. Hiring practices and personnel policies for staff members;

b. Methods for obtaining references and employment histories of staff members;

c. Methods of conducting staff member performance evaluations;

d. Children's activities, care, and enrollment;

e. The responsibilities and rights of staff members and parents;

f. An explanation of how accidents and illnesses will be handled;

g. The methods of developmentally appropriate discipline and guidance techniques that are to be used;

h. The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;

i. The care and safeguarding of personal belongings brought to the child care center by a child or by another on a child's behalf;

j. Procedures for accountability when a child fails to arrive as expected at the child care center; and

k. Transportation procedures, if the operator provides transportation;

6. Maintain records of enrollment, attendance, health, and other required records;

7. May select an emergency designee;

8. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the child care center;

9. Ensure that parents of enrolled children and other interested parties are informed of the goals, policies, procedures, and content of the child care center's program;

10. Ensure that parents of enrolled children:

a. Are advised of the child care center's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director;

b. Receive written notice of the effective date, duration, scope, and impact of any significant changes in the child care center's services; and

c. Receive notice that they may request written daily reports for their child, including details regarding eating, napping, and diapering;

11. Ensure that the child care center is sufficiently staffed at all times to meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;

12. Ensure that the child care center has sufficient qualified staff members available to substitute for regularly assigned staff who are sick, on leave, or otherwise unable to be on duty;

13. Ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;

14. Provide parents with unlimited access and opportunities for parents to observe their children while in care, and provide parents with regular opportunities to meet with staff members

responsible for caring for or teaching children before and during enrollment to discuss their children's needs. Providing unlimited access does not prohibit a child care center from locking its doors while children are in care;

15. Provide parents, upon request, with progress reports on their children;

16. Report immediately, as a mandatory reporter, suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;

17. Ensure that staff members responsible for caring for or teaching children under the age of eighteen are supervised by an adult staff member;

18. Meet the qualifications of the director set forth in section 75-03-10-10, if the operator is also the director;

19. Report to the department within twenty-four hours:

    a. A death or a serious accident or illness requiring hospitalization of a child while in the care of the child care center or attributable to care received in the child care center;

    b. An injury to any child which occurs while the child is in the care of the child care center and which requires medical treatment;

    c. Poisonings or errors in the administering of medication;

    d. Closures or relocations of the child care center due to emergencies; and

    e. Fire that occurs or explosions that occur in or on the premises of the child care center;

20. Ensure that children do not depart from the child care center premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for the age and development of the child. The provider shall obtain written parental consent for the child to leave the child care center premises unsupervised, which must specify the activity, time the child is leaving and length of time the child will be gone, method of transportation, and parental responsibility for the child once the child leaves the child care center premises; and

21. Ensure that each child is released only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-10. Minimum qualifications of child care center director.

A director shall:

1. Be an adult of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care;

2. Possess knowledge or experience in management and interpersonal relationships;

3. Hold at least one of the following qualifications, in addition to those set out in subsection 1:

a. A bachelor's degree in the field of early childhood education or child development;

b. A bachelor's degree with at least six months of experience in a child care center or similar setting and one of the following:

(1) Eight semester hours or twelve quarter hours of department-approved early childhood education or child development;

(2) One hundred twenty hours of department-approved early childhood training; or

(3) A director's credential approved by the department;

c. An associate's degree in the field of early childhood education or child development with at least six months of experience in a child care center or similar setting;

d. An associate's degree with at least one year of experience in a child care center or similar setting and one of the following:

(1) Eight semester hours or twelve quarter hours of department-approved early childhood education or child development;

(2) One hundred twenty hours of department-approved early childhood training; or

(3) A director's credential approved by the department;

e. A teaching certificate in elementary education with at least six months of experience in a child care center or similar setting;

f. A current certification as a child development associate or successful completion of a department-approved diploma program with emphasis in early childhood or child care, with at least one year of experience in a child care center or similar setting; or

g. Certification from a Montessori teacher training program with at least one year of experience in a Montessori school, child care center, or similar setting and at least one of the following:

(1) Eight semester hours or twelve quarter hours of department-approved child development or early childhood education;

(2) One hundred twenty hours of department-approved early childhood training; or

(3) A director's credential approved by the department; and

4. Certify annual completion of a minimum of thirteen hours of department-approved training related to child care, including one hour on safe sleep prior to the director providing care to infants and one hour on mandated reporter of suspected child abuse or neglect.. A department-approved basic child care course must be completed within ninety days of employment. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of safe sleep and mandated reporter annual training.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; January 1, 2023; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-11. Duties of child care center director.

The director, in collaboration with the operator, shall:

1. Plan, supervise, and conduct daily activities in the child care center;

2. Maintain required enrollment, attendance, health, and other required records;

3. Screen, schedule, supervise, and be responsible for the conduct of staff members while staff members are on duty; and

4. Perform other duties as delegated by the operator.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-11.1. Minimum qualifications of child care center supervisor.

A supervisor shall:

1. Be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;

2. Have a demonstrated ability in working with children;

3. Hold at least one of the following qualifications:

   a. An associate degree in the field of early childhood development;

   b. Current certification as a child development associate or successful completion of a department-approved diploma program with an emphasis in early childhood or child care;

   c. Certification from a Montessori teacher training program; or

   d. A high school diploma or high school equivalency with at least one year of experience in a child care or similar setting;

4. Possess knowledge and experience in building and maintaining interpersonal relationships;

5. Successfully complete a department-approved basic child care course within ninety days of employment; and

6. Successfully complete a minimum of thirteen hours of department-approved training related to child care each year, and annually thereafter. The supervisor shall certify completion of one hour of department-approved safe sleep training before providing care to infants and one hour on mandated reporter of suspected child abuse or neglect. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of safe sleep and mandated reporter annual training.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2016; January 1, 2023; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-11.2. Duties of the child care center supervisor.

The supervisor, in collaboration with the director, shall:

1. Communicate with parents about the individual needs of their children, including any special concerns the parents may have;

2. Plan daily and weekly schedules of activities and make those plans available to parents; and

3. Ensure that program policies are adhered to in the classes and groups assigned to the supervisor.

History: Effective January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-12. Minimum qualifications for all staff members responsible for caring for or teaching children.

1. Staff members:

   a. Shall be at least fourteen years of age, provided that each staff member under age sixteen has written parental consent for employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07;

   b. Shall be individuals of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;

   c. Shall certify completion of a department-approved basic child care course within ninety days of employment;

   d. Shall be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department;

   e. Shall be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in pediatric first aid by a program approved by the department;

   f. Shall certify the staff member's own successful completion of the department-approved training related to child care each year, and annually thereafter, as set forth below:

      (1) If working thirty or more hours per week, certify thirteen hours of department-approved training annually;

      (2) If working fewer than thirty hours and more than twenty hours per week, certify eleven hours of department-approved training annually;

      (3) If working fewer than twenty hours and at least ten hours per week, certify nine hours of department-approved training annually;

      (4) If working fewer than ten hours per week, certify seven hours of department-approved training annually;

(5) Completion of one hour of department-approved safe sleep prior to the staff member providing care to infants;

(6) Completion of one hour of department-approved mandated reporter of suspected child abuse or neglect training;

(7) The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of safe sleep and mandated reporter annual training; and

(8) Substitute staff and emergency designees are exempt from the annual training requirement with the exception of paragraphs 5 and 6; and

g. Shall not place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health;

2. Receive orientation to the child care center during the first week of employment. The director shall document orientation of each staff member responsible for caring for or teaching children on an orientation certification form. The orientation must address the following:

a. Emergency health, fire, and safety procedures for the child care center;

b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;

c. Any special health or nutrition instructions of the children assigned to the staff member;

d. Any special needs of the children assigned to the staff member;

e. The planned program of activities at the child care center;

f. Rules and policies of the child care center; and

g. Child abuse and neglect reporting laws; and

3. Ensure safe care for children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety is protected.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; April 1, 2018; January 1, 2023; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-13. Minimum health requirements for all applicants, operators, and staff members.

1. If the physical, cognitive, social, or emotional health capabilities of an applicant, operator, or staff member appears questionable, the department may require the individual to present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.

2. A staff member may not use or be under the influence of any illegal drugs or alcoholic beverages while caring for children.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-14. Minimum qualifications for volunteers.

If a volunteer is providing child care, the volunteer shall meet the qualifications of a staff member responsible for caring for or teaching children and shall receive orientation for all assigned tasks.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-15. Minimum standards for provision of transportation.

1. The operator shall establish a written policy governing the transportation of children to and from the child care center, if the child care center provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the child care center. If the child care center provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.

2. When transportation is provided by a child care center, children must be protected by adequate staff member supervision, safety precautions, and liability insurance.

    a. Staffing requirements must be maintained to assure the safety of children while being transported.

    b. A child may not be left unattended in a vehicle.

3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.

4. The driver must be eighteen years of age or older and shall comply with all relevant federal, state, and local laws, including child restraint system laws.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-16. Minimum emergency evacuation and disaster plan.

1. The operator shall establish and post an emergency disaster plan for the safety of the children in care. The operator shall develop written disaster plans in cooperation with local emergency management agencies. The plan must include:

    a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;

    b. Procedures for evacuation, relocation, shelter-in-place, and lockdown;

c. Communications and reunification with families;

d. Continuity of operations; and

e. Accommodations for infants, toddlers, children with disabilities, and children with chronic medical conditions.

2. Fire and emergency evacuation drills must be performed monthly.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2018; January 1, 2022.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-17. Fire inspections.

1. The operator shall ensure that annual fire inspections are completed by local or state fire authorities. The operator shall correct or have corrected any code violations noted by the fire inspector and shall file reports of the inspections and any corrections with the department.

2. The operator shall ensure that the child care center is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.

3. The operator shall provide:

   a. The fire inspector's written statement of compliance with the local fire code, if there is one; or

   b. The fire inspector's written statement that the child care center has been inspected and that the inspector is satisfied that the child care center meets minimum fire and safety standards.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2020; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-18. Minimum sanitation and safety requirements.

1. The operator shall ensure that in child care centers licensed for more than thirty children, where meals are prepared, comply with the public health division of the department child care food service establishment license requirements pursuant to North Dakota Century Code chapter 23-09. If only snacks or occasional cooking projects are prepared, an inspection by the public health division of the department is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the department.

2. The operator shall ensure that the child care center bathroom sinks, toilets, tables, chairs, and floors are cleaned daily.

3. The operator shall ensure that beds, cots, mats, or cribs, complete with a mattress or pad, are available and the operator shall ensure:

   a. Pillows and mattresses have clean coverings.

b. Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.

c. If beds, cots, mats, or cribs are used by different children, sheets and pillowcases are laundered before use by other children.

d. Cots, mats, and cribs are cleaned as often as necessary for cleanliness and hygiene, at least weekly, and after each use if used by different children.

e. That cots, mats, and cribs are single occupancy.

f. Each bed, cot, or mat has sufficient blankets available.

g. That aisles between beds, cots, mats, cribs, and portable cribs are a minimum space of two feet [60.96 centimeters] and are kept free of all obstructions while beds, cots, mats, cribs, and portable cribs are occupied.

h. Provide separate storage for personal blankets or coverings.

i. That mattresses and sheets are properly fitted.

4. The operator shall ensure that the child care center's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and the staff members.

5. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, single-use or individually designated cloth towels, or paper towels must be available at each sink.

6. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys and equipment are kept clean and in sanitary condition. Books and other toys are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.

7. The operator shall ensure that the child care center ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.

8. The operator shall ensure that the garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.

9. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.

10. The operator shall ensure that potential hazards, such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.

11. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.

12. The operator shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.

13. The operator shall take steps to keep the child care center free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the child care center. Insect repellant may be applied outdoors on children with written parental permission.

14. The operator shall ensure that exit doorways and pathways are not blocked.

15. If the child care center is providing care to children in wheelchairs, the operator shall ensure doors have sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the child care center.

16. The operator shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.

17. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.

18. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by the local fire authorities. During the heating season when the child care center is occupied by children, the room temperature may not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].

19. The operator shall ensure that all child care center buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of environmental quality.

20. The operator shall ensure that personal items including combs, pacifiers, and toothbrushes are individually identified and stored in a sanitary manner.

21. Pets and animals.

    a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.

    b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.

c. The operator shall ensure parents are aware of the presence of pets and animals in the child care center.

d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.

e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.

f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.

g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.

h. The operator shall ensure that the child care center is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

22. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the child care center and shall empty, clean, and sanitize wading pools daily.

23. All swimming pools used by children must be approved annually by the local health unit.

24. Aquatic activities:

a. The operator shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the child care center may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.

b. The operator may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

25. Water supply:

a. The operator shall ensure that the child care center has a drinking supply from an approved community water system or from a source tested and approved annually by the department of environmental quality.

b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups.

c. The child care center must have hot and cold running water. The water in the faucets used by children may not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

26. Toilet and sink facilities:

a. The operator shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff members.

b. Toilets must be located in rooms separated from those used for cooking, eating, and sleeping. A minimum of one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained.

c. The operator shall ensure that separate restrooms are provided for boys and girls six years of age and over, and partitions are installed to separate toilets in these restrooms.

d. The operator shall provide child-sized toilet adapters, training chairs, or potty chairs for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.

e. The operator shall provide at least one handwashing sink per toilet room facility or diapering area.

f. The operator shall provide safe step stools to allow children to use standard-size toilets and sinks or the operator shall ensure the availability of child-size toilets and sinks.

27. The operator of a child care center not on a municipal or public water supply or wastewater disposal system shall ensure the child care center's sewage and wastewater system has been approved by the department of environmental quality.

28. Laundry:

a. If the child care center provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation.

b. The operator shall ensure that soiled linens are placed in closed containers or hampers during storage and transportation.

c. The operator shall ensure that in all new or extensively remodeled child care centers, the handling, sorting, or washing of soiled linens or blankets takes place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas.

d. The operator shall ensure that in an existing child care center where physical separation of laundry and kitchen areas is impractical, procedures are developed that prohibit the washing or transportation of laundry while meals are being prepared or served.

e. The operator shall ensure that sorting of laundry is not allowed in food preparation, serving, or kitchen areas.

f. If the child care center provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the operator shall ensure that water temperature must be greater than one hundred forty degrees Fahrenheit [60 degrees Celsius].

g. The operator shall ensure that if the water temperature is less than one hundred forty degrees Fahrenheit [60 degrees Celsius], bleach or sanitizer is used in the laundry process during the rinse cycle or the child care center shall use a clothes dryer that reaches a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius].

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2023; April 1, 2024.

General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-19. Minimum requirements regarding space and lighting.

1. Each operator shall provide adequate indoor and outdoor space for the daily activities of all children within the licensed capacity of the child care center.

2. Adequate space must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the child care center at one time, the total appropriate outdoor play space available must not be less than what is required for the number of children in the largest class or group of the center multiplied by seventy-five square feet [6.97 square meters]. Operators who provide seventy-five square feet [6.97 square meters] of separate indoor recreation space per child for the largest class or group are exempt from the outdoor space requirement. The child care center operator shall prepare a written schedule of outdoor or separate indoor recreation space playtime which limits use of the play area to its capacity, giving every child an opportunity to play daily.

3. The child care center must be properly lighted. If the lighting of the child care center appears questionable, the department may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-20. Program requirements.

1. The child care center operator shall have a program of daily individual or small group activities appropriate to the ages and needs of the children in the child care center. The program must include activities which foster sound social, cognitive, emotional, and physical growth, and the program must be developed with consideration of parental input. A written daily routine including mealtimes, rest times, planned developmentally appropriate activities, free play, and outside time must be available to parents. The daily routine must be flexible enough to allow for spontaneous activity as appropriate.

2. The program must be flexible and subject to modification for individual child differences.

3. The program must be written and varied to promote the physical and emotional well-being of the children, to encourage the acquisition of information and knowledge, and to foster the development of language skills, concepts, self-discipline, and problem-solving activities. The program must describe how the activities planned meet the children's developmental needs, including the special needs of children. The written program must be made available to parents.

4. The program must include firsthand experiences for children to learn about the world in which they live.

5. Learning experiences must be conducted in consultation with parents to ensure harmony with the lifestyle and cultural background of the children.

6. The program must provide a balance of quiet and active indoor and outdoor group and individual activities. A time for supervised child-initiated and self-selected activity must be established.

7. If children are allowed to assist in any food preparation, the activity must be limited to use of equipment and appliances that do not present a safety hazard. Children may not be allowed in the kitchen or laundry area unsupervised.

8. A variety of games, toys, books, crafts, and other activities and materials must be provided to enhance the child's intellectual and social development and to broaden the child's life experience. Each child care center must have enough play materials and equipment so, that at any one time, each child in attendance may be involved individually or as a group.

9. The cultural diversity of the children must be reflected in the program through incorporation of their language, food, celebration, and lifestyles, if appropriate.

10. Equipment and furniture must be durable and safe and must be appropriately adapted for children's use.

11. Sufficient space accessible to children must be provided for each child's personal belongings.

12. The child care center shall supplement, augment, and reinforce the child's activities at home and, where applicable, at school.

13. At the time of enrollment, the director or supervisor shall discuss with the parents the children's habits, activities, and schedules while at home and in school and the parents' special concerns about their past and future behavior and development. The schedule and activities must be designed to complement and supplement the children's experiences at home and in school.

14. Staff members responsible for caring for or teaching children shall encourage parents to visit the facility, observe, and participate in the care of their children.

15. The director or supervisor shall contact parents to offer meaningful opportunities to participate in general program policymaking.

16. The child care center shall stress personal hygiene practices appropriate for a child's age and development.

17. The director or supervisor shall contact parents to exchange information concerning the child and any concerns about the health, development, or behavior of the child. These concerns must be communicated to the parent promptly and directly.

18. Each child's cultural and ethnic background and primary language or dialect must be respected by the staff members.

19. Each child care center shall have a designated area where a child can sit quietly or lie down to rest. There must be sufficient cots or sleeping mats to allow each child in attendance an individual napping space. The floor may be used only when the floor is carpeted or padded, warm, and free from drafts, and when individual blankets or coverings are used. The child care center shall set napping schedules for children according to the children's ages and needs. For children unable to sleep, the director or supervisor shall provide time and space for quiet play.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-21. Minimum standards for food and nutrition.

1. When the operator is responsible for providing food to children, the food supplied must meet United States department of agriculture standards and must be properly prepared, sufficient in amount, nutritious, varied according to diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in a child care center must be treated in a sanitary and safe manner with sanitary and safe equipment.

2. When parents bring sack lunches for their children, the operator may supplement lunches, as necessary, to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.

3. Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of the day.

4. The operator shall serve nutritious meals to children in care during any normal mealtime hour.

5. The operator shall serve snacks to children in care in afterschool child care center programs.

6. When the operator is responsible for providing food to children, menus must be prepared on a weekly or daily basis and made available to the parents, the department, and other appropriate individuals.

7. The operator shall consider information provided by the children's parents as to the children's eating habits, food preferences, or special needs in creating the feeding schedules and in tailoring menus.

8. The operator shall serve snacks and meals to children in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.

9. The operator or staff member may encourage children to eat the food served, but the operator or staff member may not coerce or force-feed children.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2020; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-07, 50-11.1-08

75-03-10-22. Records.

1. The operator shall keep a copy of this chapter on the premises of the child care center and shall make it available to staff members at all times.

2. The operator shall maintain the following records:

   a. The child's full name, birth date, and current home address;

   b. Legal names of the child's parents and current business and personal telephone numbers where they can be reached;

   c. Names and telephone numbers of individuals who may assume responsibility for the child if the individuals legally responsible for the child cannot be reached immediately in an emergency;

d. A written statement from the parents authorizing emergency medical care;

e. Names and telephone numbers of individuals authorized to take the child from the child care center;

f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the public health division of the department, or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs; and

g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.

3. The operator shall record and verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the operator considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.

4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents of each child, and to the following, unless otherwise protected by law:

a. The department representatives;

b. Individuals having a definite interest in the well-being of the children concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and

c. Individuals who possess a written authorization from the child's parent. The child care center shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2022; January 1, 2023; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-23. Discipline - Punishment prohibited.

Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, or neglect, or abuse, to any child is grounds for license denial or revocation:

1. The child care center must have a written policy regarding the discipline of children. The operator shall provide the policy to, and discuss the policy with, the staff members responsible for caring for or teaching children before the child care center begins operation or before staff members begin working with children.

2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint, such as holding. A child may not be subjected to physical harm, fear, or humiliation.

3. Authority to discipline may not be delegated to children nor may discipline be administered by children.

4. Separation, when used as discipline, must be appropriate to the child's development and circumstances. The child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult staff member responsible for caring for or teaching children. A staff member may not isolate a child in a locked room or closet.

5. A child may not be punished for lapses in toilet training.

6. A staff member may not use verbal abuse or make derogatory remarks about a child, or a child's family, race, or religion when addressing the child or in the presence of a child.

7. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.

8. A staff member may not force-feed a child or coerce a child to eat, unless medically prescribed and administered under a medical provider's care.

9. A staff member may not use deprivation of meals or snacks as a form of discipline or punishment.

10. A staff member or any other adult in or at the child care center may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.

11. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.

12. A staff member may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-24. Specialized types of care and minimum requirements.

1. Infant care.

   a. Environment and interactions.

      (1) A child care center serving children from birth to twelve months shall provide an environment which protects the children from physical harm.

      (2) The operator shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children or emergency designee such as the staff member or emergency designee holding, rocking, talking with, or singing to the child.

      (3) A staff member shall respond to comfort an infant's or toddler's physical and emotional distress:

         (a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and

(b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.

(4) The operator shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, uncluttered area.

(5) Staff members responsible for caring for or teaching children shall take children outdoors or to other areas within the child care center for a part of each day to provide children with some change of physical surroundings and to allow them to interact with other children.

(6) The operator shall ensure that low chairs and tables, high chairs with trays, or other age-appropriate seating systems are provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.

(7) The operator shall ensure that infants are not shaken or jostled.

(8) The operator shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

b. Feeding.

(1) The operator shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed in writing by the infant's parent or medical provider in writing.

(2) The operator shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider in writing.

(3) The operator shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.

(4) The operator shall ensure that frozen breast milk is thawed under cool running tap water, or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent within twenty-four hours.

(5) The operator shall ensure that an infant is not fed by propping the bottle.

(6) The operator shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.

(7) The operator shall ensure that staff members responsible for caring for or teaching children, emergency designee, or substitute staff are within sight and hearing range of an infant during the infant's feeding or eating process.

c. Diapering.

(1) The operator shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the child care center if children requiring diapering are in care.

(2) The operator shall ensure that diapers are changed promptly and in a sanitary manner when needed.

(3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.

(4) The operator shall ensure that soiled or wet diapers are stored in a sanitary, covered container, separate from other garbage and waste until removed from the child care center.

d. Sleeping.

(1) The operator shall ensure that infants are placed on their back initially when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.

(2) The operator shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.

(3) The operator shall ensure that if an infant falls asleep while not in a crib, the infant must be moved immediately to a crib or portable crib, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise.

(4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.

(5) The operator shall ensure that all items are removed from and that no toys or objects are hung over or attached to the crib or portable crib when an infant is sleeping or preparing to sleep. With written parental permission, the provider may place one individual infant blanket or sleep sack, a pacifier, and a security item that does not pose a risk of suffocation to the infant in the crib or portable crib while the infant is sleeping or preparing to sleep.

(6) The operator shall ensure that a staff member responsible for caring for or teaching children checks on sleeping infants regularly and that a monitor is in the room with the infants, unless a staff member is in the room with the infants while the infants are sleeping.

e. The operator shall ensure that parents of each infant receive a written daily report detailing the infant's sleeping and eating processes for the day, and the infant's diapering schedule for the day.

2. Night care.

a. Any child care center offering night care shall provide program modifications for the needs of children and their parents during the night.

b. In consultation with parents, attention must be given by the staff member responsible for caring for or teaching children to provide a transition into this type of care appropriate to the child's needs.

c. The operator shall encourage parents to leave their children in care and pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parent's work schedule.

d. The operator shall ensure that children under the age of six are supervised when bathing.

e. The operator shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available.

f. The operator shall require each child in night care to have night clothing and a toothbrush marked for identification.

g. The operator shall ensure that during sleeping hours, staff members are awake and within hearing range to provide for the needs of children and to respond to an emergency.

3. Drop-in child care.

a. If a child care center serves drop-in children, schoolchildren, or before-school and afterschool children, the child care center must be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the child care center and to maintain the proper staff member to child ratio.

b. The operator shall ensure that the program reflects the individual needs of the children who are provided drop-in care.

c. The operator shall ensure that admission records comply with all enrollment requirements contained in section 75-03-10-22.

d. The operator shall ensure that admittance procedures provide for a period of individual attention for the child to acquaint the child with the child care center, its equipment, and the staff members.

e. A child care center may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the child care center to exceed the total number of children for which the child care center is licensed.

4. An operator shall ensure that a child care center serving only drop-in care children complies with this chapter, but is exempt from the following provisions:

a. The maximum group size requirements listed in section 75-03-10-08;

b. Subsections 5, 9, 12, 13, 14, 15, and 19 of section 75-03-10-20; subsections 6 and 7 of section 75-03-10-21; subdivision f of subsection 2 of section 75-03-10-22; and subsection 1 of section 75-03-10-25; and

c. A child care center serving only drop-in care children is exempt from the outdoor space requirements.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2023; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-25. Minimum requirements for care of a child with special needs.

An operator shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of children with special needs. The child care center shall receive documentation of the child's special needs from the parent upon the child's enrollment.

1. When a child with special needs is admitted, the director or supervisor shall consult with the child's parents, and, with the parent's permission, the child's source of professional health

care, or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The operator shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.

2. The operator shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's special needs and potential for growth and development.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-26. Minimum provisions regarding emergency care for children.

The child care center shall have written plans to respond to illness and emergencies, including burns, serious injury, and ingestion of poison. The operator shall ensure that parents of enrollees are advised of these plans. Plans must:

1. Establish emergency response procedures;

2. Provide accessible posting of emergency response procedures and require training for all staff members concerning those emergency procedures;

3. Require the availability of at least one working flashlight;

4. Require at least one department-approved first-aid kit maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times;

5. Provide a working telephone line immediately accessible to staff members with a list of emergency telephone numbers conspicuously posted;

6. Require a plan for responding to minor illnesses and minor accidents when children are in the care of the child care center;

7. Require written permission to dispense medication and proper instructions for the administration of medication obtained from the parent of a child in the child care center who requires medication:

   a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to dosage and storage, and labeled with the child's name and date;

   b. Medication must be stored in an area inaccessible to children, and medication stored in a refrigerator must be stored collectively in a spillproof container;

   c. The operator shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child; and

   d. The operator shall include completed medication records in the child's record;

8. Require a supervised temporary isolation area designated for a child who is too ill to remain in the child care center or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:

   a. Parents are notified immediately and asked to pick up their child; and

   b. First aid is provided and medical care is sought as necessary;

9. Establish and implement practices in accordance with guidance obtained through consultation with local health unit authorities or authorities from the public health division of the department implemented regarding the exclusion and return of children with infectious or communicable conditions. The operator may obtain this guidance directly or through current published materials regarding exclusion and return to the child care center;

10. Notify parents, legal custodians, or guardians of a child's exposure to a presumed or confirmed reportable infectious disease;

11. Identify a source of emergency health services readily available to the child care center, including:

    a. A prearranged plan for emergency medical care in which parents of enrollees are advised of the arrangement; and

    b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume responsibility for the child's care and until the parent is notified;

12. Require information be provided to parents, as needed, concerning child health and social services available in the community; and

13. Require that the child care center inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, immediately notify parents of any injury which requires emergency care beyond first aid, and require each injury report to be made a part of the child's record.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2023; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-27. Effect of conviction on licensure and employment.

1. An applicant, operator, director, or supervisor may not be, and a child care center may not employ or allow, in any capacity that involves or permits contact between the emergency designee, substitute staff member, or staff member and any child cared for by the child care center, an operator, emergency designee, substitute staff member, director, supervisor, or staff member who 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 performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-17-01, simple assault; 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, harassment; 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 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; 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;

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

c. An offense other than an offense identified in subdivision a or b, if the department in the case of a child care center applicant, operator, director, or supervisor, or the operator in the case of an emergency designee, substitute staff, or staff member, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, operator's, emergency designee's, substitute staff member's, director's, supervisor's, or staff member's ability to serve the public as an operator, emergency designee, substitute staff member, director, supervisor, or staff member.

3. 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, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; 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 conviction.

4. The operator shall establish written policies and engage in practices that conform to those policies to effectively implement this section before hiring any staff member.

5. An owner shall submit an application for a fingerprint-based criminal history record check at the time of application and within five years from the date of initial approval and at least once every five years thereafter. The owner shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and within five years from the date of initial approval and at least once every five years thereafter. The department may excuse an individual from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If an individual is excused from providing fingerprints, the department shall submit a request to the bureau of criminal investigation for a nationwide name-based criminal history record check.

6. Review of fingerprint-based criminal history record check results.

a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

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

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-10-28. Child abuse and neglect decisions.

An owner and operator shall ensure safe care for the children receiving services in the child care center.

1. If a confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, owner, operator, director, supervisor, emergency designee, substitute staff member, or staff member, that decision has a direct bearing on the applicant's, owner, or operator's ability to serve the public in a capacity involving the provisions of child care and the application or license may be denied or revoked. If a confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, owner, operator, director, supervisor, emergency designee, substitute staff member, or staff member, the applicant or operator shall furnish information satisfactory to the department, from which the department can determine the applicant's, owner, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator.

2. Each applicant, owner, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete, and the operator shall submit to the department, a department-approved authorization for background check form no later than the first day of employment.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-29. Correction of violations.

1. Within ten business days of mailing or within three days of electronic transmission of the correction order, the owner shall notify the parents of each child receiving care at the child care center that a correction order has been issued. In addition to providing notice to the parent of each child, the owner shall post the correction order in a conspicuous location within

the child care center until the violation has been corrected or for five days, whichever is longer.

2. Violations noted in a correction order must be corrected:

   a. For a violation of North Dakota Century Code section 50-11.1-02.2; section 75-03-10-04 or 75-03-10-08; subsection 12 of section 75-03-10-09; subdivision e of subsection 1 of section 75-03-10-12; subsection 3 of section 75-03-10-12; subsection 3, 6, 9, or 10 of section 75-03-10-18; section 75-03-10-23; or subsection 1 of section 75-03-10-24, within twenty-four hours;

   b. For a violation requiring the hiring of a child care supervisor with those qualifications set forth in section 75-03-10-11.1, or a child care center director with those qualifications set forth in section 75-03-10-10, within sixty days;

   c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-10-17, within sixty days;

   d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and

   e. For all other violations, within twenty days.

3. All periods for correction begin on the date of receipt of the correction order by the owner and operator.

4. The department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the owner and a showing that the need for the extension is created by unforeseeable circumstances and the owner has diligently pursued the correction of the violations.

5. The owner shall furnish a written notice to the department upon completion of the required corrective action. The correction order remains in effect until the department or its authorized agent confirms that the corrections have been made.

6. At the end of the period allowed for correction, the department shall reinspect a child care center that has been issued a correction order. If, upon reinspection, the department determines that the child care center has not corrected a violation identified in the correction order, the department shall mail or send by electronic mail a notice of noncompliance with the correction order to the owner and operator. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.

7. If a child care center receives more than one correction order in a single year, the owner and operator may be referred by the department for consulting services to assist the owner in maintaining compliance and to avoid future corrective action.

8. Refutation process for a correction order:

   a. An owner may refute a correction order by submitting a refutation request in writing on the form provided by the department within five calendar days of receiving the correction order.

   b. The department shall respond to written refutations within five business days of receipt.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended

effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; July 1, 2020; January 1, 2022; April 1, 2024.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

75-03-10-30. Fiscal sanctions.

1. The department shall assess a fiscal sanction of twenty-five dollars per day for each violation of North Dakota Century Code chapter 50-11.1; subsection 2 of section 75-03-10-08; subsection 12 of section 75-03-10-09; section 75-03-10-17; subsection 6, 9, or 13 of section 75-03-10-18; or section 75-03-10-19, 75-03-10-23, 75-03-10-27, or 75-03-10-28, for each day that the operator has not verified correction after the allowable time for correction of violations ends.

2. The department shall assess a fiscal sanction of fifteen dollars per day for each violation of section 75-03-10-10, 75-03-10-12, or 75-03-10-15; subsection 2, 3, 4, 7, 8, 11, or 19 of section 75-03-10-18; subsection 3, 8, or 19 of section 75-03-10-20; or subdivision a of subsection 1 of section 75-03-10-24, for each day that the operator has not verified correction after the allowable time for correction of violations ends.

3. The department shall assess a fiscal sanction of five dollars per day for each violation of any other provision of this chapter, for each day that the operator has not verified correction after the allowable time for correction of violations ends.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2018.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-07.4, 50-11.1-08

75-03-10-31. Appeals.

An applicant or operator may appeal a decision to deny or revoke a license by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of the applicant's or operator's receipt of written notice of the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-08, 50-11.1-10

75-03-10-32. Penalties.

Repealed effective January 1, 1999.