

Introduced by

**NORTH DAKOTA CENTURY CODE CHAPTER 15.1-34 -
BOARDING HOME CARE FOR STUDENTS WITH DISABILITIES**

Chapter 15.1-34 of the North Dakota Century Code is created and enacted as follows:

15.1-34-01. Definitions. As used in this chapter:

1. "Boarding home care for a student with disabilities" means the provision of food, shelter, security, and safety, on a twenty-four-hour basis, to an individual who has reached the age of three years but who has not reached the age of twenty-one before September first of the year in which the individual turns twenty-one and who because of mental, physical, emotional, or learning characteristics requires regular or special education and related services designed to meet the individual's educational needs.
2. "Department" means the department of human services.
3. "Family boarding home" means a private residence at which boarding home care is regularly provided by the owner or lessee to no more than four students with disabilities. The limit of four students may be exceeded if all the students boarding at the home are related to each other by blood or marriage.
4. "Registration" means the process by which the department maintains a record of all family boarding homes, prescribes standards and adopts rules under section 15.1-34-14, and requires the operator of a home to certify that the operator has complied with the prescribed standards and adopted rules.
5. "Registration certificate" means a document issued by the department to provide public notice that the certificate holder is in compliance with this chapter and the applicable rules and standards prescribed by the department.
6. "Relative" means a grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt of the student by marriage, blood, or adoption.

NOTE: Present Section 15-59.3-01.

15.1-34-02. Students with disabilities - Boarding home care - Registration

certificate. A person may not establish or operate a family boarding home unless the person first obtains a registration certificate from the department. This section does not apply if the student's boarding and care are provided in:

1. The home of a relative.
2. A home or institution under the management and control of the state or the board of a school district.
3. A home providing "foster care for children" as defined in section 50-11-00.1.

NOTE: Present Section 15-59.3-02.

15.1-34-03. Registration certificate - Application.

1. In order to obtain a registration certificate for a family boarding home, a person shall complete an application form available from the department.
2. The department may investigate the applicant's activities and may inspect the home for which the registration is sought.
3. The department shall grant the registration certificate within ten working days from the date the department receives the application if:
 - a. The home is in sanitary condition;
 - b. The home is properly equipped to provide for the health and safety of student boarders; and
 - c. The individual in charge of the home and all assistants are qualified to fulfill the duties required of them under this chapter and under any rules or standards prescribed by the department.
4. A registration certificate issued under this section is effective for up to two years.

NOTE: Present Section 15-59.3-04. Present Section 15-59.3-04 provides that the department shall grant the registration certificate if the home will be maintained according to the standards prescribed for its conduct by the rules of the department. The difficulty with this provision is that there is no way to determine whether or not a home "will be" maintained according to certain standards. The provision is omitted in the rewrite, subject to review by the committee.

15.1-34-04. Boarding home fire inspection - Report. The state department of health, the state fire marshal, or a designee of the state fire marshal shall inspect any home for which a registration certificate is sought if requested to do so by the department. The entity conducting

1 the inspection under this section shall prepare an inspection report and present the report to the
2 department.

NOTE: Present Section 15-59.3-07. Present Section 15-59.3-07 contains multiple concepts, including fire inspection of homes in which care is provided, the maintenance of records, and record confidentiality. These concepts have been placed in separate sections.

3 **15.1-34-05. Boarding home - Conditions - Inspection - Investigation of owner or**
4 **operator.** At any time, the department or its authorized agents may inspect the conditions of a
5 family boarding home and investigate the qualifications of the owner or operator.

NOTE: Present Section 15-59.3-07. Present Section 15-59.3-07 contains multiple concepts, including fire inspection of homes in which care is provided, the maintenance of records, and record confidentiality. These concepts have been placed in separate sections.

6 **15.1-34-06. Conviction - Effect on registration - Exceptions.** A person who has
7 been convicted of an offense may not be disqualified from registration under this chapter,
8 unless:

- 9 1. The department determines that the offense has a direct bearing upon the person's
10 ability to serve the public as an owner or operator of a boarding home for students
11 with disabilities; or
12 2. Following conviction for any offense, the department deems that the person is not
13 sufficiently rehabilitated under section 12.1-33-02.1.

NOTE: Present Section 15-59.3-05.

14 **15.1-34-07. Registration certificate - Denial - Administrative hearing.** If after
15 reviewing a person's application for a registration certificate the department elects to deny the
16 application, the department shall serve the applicant with notice of the denial and with the
17 reasons for the denial. The department shall hold an administrative hearing under chapter
18 28-32 regarding the person's application and its subsequent denial if requested to do so by the
19 applicant within ten days from the date on which the department served the notice of denial.

NOTE: Present Section 15-59.3-09. Present Section 15-59.3-09 contains provisions regarding the right of a person whose application for a registration certificate has been denied to request a hearing and provisions allowing for a hearing if a certificate is to be revoked. The rewrite has placed these provisions in separate sections.

20 **15.1-34-08. Registration certificate - Information.** The registration certificate must
21 indicate the name of the owner or operator of the boarding home, the location of the boarding

- 1 home, and the maximum number of students with disabilities who, at any one time, may board
2 at the home.

NOTE: Present Section 15-59.3-10.

- 3 **15.1-34-09. Records - Maintenance - Examination.** Any person to whom a
4 registration certificate has been issued shall:

- 5 1. Maintain records regarding each student for whom care is provided, as directed by
6 the department;
7 2. Submit forms and other information regarding each student for whom care is
8 provided, as directed by the department; and
9 3. Allow department personnel and authorized agents of the department to examine
10 all books, records, and reports regarding the home and each student for whom
11 care is provided.

NOTE: Present Section 15-59.3-07. Present Section 15-59.3-07 contains multiple concepts, including fire inspection of homes in which care is provided, the maintenance of records, and record confidentiality. These concepts have been placed in separate sections.

- 12 **15.1-34-10. Records - Students - Confidentiality.** All records and information
13 regarding a student for whom care is provided under this chapter are confidential and may be
14 disclosed only:

- 15 1. As part of a judicial proceeding;
16 2. To officers of the law;
17 3. To representatives of a governmental entity;
18 4. To the parent of a student for whom care is provided under this chapter; and
19 5. To any person who in the opinion of the department has, or may acquire, an
20 advocacy function on behalf of a student for whom care is provided under this
21 chapter.

NOTE: Present Section 15-59.3-07. Present Section 15-59.3-07 contains multiple concepts, including fire inspection of homes in which care is provided, the maintenance of records, and record confidentiality. These concepts have been placed in separate sections.

Present Section 15-59.3-07(3) provides that the records may be made available to "parents and persons having a definite interest in the well-being of the student or students concerned and who, in the judgment of the department, are in a position to serve their interests should that be necessary." Because this appears to be fairly fluid criteria, the rewrite provides that the records may be made available to "any person who

in the opinion of the department has, or may acquire, an advocacy function on behalf of a student for whom care is provided under this chapter."

15.1-34-11. Registration certificate - Revocation. The department may revoke a registration certificate issued under this chapter if:

1. The home is in an unsanitary condition.
2. The home is not properly equipped to provide for the health and safety of the students.
3. The individual in charge of the home and all assistants are not qualified to fulfill the duties required of them under this chapter and under any rules adopted by the department.
4. The owner or operator does not comply with the standards prescribed by the department.
5. The registration certificate was issued as a result of an application that contained fraudulent information or an untrue representation.
6. The person to whom the registration certificate was issued violated a rule adopted by the department.
7. The person to whom the registration certificate was issued is found guilty of an offense which, in the determination of the department, has a direct bearing upon the person's ability to serve the public as an owner or operator of a boarding home for students with disabilities.
8. The person to whom the registration certificate was issued is found guilty of any offense and the department determines that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

NOTE: Present Section 15-59.3-08.

15.1-34-12. Registration certificate - Revocation - Administrative hearing. Before the department may revoke a person's registration certificate, the department shall serve the holder of the registration certificate with notice of the revocation and the grounds for the revocation. The department shall hold an administrative hearing under chapter 28-32 regarding the revocation of the person's registration certificate, if requested to do so by the holder of the registration certificate within ten days from the date on which the department served the notice of revocation.

NOTE: Present Section 15-59.3-09. Present Section 15-59.3-09 contains provisions regarding the right of a person whose application for a registration certificate has been denied to request a hearing and provisions allowing for a hearing if a certificate is to be revoked. The rewrite has placed each of these provisions in a separate section.

15.1-34-13. Student with disabilities - Placement by governmental entity -

Requirements. A governmental entity may not provide for the placement of a student with disabilities in a family boarding home unless the person operating the home:

1. Has obtained a registration certificate; or
2. Is exempt from the registration requirement under subsection 1 or 2 of section 15.1-34-02 and complies with all applicable standards and rules adopted by the department.

NOTE: Present Section 15-59.3-03.

15.1-34-14. Minimum standards - Rules - Inspection by governmental entity. The department may:

1. Establish standards for the registration and operation of a family boarding home.
2. Allow the application of alternate standards, if appropriate.
3. Adopt rules governing the provision of boarding home care to students with disabilities.
4. Authorize a governmental entity to:
 - a. Inspect any home for which a registration certificate is sought under this chapter; and
 - b. Certify that the home meets the requirements of this chapter and any standards set by the department.

NOTE: Present Section 15-59.3-06.

15.1-34-15. Penalty. A person who violates any provision of this chapter is guilty of a class B misdemeanor.

NOTE: Present Section 15-59.3-11.