

**CHAPTER 75-03-21.1**  
**LICENSING OF AGENCY FOSTER HOMES FOR ADULTS**

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## **75-03-21.1-01. Definitions.**

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

1. "Abuse" means any willful act or omission by an individual which results in physical injury, mental anguish, unreasonable confinement, sexual abuse, or exploitation to or of a resident.
2. "Agency" means an organization which operates the facility.
3. "Agency foster home for adults" means a residential home in which foster care for adults is regularly provided exclusively to Medicaid waiver recipients by professional staff trained to provide services to older adults or adults with a disability, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.
4. "Applicant" means the agency completing and submitting to the department an application to be licensed to provide agency foster care for adults.
5. "Care" means the provision of residential habilitation or community support services, as defined by chapter 75-03-23, in an agency foster care for adults.
6. "Department" means the North Dakota department of human services.
7. "Facility" means a licensed agency foster care home for adults providing residential habilitation or community support services.
8. "Financial exploitation" means use or receipt of services provided by the vulnerable adult without just compensation, the taking, acceptance, misappropriation, or misuse of property or resources of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means.
9. "Home and community-based setting experience interview" means an instrument used to record information about a resident's experiences in the facility.
10. "License" means a document issued by the department authorizing an applicant to operate a facility.
11. "Mental anguish" means psychological or emotional damage that requires medical treatment or medical care or is characterized by behavioral changes or physical symptoms.
12. "Monitoring" means overseeing the care provided to a resident by a provider and verifying compliance with laws, rules, and standards pertaining to care and the resident's rights related to the facility.
13. "Neglect" means the failure of the provider to provide the goods or services necessary to avoid subjecting a resident to physical harm, mental anguish, or mental illness.
14. "Person-centered service plan" means a plan that describes the Medicaid waiver recipient resident's assessed needs, outcomes, and goals and how the services and natural supports provided will assist the resident in achieving their outcomes and live safely and successfully in the community.
15. "Provider" means an agency enrolled to operate the facility whose employees have documented qualifications in providing care and is enrolled as a qualified service provider agency.
16. "Qualified service provider agency" means an organization that has met all standards and requirements for that status established under chapter 75-03-23.

17. "Resident" means any adult who is receiving care in a facility for compensation up to twenty-four hours per day.
18. "Sexual abuse" means conduct directed against a resident which constitutes any of those sex offenses defined in North Dakota Century Code sections 12.1-20-02, 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-06.1, 12.1-20-07, 12.1-20-11, 12.1-20-12.1, and 12.1-20-12.2, and North Dakota Century Code chapter 12.1-41.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-02. Application.**

1. An agency's application for a license to operate a facility must be made to the department.
2. An application must be made in the form and manner prescribed by the department.
3. An application for a license must be filed immediately upon change of agency or facility's location.
4. An application is not complete until all required information and verifications are submitted to the department including:
  - a. Fire inspections by the state fire marshal or local fire inspector, if required under subsection 1 of section 75-03-21.1-26;
  - b. Sanitation and safety inspection reports, when requested by the department;
  - c. Completed application form;
  - d. Licensing study report assessing the applicant's compliance with this chapter and North Dakota Century Code chapter 50-11;
  - e. Evidence that all agency employees are properly qualified to provide care as provided in section 75-03-21.1-29;
  - f. A successfully completed criminal background check as specified in North Dakota Century Code section 50-11-02.4;
  - g. Description of the type of documentation to be used to account for service time and tasks performed for each resident;
  - h. An evacuation disaster plan; and
  - i. A sample menu plan compliant with dietary guidelines outlined in subsection 4 of section 75-03-21.1-38.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-03. License.**

1. Issuance of a license to operate a facility indicates an agency's compliance with the required standards, rules, and laws at the time of issuance.
2. A license is nontransferable.

3. A license is valid only for the agency named and the facilities' premises described on the license.
4. A license is valid only for the maximum number of residents for which the agency is licensed.
5. A license is only valid for those services or facilities identified on the license.
6. An initial license is valid for no longer than twelve months from the date of issuance.
7. A license that is issued after the initial licensing period has expired is valid for no longer than twenty-four months from the date of issuance or the date of expiration of the agency's status as a qualified service provider, whichever occurs first.
8. If the agency adult foster care, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized Indian reservation in North Dakota, an affidavit from an agent of the tribal agency or an appropriate tribal officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:
  - a. That an investigation of the agency and facility was completed by the tribe's agency or tribal council.
  - b. That the prospective agency and facility is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter.
9. If the agency adult foster care, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized military base in North Dakota, an affidavit from an agent of the base agency or other appropriate military officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:
  - a. That an investigation of the agency and facility was completed by the military base's agency.
  - b. That the prospective agency and facility is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-04. Single or multiple license.**

A single license may be issued authorizing the provision of both residential habilitation and community support services by one applicant or single licenses may be issued authorizing the provision of each discrete service, at the discretion of the department. A license denial or revocation may affect all or some of the services and facilities operated by an agency, as determined by the department.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-05. Notification of license.**

1. The department, within sixty days from the date of the receipt of an application for a license, or upon finding an agency in noncompliance with the rules of the department, shall notify the applicant or agency's principal officer of the department's intent to grant, deny, or revoke a license.

2. The department shall notify the applicant or agency in writing. Service of the notification is made upon deposit with the United States postal service. The department shall issue a notice of denial or revocation in accordance with North Dakota Century Code section 50-11-08.
3. The applicant or agency may appeal the denial or revocation of a license by written request for an administrative hearing, mailed or delivered to the department within twenty days after service of the denial or revocation. The hearing must be governed by the provisions of chapter 75-01-03.
4. The agency may continue to provide services until the final appeal decision is rendered. If residents have been removed from the facility or service because of a health, welfare, or safety issue, the residents shall remain out of the facility or service while the appeal is pending.
5. The agency, upon final revocation notification, immediately shall return the license to the department.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-06. Types of licenses.**

1. A license issued pursuant to this chapter must be denominated "unrestricted license" or "provisional license".
2. An "unrestricted license" may be issued to an applicant who complies with the rules and regulations of the department and North Dakota Century Code chapter 50-11, and who is accredited by the council on quality and leadership for services for individuals with disabilities in accordance with 2015 third edition of the Basic Assurances tool, including all factors and indicators.
3. A "provisional license" may be issued subject to the provisions of section 75-03-21.1-07.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-07. Provisional license.**

1. An applicant may submit an application, on a form provided, for a provisional license, permitting the provision of a new provider agency.
  - a. A provisional license may be issued to an applicant who complies with the rules and regulations of the department and North Dakota Century Code chapter 50-11 and who has the initial level of accreditation by the council on quality and leadership for services for individuals with disabilities in accordance with 2015 third edition of the Basic Assurances tool, including all factors and indicators.
  - b. A provisional license issued under this subsection may be renewed for an additional six months only upon the department's determination the agency has made significant progress toward full accreditation by the council of quality and leadership for services for individuals with disabilities in accordance with 2015 third edition of the Basic Assurances tool, including all factors and indicators, as determined by the department.
  - c. The department shall terminate a provisional license and issue an unrestricted license to the agency upon full accreditation by the council of quality and leadership for services for

individuals with disabilities in accordance with 2015 third edition of the Basic Assurances tool, including all factors and indicators, as determined by the department.

- d. The department shall issue a notice of denial or revocation of a provisional license in accordance with North Dakota Century Code section 50-11-08.
  - e. Notice of a denial or revocation of a provisional license may be appealed in the same manner as a notice of denial or revocation of a license.
2. A provisional license may be issued to an agency with an acceptable plan of correction notwithstanding a finding of noncompliance with the rules and regulations of the department and North Dakota Century code chapter 50-11.
- a. A provisional license may not be issued to an agency whose practices or facilities pose a clear and present danger to resident health and safety, including fire safety requirements as evidenced in writing by the state fire marshal, negligent or intentional misrepresentations to the department regarding any aspect of the agency's operations, or any violation that places a resident's life in danger.
  - b. A provisional license may be issued for any or all services provided, or facilities operated by an agency, as determined by the department.
  - c. Upon a finding that the agency is not in compliance, the department shall notify the agency, in writing, of its intent to issue a provisional license. The notice must provide the reasons for the action, the specific statute or rule violated, the specific services that are affected by the provisional license, specify the time allowed for correction, and describe the corrective actions required of the agency.
  - d. The agency shall, within ten days of the receipt of notice under subdivision c, submit to the department, on a form provided, a plan of correction. The plan of correction must include the elements of noncompliance, a description of the corrective action to be undertaken, and a date of compliance. The department may accept, modify, or reject the agency's plan of correction and shall notify the agency of the department's decision within thirty days. If the plan of correction is rejected, the department shall notify the agency that the license is being revoked in accordance with North Dakota Century Code section 50-11-08. The department may conduct periodic inspections of the facilities and operations of the agency to evaluate the implementation of a plan of correction.
  - e. The department shall terminate a provisional license and issue an unrestricted license to the agency upon successful completion of an accepted plan of correction, as determined by the department.
  - f. A provisional license issued under this subsection may be issued for any period not exceeding one year. A provisional license may be renewed for an additional six months only upon the department's determination the agency has made significant progress toward meeting the rules and regulations of the department and North Dakota Century Code chapter 50-11, as identified in the plan of correction or the agency has shown good cause for failure to implement the plan of correction. A provisional license is nontransferable and valid only for the facilities or services identified thereon.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-08. Display of license.**

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

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-09. Purchase of service or recognition of unlicensed entities.**

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

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-10. Unlicensed entities - Notification.**

Upon a determination that activities subject to licensure are occurring or have occurred, the department shall notify the person that the activities are subject to licensure. The notice must include a citation of the applicable provisions of these rules, an application for a license, a date by which the application must be submitted, and, if applicable, a request for the persons to explain that the activities identified in the notification are not subject to licensure. A person who receives notification shall submit a completed application to the department within thirty days of notice.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-11. Standards of the department.**

The department herein adopts and makes a part of these rules for all agencies the 2015 third edition of the Basic Assurances tool, including all factors and indicators standards used for accreditation by the council on quality and leadership. If an agency fails to meet an accreditation standard, the department may analyze the agency's failure using the appropriate current standards of the council on quality and leadership, this chapter, and North Dakota Century Code chapter 50-11.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-12. Identification of basic services subject to licensure.**

Services provided to eligible residents must be identified and licensed by the following titles for older adults and individuals with physical disabilities:

1. Residential habilitation services; or
2. Community support services.

**History:** Effective January 1, 2020.

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

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

### **75-03-21.1-13. Facility.**

1. The facility must be:
  - a. Free of warped or damaged floors, loose or unsecured floor coverings, loose tiles, broken or damaged windows, loose or broken handrails, broken light bulbs, and other hazards that would affect the safety of a resident;
  - b. Maintained by a central heating and cooling system at a temperature of at least sixty-eight degrees Fahrenheit [20 degrees Celsius];
  - c. Maintained so as to prevent crawling and flying pests from entering the facility through windows;
  - d. Equipped with handrails in all stairways;
  - e. Equipped with nonporous surfaces for shower enclosures;
  - f. Equipped with safety mats or slip-preventing materials on the bottom of tubs and floors of showers; and
  - g. Physically accessible for the resident.
2. The facility must have a telecommunication device on the main floor available for use by residents.
3. Use of video surveillance equipment by the provider in the resident's bedroom and bathroom is prohibited.
4. Mobile home units used as a facility must:
  - a. Have been constructed after 1976;
  - b. Have been designed for use as a dwelling that is placed on a permanent foundation, rather than as a travel trailer;
  - c. Meet the flame spread rate requirements; and
  - d. Have a manufacturer's label permanently affixed stating the mobile home meets the requirements of the department of housing and urban development or the American national standards institute.

**History:** Effective January 1, 2020.

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

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

### **75-03-21.1-14. Facility design.**

1. Facilities must be small enough and of a modest design, minimizing the length of hallways, the number of exterior corners, and the complexity of construction, to ensure the development of meaningful interpersonal relationships and the provision of proper programming, services, and direct care.
2. Facilities must simulate the most homelike atmosphere possible in order to encourage a personalized environment.
3. Facilities shall provide, at a minimum, enough living space, based on the needs of both males and females, with provisions for privacy and appropriate access to quiet areas where a resident can be alone.



4. Facilities shall provide arrangement of space to permit residents to participate in different kinds of activities, both in groups and individually. Space must be arranged to minimize noise and permit communication at normal conversational levels.
5. Facilities must be accessible to nonambulatory residents, visitors, and employees.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-15. Facility location.**

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

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-16. Facility bedrooms.**

1. Bedrooms must accommodate no more than two residents.
2. Bedrooms must provide at least one hundred square feet [7.43 square meters] per resident in a single occupancy bedroom, and at least eighty square feet [5.57 square meters] per resident in a double occupancy bedroom, both exclusive of closet and bathroom space.
3. Bedrooms must be located on outside walls and separated from other rooms and spaces by walls extending from floor to ceiling and be at or above grade level.
4. Bedrooms must not have doors with vision panels.
5. Each resident must have the opportunity to furnish and decorate their bedrooms as they choose, such as a chest of drawers, table, or desk.

6. Bedrooms must provide storage space for clothing in the bedroom, which is accessible to all, including nonambulatory individuals.
7. Bedrooms for all residents must be constructed as a bedroom with walls or partitions of standard construction which extend from floor to ceiling and which provide privacy for the resident.
8. Bedroom ceilings must be at least six feet and eight inches [203.20 centimeters] above the finished floor surface at the ceiling's lowest point.
9. No more than one resident may be assigned to a bedroom unless requested by both residents. No more than two residents may reside in one bedroom.
10. Bedroom and bathroom doors must be lockable by the resident for privacy, with only the resident and appropriate employee having keys to the bedroom doors. Any restrictions on having a lockable bedroom or bathroom door must be documented and justified in the person-centered service plan.
11. Bedrooms occupied by residents may not be located in a level of the facility below grade level unless there are two means of egress, one of which leads to the outside of the facility.
12. At least one full bathroom must be available on the same floor as any bedroom occupied by a resident.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-17. Facility kitchens.**

1. Kitchens must provide sufficient space to permit participation by both employees and residents in the preparation of food.
2. Kitchens must provide appropriate space and equipment, including a two-compartment sink, to adequately serve the food preparation and storage requirements of the facility.
3. Kitchens must have hot water supplied to sinks in the range of one hundred ten to one hundred forty degrees Fahrenheit [47.22 to 60 degrees Celsius], as controlled by a tempering valve, located to preclude resident access.
4. Kitchens must be maintained in such a way that they provide for safe food handling and food storage, and meet acceptable standards to assure a healthy environment.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-18. Facility bathrooms.**

1. Bathrooms must be located in places that facilitate maximum self-help by residents.
2. Bathrooms must provide showers or bathtubs, toilets, and lavatories approximating normal patterns found in homes, unless specifically contraindicated by program needs.
3. Bathrooms must serve only up to four residents each.
4. At least one bathroom per facility must be accessible and usable by nonambulatory residents, visitors, and employees.

5. Bathrooms must have hot water supplied to lavatories and bathing facilities in the range of one hundred ten to one hundred forty degrees Fahrenheit [47.22 to 60 degrees Celsius], as controlled by a tempering valve, located to preclude resident access.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-19. Facility laundry.**

Laundry space must provide a washer and dryer, storage for laundry supplies, accommodations for ironing, and counterspace for folding clothing and linen.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-20. Facility use of space.**

1. Facilities shall provide access to all areas of the facility, with due regard for privacy, personal possessions, and service provision, with limitations of personal areas of employees.
2. Facilities shall provide for a resident to personalize the resident's portion of the living unit and mount pictures on the walls.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-21. Facility water supply.**

1. Facilities must be located in areas where public or private water supplies approved by the department of environmental quality are available. Approved public water supplies must be used where available.
2. When a private water supply is used, water samples must be submitted to a certified laboratory approved by the department of environmental quality at the earliest possible date prior to occupancy, and every six months thereafter to determine chemical and bacteriological acceptability.
3. Drinking water must be obtained from an approved community water system or from a source tested by a certified laboratory and approved by the department of environmental quality. A copy of the test report must be submitted to the department. The water and wastewater plumbing systems must comply with article 62-03.1, plumbing installation standards.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-22. Facility sewage disposal.**

1. Facilities must be located in areas where public or private sewage disposal systems approved by the department of environmental quality are available. Approved public sewage disposal systems must be used, where available.
2. Plans and specifications for proposed private sewage disposal systems or alteration to such systems must be approved by the department of environmental quality prior to the construction, maintenance, and operation of such systems.

3. Septic tanks or other nonmunicipal sewage disposal systems must comply with chapter 62-03.1-03, private sewage disposal systems.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-23. Emergency plans.**

An agency shall have written plans and procedures, that are clearly communicated to and periodically reviewed with employees and residents for meeting emergencies, including fire, serious illness, severe weather, and missing residents. Applicable requirements of state law and regulations by the state fire marshal and applicable licensing authorities must be met.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-24. Insurance and bond requirements.**

An agency shall secure and maintain adequate insurance and bonds appropriate for the size of the programs including:

1. A blanket fidelity bond equal to not less than ten percent of the total operating costs of the program;
2. Property insurance covering all risks at replacement costs and costs of extra expense for loss of use;
3. Liability insurance covering bodily injury, property damage, personal injury, professional liability, and umbrella liability as applicable; and
4. Automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no-fault on all vehicles operated by the agency or the agency's employees in which residents may be a passenger.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-25. Variance.**

Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance to an agency from subsection 1 of section 75-03-21.1-14 and subsections 2 and 3 of section 75-03-21.1-16, except no variance may permit or authorize a danger to the health or safety of a resident.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-26. Applicant's buildings.**

Applicants occupying buildings, whether owned or leased, shall provide the department with the following:

1. The written report of an authorized fire inspector, following an initial or subsequent annual inspection of a building, which states:

- a. Rated occupancy and approval of the building for occupancy; or
  - b. Existing hazards and recommendations for correction which, if followed, would result in approval of the building for occupancy;
2. A written statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances; and
  3. For existing buildings, floor plans drawn to scale showing the use of each room or area and a site plan showing the source of utilities and waste disposal; or
  4. Plans and specifications of buildings and site plans for facilities proposed for use but not yet constructed, showing the proposed use of each room or area and the source of utilities and waste disposal.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-27. Safety codes.**

1. Applicants shall meet the applicable life safety standards established by the local governing municipality's ordinances. If the local governing municipality has no ordinances establishing life safety standards, the residential service facilities shall meet, as determined by the department, the one-family and two-family dwellings chapter of the Life Safety Code of the national fire protection association, 2000 edition.
2. Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from any specific requirement of the Life Safety Code, upon terms the department may prescribe, except no variance may permit or authorize a danger to the health or safety of the residents of the facility or violate the provisions of North Dakota Century Code chapter 50-11.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-28. Safety - Inspections.**

1. Pets not confined in enclosures may not present a danger to a resident, visitors, or employees based upon the size, temperament, or obedience of the pet. Proof of pet vaccination is required and shall be submitted to the department.
2. The facility must be located where a community or rural fire department is available.
3. Interior doors with a locking mechanism must be provided with a means to unlock the door from either side.
4. The heating and electrical system must be inspected for operability and safety at the time of the initial license application and upon relicensing.
5. Food preparation areas, equipment, and food storage areas must be clean, free of offensive odors, and in sound working condition.
6. The department requires that the facility be inspected by a local fire inspector or the state fire marshal at the time of initial license application and periodically thereafter if the department suspects that the facility is not fire safe or when structural changes are made to the facility.

7. Deficiencies noted during an inspection must be corrected within sixty days after the issuance of the inspection report.
8. Any fees for the inspections required by the department or costs associated with correcting deficiencies noted during an inspection must be the responsibility of the applicant or agency.

**History:** Effective January 1, 2020.

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

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

**75-03-21.1-29. Direct service provider employee qualifications.**

1. The direct service provider employee must:
  - a. Be eighteen years of age or older;
  - b. Possess the physical health necessary to provide care;
  - c. Be literate and capable of understanding instructions and communicating in the English language;
  - d. Be in good physical health, emotionally, and functionally stable, and not abusing drugs or alcohol;
  - e. Successfully complete criminal background check requirements as specified in North Dakota Century Code sections 50-11-02.4 and 50-11-06.8; and
  - f. Complete department-approved training on the administration of routine medications, traumatic brain injury, and dementia.
2. In addition to the requirements of subsection 1, the direct service provider employee shall:
  - a. Provide evidence of competence in the generally accepted:
    - (1) Procedure for infection control and proper handwashing methods;
    - (2) Procedure for handling and disposing of body fluids;
    - (3) Procedure for tub, shower, and bed bathing techniques;
    - (4) Procedure for hair care techniques, bed and sink shampoo, and shaving;
    - (5) Procedure for oral hygiene techniques of brushing teeth and cleaning dentures;
    - (6) Procedure for caring for an incontinent resident;
    - (7) Procedure for feeding or assisting a resident with eating;
    - (8) Procedure for basic meal planning and preparation;
    - (9) Procedure for assisting a resident with the self-administration of medications;
    - (10) Procedures and techniques, which include dusting, vacuuming, sweeping, floor care, garbage removal, changing linens, and other similar tasks, for maintaining a kitchen, bathroom, and other rooms used by residents in a clean and safe condition;
    - (11) Procedures in laundry techniques, which include mending, washing, drying, folding, putting away, ironing, and related work;

- (12) Procedure for assisting a resident with bill paying and balancing a check book;
  - (13) Procedure for dressing and undressing a resident;
  - (14) Procedure for assisting with toileting;
  - (15) Procedure for routine eye care;
  - (16) Procedure for proper care of fingernails;
  - (17) Procedure for caring for skin;
  - (18) Procedure for turning and positioning a resident in bed;
  - (19) Procedure for transfer using a belt, standard sit, bed to wheelchair;
  - (20) Procedure for assisting a resident with ambulation; and
  - (21) Procedure for making beds; or
- b. Meet developmental disability competency standards for facilities in which the responsible direct service provider employee is employed by a licensed provider in accordance with chapter 75-04-01 and North Dakota Century Code chapter 25-16, and services are provided according to chapter 75-04-01.
- 3. Direct service provider employees shall undergo a medical examination, psychological evaluation, or substance abuse evaluation when requested by the department or human service zone when there is reason to believe that such an examination or evaluation is reasonably necessary.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-30. Verifications and demonstration of competence.**

- 1. A physician, registered nurse, occupational therapist, physical therapist, or other individual with a professional degree in specialized areas of care shall verify in writing, on forms furnished by the department, that a direct service provider employee is competent to perform each procedure specified in subsection 2 of section 75-03-21.1-29. Verification that a direct service provider employee is competent to perform a procedure is evidence of competence with respect to that procedure.
- 2. Competence may be demonstrated in the following ways:
  - a. A demonstration of the procedure being performed;
  - b. A detailed verbal explanation of the procedure; or
  - c. A detailed written explanation of the procedure.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-31. General practices.**

The provider:

1. Shall permit a representative of the department, human service zone, or other individual or organization serving a resident entry into the facility without prior notice;
2. Shall provide information about the residents to the department, human service zone, or other individual or organization serving a resident with reasonable promptness;
3. Shall report illness, hospitalization, or unusual behavior of a resident to the individual or organization serving the resident, and to the resident's legal representative, whichever is appropriate;
4. Shall assure information related to the resident is kept confidential, except as may be necessary in the planning or provision of care or medical treatment, as related to an investigation or license review under this chapter, required or permitted by law, or as authorized by the resident;
5. May not practice, condone, facilitate, or collaborate with any form of illegal discrimination on the basis of race, color, sex, age, religion, national origin, marital status, political belief, or mental or physical disability;
6. Shall accept direction, advice, and suggestions concerning the care of residents from the department, human service zone, or other individual or organization serving a resident;
7. Shall assure residents receiving care are not subjected to abuse, sexual abuse, neglect, or financial exploitation by the provider, employees, or volunteers;
8. Shall coordinate and facilitate the release of a report of any examination or evaluation, required under subsection 3 of section 75-03-21.1-29, to the department or human service zone;
9. Immediately shall report changes in the identity or number of individuals living in the facility to the department;
10. Immediately shall report an inability to provide care to the resident to the department;
11. Shall allow a representative of the department, or human service zone, to enter the premises, examine the facility, and interview the residents, provider, and employees in order to evaluate compliance with this chapter and North Dakota Century Code chapter 50-11;
12. Shall cooperate with the department or human service zone in inspections, complaint investigations, planning for the care of a resident, application procedures, and other necessary activities, and allow access of the department, human service zone, ombudsman, or other authorized individuals to the facility and its residents;
13. May not retaliate against any resident who has filed a complaint with the department or human service zone by taking away rights or privileges; threatening to take away rights or privileges; or by abusing or threatening to abuse a resident in any manner;
14. May not use a transfer of ownership of a resident's possessions or property as payments;
15. May not purchase property or possessions from a resident without providing documented proof to the department that the item or property was purchased at fair market value;
16. May not accept or solicit personal property or a purchased item with a fair market value of at least twenty-five dollars that the resident, resident's family, or both, choose to give to the provider or employees;



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

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-32. Recording and reporting critical incidents.**

An agency shall implement policies and procedures to assure that critical incidents including alleged abuse, neglect, and exploitation and use of restraint are immediately reported as required by the department.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-33. Entry and inspection.**

1. The applicant shall affirm the right of the department or human service zone to enter any of the applicant's buildings or facilities and access to its records to determine the extent to which

the applicant is in compliance with the rules of the department, to facilitate verification of the information submitted with an application for licensure, and to investigate complaints.

2. The agency shall authorize the department or human service zone, entry to its facilities and access to its records if the agency declares bankruptcy, transfers ownership, ceases operations, evicts residents of its facilities, or the contract with the department is terminated by either of the parties. The department's entry is for the purpose of facilitating the orderly transfer of residents to an alternative service or the maintenance of appropriate service until an orderly transfer can be made.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-34. Access to records.**

The applicant shall affirm the right of duly authorized representatives of the department to inspect the records of the applicant, to facilitate verification of the information submitted with an application for licensure, and to determine the extent to which the applicant is in compliance with the rules of the department and North Dakota Century Code chapter 50-11.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-35. Denial of access to facilities and records.**

Any applicant or agency that denies the department or human service zone access to a facility or its records, must have its license revoked or its application denied.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-36. Criminal conviction - Effect on licensure and operation of a facility.**

1. An individual employed by, or providing care in, a facility and any adult living in the facility, but not being provided care in the facility, may not have been found guilty of, pled guilty to, or pled no contest to:
  - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or North Dakota Century Code section 12.1-17-01, simple assault, if a class C felony under subdivision a of subsection 2 of that section; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult; 12.1-31-07.1, exploitation of an eligible adult; 14-09-22, abuse of a child; 14-09-22.1, neglect of a child; subsection 1 of section 26.1-02.1-02.1, fraudulent insurance acts; or

an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or

- b. An offense, other than a direct-bearing offense identified in subsection 1, if the department determines the individual has not been sufficiently rehabilitated.
  - (1) The department may not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment without subsequent charge or conviction has elapsed, unless sufficient evidence is provided of rehabilitation.
  - (2) An individual's completion of a period of three years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. In the case of an offense described in North Dakota Century Code section 12.1-17-01, simple assault, if a felony; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence, if a misdemeanor; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-18-03, unlawful imprisonment; 12.1-20-05, corruption or solicitation of minors, if a misdemeanor; 12.1-20-07, sexual assault, if a misdemeanor; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent convictions.
3. The department has determined the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to be employed by, providing care in, a facility, or be an adult living in the facility, but not being provided care in the facility.
4. A provider shall submit an application and payment for a fingerprint-based criminal history record check at the time of application and on any individual employed by, or providing care in, the facility and any adult living in the facility, but not being provided care in the facility. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-37. Disclosure of a criminal record.**

1. Each member of the governing body of the applicant or agency, the chief executive officer, and any employees, volunteers, or agents who receive and disburse funds on behalf of the governing body, shall disclose to the department if they have been found guilty of, pled guilty to, or pled no contest to a criminal offense.
2. The applicant or agency shall disclose to the department the names, type of offenses, dates of having been found guilty of, pled guilty to, or pled no contest to a criminal offense, and position and duties within the applicant's or agency's organization of employees and volunteers with a criminal record.

**History:** Effective January 1, 2020.

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

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

**75-03-21.1-38. Meals and nutrition.**

1. Three meals must be served daily.
2. Residents must be allowed access to food at any time and meal choices must be provided. Any restrictions on access to or choice of food because of health and safety concerns must be documented and justified in the person-centered service plan or service and rental agreement.
3. There may be no more than fourteen hours between the conclusion of the evening meal and service of breakfast.
4. Each meal must be nutritious and well-balanced in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences.
5. Adequate amounts of food must be available at all meals.
6. The special dietary needs of the residents must be considered in all menu planning, food selection, and meal preparation.
7. Consideration must be given to residents' cultural, ethnic, and religious backgrounds in food preparation.
8. Meals must be regularly and routinely prepared in the facility where the residents live.
9. Charges imposed for resident meals provided by individuals or businesses other than the provider must be paid by the provider unless the provider made a meal available at the facility.

**History:** Effective January 1, 2020.

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

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

**75-03-21.1-39. Lease or rental agreement.**

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

1. The lease or rental agreement must include all of the following information:
  - a. Landlord tenant eviction and appeals process;
  - b. Any relevant expectations with which the resident is expected to comply, including restrictions on the use of alcohol or tobacco in the facility; and
  - c. Procedure used for billing, collecting, and reimbursing the charge for board, room, and care.
2. All modifications made after the date the initial lease or rental agreement was signed must be in writing and signed by the resident or the resident's legal representative and the provider. The provider shall furnish the resident, or the resident's legal representative, and the department with a signed copy of the modifications. A copy of the modifications must be kept in the resident's records.

**History:** Effective January 1, 2020.

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

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

**75-03-21.1-40. Applicant guarantees and assurances.**

1. Applicants shall submit, in a manner prescribed by the department, evidence that policies and procedures approved by the governing body are written and implemented in a manner that:
  - a. Guarantees each resident a person-centered service plan;
  - b. Guarantees the resident the right to receive authorized services and supports included in his or her person-centered service plan in a timely manner and the opportunity to fully participate in the benefits of community living, vote, worship, interact socially, freely communicate and receive guests, own and use personal property, and unrestricted access to legal counsel;
  - c. Guarantees such restrictions as may be imposed upon a resident relate solely to capability and are imposed pursuant to the provisions of a person-centered service plan;
  - d. Guarantees the confidentiality of all resident records;
  - e. Guarantees the applicable legal documents establishing guardianship and of durable power of attorney are kept in the resident record and provided to the case manager;
  - f. Guarantees the resident the right to choose and refuse services, who provides the services, the right of the resident and the resident's representatives to be informed of the possible consequences of the refusal, alternative services available, and specifically, the extent to which such refusal may harm the resident or others;
  - g. Assures the resident safe and sanitary living and working arrangements and provides for emergencies or disasters and first-aid training for staff;
  - h. Assures adaptive equipment, where appropriate for personal hygiene, self-care, mobility, or communication, is provided in the service for use by residents with disabilities consistent with the person-centered service plan;
  - i. Assures all employees demonstrate basic professional competencies as required by their job descriptions and complies with all required trainings, credentialing, and professional development activities;
  - j. Assures annual evaluations that measure program outcomes against previously stated goals and objectives are conducted;
  - k. Assures all vehicles transporting residents are subject to routine inspection and maintenance, licensed by the department of transportation, equipped with a first-aid kit and a fire extinguisher, carry no more individuals than the manufacturer's recommended maximum capacity, handicapped accessible, where appropriate, and are driven by individuals who hold a valid state driver's license;
  - l. Guarantees a grievance procedure, reviewed and approved by the department, affords the resident or the resident's authorized representative or advocate, the right to a hearing of any complaint; and guarantees that records of such hearings are maintained and must note therein the complaint, the names of the individuals complaining, and the resolution of the grievance;

- m. Assures policies and procedures regarding admission to the agency's services and termination of services are in conformance with the rules of the department;
  - n. Assures all documentation, data reporting requirements, rules, regulations, and policies are conducted as required by the department;
  - o. Assures all applicable municipal, federal, and state laws and regulations are being abided by;
  - p. Assures the residents right to use medical marijuana if the resident is a qualified patient who has the required documentation necessary to legally obtain medical marijuana. The facility is not required to administer or store medical marijuana and can limit where a resident uses medical marijuana to a certain part of the facility; and
  - q. Assures the facility complies with all requirements of title 28, Code of Federal Regulations, part 35, app. B.
2. Accredited applicants shall submit evidence, satisfactory to the department, of accreditation.
  3. The department shall determine the degree to which the unaccredited applicant's policies and procedures are in compliance with the standards.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-41. Termination of care.**

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

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-42. Permitting operation after notice of revocation.**

The department may revoke or deny a license for any of the reasons permitted by law, or any combination of reasons. A revocation or denial based on one or more reasons must be affirmed, on appeal, if the evidence supports any reason given for revocation or denial. An agency that receives a notice of revocation, and that makes a timely appeal of that notice, may continue to operate the facility pending a final administrative appeal decision, unless the license expires. If the revocation is based on

reasons which present an imminent danger to the health, welfare, or safety of residents, an agency may not provide care to a resident pending a final administrative appeal decision.

**History:** Effective January 1, 2020.

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

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

**75-03-21.1-43. Distribution of notice of denial or revocation.**

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

**History:** Effective January 1, 2020.

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

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

**75-03-21.1-44. Reapplication after denial or revocation.**

An agency or applicant whose license has been revoked or whose license application has been denied may not reapply, without the written permission of the department, until a final determination has been made with respect to the denial or revocation.

**History:** Effective January 1, 2020.

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

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

**75-03-21.1-45. Time period for correcting deficiencies.**

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

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

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-46. Penalties.**

An agency, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions.

1. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of twenty-five dollars per day--subsections 1 or 2 of section 75-03-21.1-13; subsections 2, 8, or 11 of section 75-03-21.1-16; subsections 3 or 4 of section 75-03-21.1-17; subsection 3 of section 75-03-21.1-21; sections 75-03-21.1-22 or 75-03-21.1-27; subsections 3, 4, or 5 of section 75-03-21.1-28; subsection 1 of section 75-03-21.1-29; subsection 4 of section 75-03-21.1-31; subsections 4 or 5 of section 75-03-21.1-38; or subsection 1 of section 75-03-21.1-41.
2. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of fifteen dollars per day--subsections 1, 9, or 12 of section 75-03-21.1-16; subsections 6, 9, 10, 11, 12, 13, or 14 of section 75-03-21.1-31; or section 75-03-21.1-39.
3. A violation of any other provision of this chapter not noted in subsections 1 and 2 subjects the licensed provider to a fiscal sanction of five dollars per day.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-47. Records.**

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

1. The resident's full name and birth date;
2. The name, address, and telephone number of the resident's legal representative when one exists and an emergency contact;
3. Names, addresses, and telephone numbers of individuals who can assume responsibility or consent to health care under North Dakota Century Code section 23-12-13 for the resident if the legal representative cannot be reached immediately in an emergency;
4. Applicable legal documents establishing guardianship, durable power of attorney, or health care directive for the resident;
5. An agency shall submit and retain all requisite documentation to demonstrate the right to receive payment for all services and supports and comply with all federal and state laws, regulations, and policies necessary to disclose the nature and extent of services provided and all information to support claims submitted by, or on behalf of, the agency;
6. A record of any matter required to be reported under section 75-03-21.1-32 and of any accident resulting in injury to a resident; and
7. An accounting of any real or personal property the resident or the resident's family gives, sells, or otherwise transfers to the provider.

**History:** Effective January 1, 2020.

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

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



#### **75-03-21.1-48. Documentation and data reporting requirements.**

1. An agency shall maintain program records, fiscal records, and supporting documentation, including:
  - a. Authorization from the department for each resident for whom service is billed;
  - b. Attendance sheets and other records documenting the days and times the residents received the billed services from the agency; and
  - c. Records of all bills submitted to the department for payment.
2. An agency shall report the results of designated quality and performance indicators, as requested by the department.
3. An agency shall retain a copy of the records required for forty-two months from the last date of the service unless an audit in process requires a longer retention.
4. The department maintains the right to withhold a payment for services or suspend or terminate Medicaid enrollment if the agency has failed to abide by terms of the Medicaid contract, federal and state laws, regulations, and policies regarding documentation or data reporting.

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-49. Monitoring.**

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

**History:** Effective January 1, 2020.

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

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

#### **75-03-21.1-50. Developmental disability licensure.**

Agencies and facilities licensed according to chapter 75-04-01 and North Dakota Century Code chapter 25-16 that provide residential habilitation services satisfy the requirements of section 75-03-21.1-11; sections 75-03-21.1-13 through 75-03-21.1-24; and sections 75-03-21.1-26, 75-03-21.1-27, 75-03-21.1-29, and 75-03-21.1-30.

**History:** Effective January 1, 2020.

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

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