

**BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL**

N.D. Admin. Code Chapter 75-03-36, Licensing of Child- Placing Agencies (Pages 197-233)))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> March 9, 2010
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For its report, the North Dakota Department of Human Services states:

1. The proposed creation of N.D. Admin. Code chapter 75-03-36 is in response to section 2 of 2009 HB 1095 which amended North Dakota Century Code section 50-12-02 to require the Department of Human Services to adopt rules establishing the requirements for licensure of child-placing agencies.
2. These rules are not related to changes in a federal statute or regulation.
3. The Department of Human Services uses direct and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The Department uses a basic mailing list for each rulemaking project that includes the county social service boards, the regional human service centers, Legal Services offices in North Dakota, all persons who have asked to be on the basic list, and internal circulation within the Department. Additionally, the Department constructs relevant mailing lists for specific rulemaking. The Department also places public announcements in all county newspapers advising generally of the content of the rulemaking, of over 50 locations throughout the state where the proposed

rulemaking documents may be reviewed, and stating the location, date, and time of the public hearing.

The Department conducts public hearings on all substantive rule-making. Oral comments are recorded. Oral comments, as well as any written comments that have been received, are summarized and presented to the Department's executive director, together with any response to the comments that may seem appropriate and a re-drafted rule incorporating any changes occasioned by the comments.

4. A public hearing on the proposed rules was held in Bismarck on December 22, 2009. The record was held open until 5:00 p.m. on January 4, 2010, to allow written comments to be submitted. A summary of the comments received is attached to this report.
5. The cost of giving public notice, holding a hearing, and the cost (not including staff time) of developing and adopting the rules was \$1,951.10.
6. The proposed rule creates chapter 75-03-36. The following specific changes were made:

Chapter 75-03-36. Chapter 75-03-36 includes sections on definitions; licensure; license revocation and denial; suspension reviews; resident child-placing agency office requirements; governance and responsibilities of child-placing agencies; financial structure, personnel files, staff functions and qualifications, and staff development of child-placing agencies; employee background checks; effect of criminal convictions on licensure; child abuse and neglect reporting; critical incident reporting; confidentiality and retention of files; adoption services; selection of interim care for a child

pending adoptive placement; interim family foster homes for infants; pre-adoption services; adoption placement; adoption disruption; foster care services; foster care placements; service requirements; family foster home recruitment, licensing, training, and support; and rights of the foster child.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The proposed chapter is not expected to have an impact on the regulated community in excess of \$50,000. A regulatory analysis was prepared and is attached to this report.
8. A small entity regulatory analysis and small entity economic impact statement were prepared and are attached to this report.
9. A constitutional takings assessment was prepared and is attached to this report.
10. These rules were not adopted as emergency (interim final) rules.

Prepared by:

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North Dakota Department of Human Services
March 9, 2010

CHAPTER 75-03-36

LICENSING OF CHILD-PLACING AGENCIES

Section

75-03-36-01	Definitions – Application.
75-03-36-02	Child-Placing Agency License.
75-03-36-03	License Revocation and Denial.
75-03-36-04	Suspension Review.
75-03-36-05	Resident Child-Placing Agency Office Requirements.
75-03-36-06	Governance and Responsibilities.
75-03-36-07	Responsibilities of the Child-Placing Agency Administrator.
75-03-36-08	Financial Structure.
75-03-36-09	Personnel Files.
75-03-36-10	Staff Functions and Qualifications.
75-03-36-11	Staff Development.
75-03-36-12	Employee Background Checks.
75-03-36-13	Criminal Conviction – Effect on Licensure.
75-03-36-14	Volunteers.
75-03-36-15	Student Field Placements.
75-03-36-16	Child Abuse and Neglect Reporting.
75-03-36-17	Critical Incident Reporting.
75-03-36-18	Emergency Plan.
75-03-36-19	Confidentiality and Retention of Files.
75-03-36-20	Legal Services and Responsibilities.
75-03-36-21	Quality Assurance.
75-03-36-22	Child-Placing Agency Closure.
75-03-36-23	Adoption Services – Coordination with Referral Source.
75-03-36-24	Provision of Services to Birth Parents – Adoption.
75-03-36-25	Provision of Services to the Child – Adoption.
75-03-36-26	Selection of Interim Care for Child Pending Adoptive Placement.
75-03-36-27	Licensed Child-Placing Agencies – Interim Family Foster Homes for Infants.
75-03-36-28	Pre-adoption Placement Preparation Services.
75-03-36-29	Adoption Placement.
75-03-36-30	Post-placement and Post Finalization.
75-03-36-31	Services to Prospective Adoptive Parents.
75-03-36-32	Case Plan for Adoption.
75-03-36-33	Client Adoption Case Records.
75-03-36-34	Adoption Disruption.
75-03-36-35	Foster Care Services Related to Child-Placing Agencies – Programs and Services.
75-03-36-36	Child-Placing Agencies' File and Documentation Requirements for Foster Care Placements.
75-03-36-37	Child and Family Plan of Care for Foster Children.
75-03-36-38	Family Foster Homes – Recruitment – Licensing – Foster Parent Training – Support.
75-03-36-39	Foster Care Placements.
75-03-36-40	Service Delivery.
75-03-36-41	Rights of the Foster Child.

SECTION 1. Chapter 75-03-36 is created as follows:

75-03-36-01. Definitions – Application.

1. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-12. In addition, as used in this chapter:
 - a. “Adoption disruption” means an interruption of an adoption prior to finalization where the child is returned to foster care or placed with another family.
 - b. “Adoption services” is a coordinated program of services for the child, the child’s birth parents, and the adoptive applicants and adoptive parents.
 - c. “Foster care for children” means the provision of substitute parental child care for those children who are in need of care for which the child’s parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child’s growth and development and to minimize and counteract hazards to the child’s emotional health inherent in the separation from the child’s family.
 - d. “Family foster home” means an occupied private residence in which foster care for children is regularly provided by the owner or lessee of the home to no more than four children, unless all the children in foster care are related to each other by blood or marriage or unless the department approves otherwise for the placement of siblings, in which case the limitation in this subsection does not apply. For the purposes of this subsection, foster care for children applies to those agencies placing children that are in the custody of a county, tribe or the state, in family foster homes.
 - e. “Legal risk adoptive placement” means placement of a child with a prospective adoptive family when the child is not legally free for adoption.
 - f. “Life book” means a tool used with children in out-of-home care and children who have been adopted to record memories and life events as they move to different placements.
 - g. “Permanent adoption record” means all paper, records, identifying and non-identifying information related to an adopted individual, birth siblings, birth parents, or adoptive parents that pertain to an adoption.
 - h. “Regional supervisor” means the regional supervisor of county social services located in each of the eight regional human service centers.
 - i. “Resident child-placing agency” means a child-placing agency that maintains an office within this state.

2. In these rules, the requirements for licensure for a child-placing agency apply to a new application for licensure as well as to an application for relicensure unless the context otherwise specifically implies.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-02. Child-placing agency license.

1. Application for a child-placing agency license must be made on an application form provided by the department.
2. At the initial application the applicant shall submit a written purpose and policy statement for the general operation and management of the child-placing agency. The statement must include:
 - a. The purpose of the child-placing agency, the geographic area the agency expects to serve, the ages of children to be placed, and any other specific factors regarding the children to be placed or the homes in which the children will be placed;
 - b. A written placement policy, including parental agreement forms, and a description of the legal procedures which will be used to obtain the authority to place the child;
 - c. A written statement of the fees that will be charged for each service; and.
3. Upon receipt of the application for license or renewal of license, the department shall conduct a licensing study or a license review to determine if the applicant meets all applicable requirements for licensure.
4. The department, after completion of a licensing study, shall issue a license to any applicant that meets all requirements for licensure.
5. The department shall renew the license on the expiration date of the previous year's license if:
 - a. The licensed child-placing agency makes written application for renewal prior to the expiration date of its current license;
 - b. The licensed child-placing agency continues to meet all requirements for licensure at the time of the relicensing study; and
 - c. The licensed child-placing agency submits a copy of its yearly budget and annual audit of expenditures.
6. If the department determines that an application or accompanying information is incomplete or erroneous, the department shall notify the applicant of the specific deficiencies or errors, and the applicant shall submit the required or corrected information. The department may not issue or renew a license until it receives all required or corrected information.

7. The licensure requirements of this chapter do not apply to county social service agencies nor does this chapter apply to child-placing activities undertaken by county social service agencies.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-03. License revocation and denial.

1. The department, after written notice to the applicant or licensee, may deny or revoke a license upon finding that:
 - a. The applicant or the licensee is not in compliance with all licensure requirements;
 - b. The applicant or the licensee has made a material misrepresentation to the department regarding its operations or facility; or
 - c. The applicant, licensee, or a member of the applicant's or licensee's staff has been named as the subject in a services required report of child abuse or neglect, has been convicted of a crime that the department has determined as having a direct bearing on the applicant's, licensee's, or staff member's ability to serve the public, or has been convicted of an other offense and has not been determined rehabilitated.
2. If an action to revoke a license is appealed, the licensee may continue the operation of the facility 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 section 50-12-11.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12-10, 50-12-11, 50-12-12

75-03-36-04. Suspension review. A child-placing agency may submit a written request for review to the department if its license is suspended. The written request must include a statement of the disputed facts and the name, address, and telephone number of the person to be contacted regarding the review. The request for review must be received by the department within five working days after the child-placing agency receives written notice of the suspension. The department shall complete its review and issue its decision within thirty days after the department receives the child placing agency's request for review. The child-placing agency may submit supporting documents or affidavits for the department to consider during its review. The department shall prepare a written decision upon the files, records, and other information received from the child-placing agency which was considered during its review. The department's decision constitutes the final determination of the suspension. If the department concludes that the child-placing agency made a false or

misleading report to the department, the department will issue a notice of revocation of the child-placing agency's license.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12-11

75-03-36-05. Resident child-placing agency office requirements. A resident child-placing agency shall maintain a physical office within the state, including an in-state mailing address and an in-state phone number. The resident child-placing agency must ensure that the phone is answered during regular business hours, or has messaging capabilities.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-06. Governance and responsibilities.

1. The governing body of the child-placing agency shall:
 - a. Be responsible for establishing policies, determining programs, and guiding the child-placing agency's development and providing leadership.
 - b. Be composed of at least three members, none of whom are family members of employees of the child-placing agency.
 - c. Meet as often as necessary, but at least four times a year with a quorum of its members present at the meetings.
 - d. Develop policies for selection criteria and rotation of its members of the governing body.
 - e. Ensure that the child-placing agency is funded, housed, staffed, and equipped in a manner required for the provision of services.
 - f. Employ a qualified administrator, and delegate responsibility to that administrator for the administration of the child-placing agency.
 - g. Regularly evaluate the performance of the administrator.
 - h. Approve the child-placing agency's annual budget of anticipated income and expenditures necessary to provide services described in the child-placing agency's statement of purpose.
 - i. Review a quarterly summary of revenues and expenditures as compared with the child-placing agency's approved annual budget.
 - j. Arrange for an annual financial audit to be prepared by a certified public accountant or a licensed public accountant and submitted to the department with the child-placing agency's request for relicensure.
 - k. Establish personnel policies for the selection and retention of staff necessary to operate the child-placing agency.

- l. Ensure that the child-placing agency has written policies and practices conducive to recruitment, retention, training, staff development, effective performance by qualified personnel, job descriptions for each position, and review of personnel policies and practices with staff participation at least every five years.
 - m. Request formal, initial orientation from the administrator on behalf of new board members of the child-placing agency's goals, programs, and methods of operation.
 - n. Maintain attendance records and minutes of the governing body's meetings.
 2. Each agency shall provide the department with the names and addresses of the members of the governing body within thirty days after the members' selection.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-07. Responsibilities of the child-placing agency administrator.

1. The administrator shall:
 - a. Plan and coordinate with the governing body, the development of policies and procedures governing the child-placing agency's services.
 - b. Ensure that the governing body is kept informed of matters affecting the child-placing agency's finances, operation, and provision of services.
 - c. Ensure employment of qualified staff and the administration of the child-placing agency's personnel policies.
 - d. Ensure that the child-placing agency and its services are made known to the community.
 - e. Maintain the child-placing agency's policies and procedures in written form.
 - f. Maintain a current organizational chart showing the child-placing agency's lines of accountability and authority.
 - g. Maintain a records retention policy that ensures adoption files are maintained permanently and foster care files are retained according to applicable foster care regulations.
2. The child-placing agency, under the administrator's direction, shall maintain a record for each client. A client's record must be kept current from the point of intake to termination of service, and must contain information relevant to the provision of services.

3. The administrator who delegates responsibility for program development shall delegate those responsibilities to qualified staff members.

History: Effective April 1, 2010
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-08. Financial structure.

1. For purposes of initial licensure, the child-placing agency shall demonstrate that it has sufficient predictable income to operate its program of services and upon relicensure, shall demonstrate ongoing financial stability.
2. The child-placing agency shall prepare an annual budget based on the assessment of agency program priorities and a realistic appraisal of anticipated funding including reimbursement for services. The child-placing agency shall submit a copy of its budget to the department with a cost breakdown of budget items utilized to determine fees for services.
3. If the child-placing agency increases fees for adoption services, the agency shall submit a copy of the cost analysis to the department to justify the increase.
4. The child-placing agency shall maintain a bonding program as protection for its governing body, staff, clients, funds, and property. The child-placing agency shall review the insurance program annually to assure adequate agency coverage.

History: Effective April 1, 2010
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-09. Personnel files. The child-placing agency shall have a personnel file for each employee that includes the following:

1. The application for employment including history of employment.
2. Reference letters, telephone notes, or both from former employers and personal references.
3. Applicable professional credentials and certifications.
4. Annual performance evaluations.
5. Orientation and training records.
6. Record of salary and salary adjustments.
7. Employee's first and last dates of employment.
8. Reason employment ended.
9. Copies of criminal history record investigation results and child abuse and neglect index findings.

History: Effective April 1, 2010
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-10. Staff functions and qualifications.

1. The child-placing agency shall employ or contract with staff with sufficient qualifications to enable them to perform the agency's fiscal, clerical, and maintenance functions.
2. The child-placing agency shall employ or contract with staff to perform the agency's administrative, supervisory, and placement services. These staff and their qualifications are as follows:

 - a. The administrator shall provide for the general management and administration of the child-placing agency in accordance with the licensing requirements and policies of the child-placing agency's governing body. The administrator must have a bachelors degree and a minimum of four years of professional experience in human services, at least two of which have been in administration including financial management, or must be an individual otherwise qualified and serving the child-placing agency as an administrator prior to April 1, 2010.
 - b. The placement supervisor shall supervise, evaluate, and monitor the work progress of the placement staff. The placement supervisor must be a licensed certified social worker and have a minimum of two years of experience in supervision of child placement workers or in child placement, or must have a master's degree in a human service-related field from an accredited school, and a minimum of two years of experience in supervision of child placement workers or in child placement, or must be an individual otherwise qualified and serving the child-placing agency as a placement supervisor prior to April 1, 2010.
 - c. The child placement worker shall perform intake services; provide casework or group work services or both, for children and families; recruit and assess foster and adoptive homes; and plan and coordinate resources affecting children and families. The child placement worker must be a licensed certified social worker, or a licensed social worker.
3. If the child-placing agency has no placement supervisor, the child placement worker must meet the education and experience requirements of the placement supervisor.
4. Staff serving as child placement workers or child placement supervisors must meet the above stated education and experience requirements or be excused from those requirements found in North Dakota Century Code chapter 43-41 on the licensing of social workers.

5. Placement worker caseload must be limited to ensure the placement worker is able to make all the required contacts with the biological, foster, and adoptive families; adopted adults; and collateral parties.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-11. Staff development. The child-placing agency shall ensure that the placement supervisor and placement workers receive training, as applicable to their position, in current foster and adoptive placement practices during each full year of employment. Activities related to orientation and supervision of the staff members and routine tasks are not training activities for the purpose of this requirement.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-12. Employee background checks.

1. Criminal history record investigations and child abuse and neglect index investigations must be completed for all child-placing agency employees who have direct contact with clients. The investigations must be completed prior to an employee's unsupervised contact with clients.
2. Criminal history record investigation must be a fingerprint-based check completed against a national data base.
3. Child abuse and neglect index investigations must be obtained from each state where the applicant has resided in the past five years. After the initial investigation, a child abuse and neglect index investigation must be repeated annually in this state and in the employee's state of residence for continued employment.
4. A subsequent criminal history record investigation is not required for an employee who maintains continuous employment at the child-placing agency unless the child-placing agency or the department determines that a need exists to conduct a subsequent investigation.
5. If an employee changes employment from one licensed child-placing agency to another licensed child-placing agency within a year of the completion of a criminal history record investigation and provides documentation of their background check clearance, a new criminal history record investigation will not be required.
6. 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 statewide 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 April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-13. Criminal conviction – Effect on licensure.

1. A prospective adoptive parent or any adult living in the prospective adoptive parent home, or a child-placing agency owner or employee, must not have been found guilty of, pled guilty to, or pled no contest to:

 - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-17, assaults – threats – coercion – harassment; 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code sections 12.1-20-03, gross sexual imposition – penalty; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, 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; or 14-09-22 – abuse or neglect of a child - penalty; or
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the North Dakota statutes identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated. The department will 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 a subsequent charge or conviction, has elapsed. 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 individual's ability to serve the public in a capacity as an adoptive

- home placement and as an owner or employee of a child-placing agency.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, 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 department may deny a request for criminal background check for any individual who provides false or misleading information about the individual's criminal history.
 5. 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 statewide 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 April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-14. Volunteers.

1. A child-placing agency which utilizes volunteers who work directly with children and families on a regular basis shall:
 - a. Develop a description of duties and specify responsibilities for volunteer positions;
 - b. Require personal references;
 - c. Designate a staff member to supervise and evaluate volunteers;
 - d. Develop a plan for orientation which includes education on the legal requirements for confidentiality, training in the philosophy of the agency, and the needs of children and families served by the child-placing agency;
 - e. Require that a volunteer sign a "statement of confidentiality"; and
 - f. Require a criminal history record investigation and a child abuse and neglect index investigation, the results of which do not disqualify the volunteer, prior to allowing the volunteer to have unsupervised contact with children.
2. Volunteers may not be used in the place of full-time paid staff.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-15. Student field placements.

1. A child-placing agency that accepts students for field placements shall:
 - a. Develop a written plan describing the students' tasks and functions;
 - b. Require references from the students' placing institutions;
 - c. Designate a staff member to supervise and evaluate the students;
 - d. Develop a plan for orientation and training of students in the philosophy of the child-placing agency, and the needs of children and families served by the child-placing agency;
 - e. Provide for students to participate in developing and carrying out the case plans for children and families with whom they are working directly;
 - f. Require that students sign a statement of confidentiality; and
 - g. Require successful completion of criminal history record investigations and child abuse and neglect index investigations prior to allowing students to have unsupervised contact with children.
2. Students may not be used in the place of full-time paid staff.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-16. Child abuse and neglect reporting.

1. The child-placing agency shall follow the mandated procedures for reporting child abuse and neglect as outlined in North Dakota Century Code chapter 50-25.1-03.
2. The agency shall develop policy for handling any suspected incidents of child abuse or neglect involving child-placing agency staff, or foster or adoptive parents. These procedures must include:
 - a. A provision that assures that any person having knowledge of or reasonable cause to suspect that a child is abused or neglected reports the circumstances to the local county social service board, regional human service center or the department;
 - b. A provision for preventing a recurrence of the alleged incident pending investigation; and
 - c. A provision for rehabilitation of the individual and for evaluating the continued utilization of any child-placing agency staff member, or foster or adoptive parent who has been the subject of a services required finding in a report of child abuse or neglect.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-06-36-17. Critical incident reporting. The child-placing agency shall have written policy outlining the critical incident recording and reporting process to the regional supervisor, and parent or custodian of the child, if any, when any of the following occurs:

1. An incident requires the services of law enforcement, including in the case of a runaway or an absent child;
2. A serious injury or trauma of a child in foster care, including a child placed for adoption, that requires the services of a medical practitioner;
3. Damage to a foster parent's home which could affect compliance with licensing standards including damage caused by fire, natural disaster, or other incident, which would cause any kind of major structural damage affecting the safety or shelter of the child or children in foster care;
4. Extended failures that are not repairable within a 24-hour period including heating, electrical, plumbing or safety warning in the foster home or the home in which the child is placed for adoption;
5. The death of a child placed in a home by the child-placing agency;
6. Any attempt at suicide by a child placed in a foster home, including a child placed for adoption, by the licensed child placing agency;
7. Pregnancy of a child placed in a foster home, including a child placed for adoption;
8. Criminal activity by the foster or adoptive parent;
9. An assault on a staff person or family foster home member by a foster child that requires medical attention by a medical practitioner;
10. Outbreak of a serious communicable disease;
11. Any condition requiring closure of the child-placing agency or family foster home; and
12. Any behavior involving a foster child, including a child placed for adoption, that results in a serious threatening situation of harm to the family members, staff, or other foster children.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-18. Emergency plan. The child-placing agency shall establish a written emergency plan for responding to potential natural, manmade, and health emergencies, including flood, avalanche, fire, severe weather, loss of water or food supplies, intruder, and lost child clients or staff. The plan must include:

1. Designation of crisis intervention leader responsibilities;
2. Development of a crisis response organizational chart;
3. Primary and alternate plans for evacuation, including transportation and relocation of participants when necessary and evacuation of injured persons; and
4. Supervision of participants after evacuation or relocation.

History: Effective April 1, 2010
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-19. Confidentiality and retention of files.

1. The child-placing agency shall have written procedures for safeguarding the confidentiality of records.
2. The child-placing agency shall ensure that all records are kept in a safe place, protected from damage, theft, and unauthorized access.
3. The child-placing agency shall have written policies regarding retention of permanent adoption records, foster care records, and personnel files.

History: Effective April 1, 2010
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-20. Legal services and responsibilities. The child-placing agency shall employ or retain legal staff to represent the child-placing agency in legal matters and to assure prompt resolution of legal questions for children in the legal custody of the agency. The agency shall have sufficient liability insurance to protect itself and children entrusted to its care from serious financial jeopardy.

History: Effective April 1, 2010
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-21. Quality assurance. The child-placing agency or applicant shall develop written policy outlining its process for determining that the child-placing agency is providing quality programming and services, including the following:

1. A process for reviewing the case plans for each child to evaluate the continued appropriateness of each service plan;
2. A process for reviewing select files, on a regular basis, to determine the quality and effectiveness of services being provided; and
3. A process for reviewing the child-placing agency's referral and admissions policies, procedures, and practices.

History: Effective April 1, 2010
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-22. Child-placing agency closure. A child-placing agency licensed under this chapter may not cease operations before:

1. Notifying the department in writing of the child-placing agency's intent to close and the proposed date of closure, with details regarding how the child-placing agency plans to meet the

requirements of this subsection. This notification must be received by the department not less than 90 days prior to the proposed date of closure;

2. All pending adoptive placements are finalized;
3. All families awaiting adoptive placement have been referred to other agencies or have closed their cases;
4. Custodians of children referred for services have been informed of the child-placing agency's closure and arrangements for transfer of the cases have been made;
5. The child-placing agency makes a reasonable attempt, which may require publication of a notice of closure, to notify former clients of the child-placing agency's closure;
6. Arrangements have been made with another resident licensed child-placing agency to retain all permanent adoption records and provide post finalization services;
7. Arrangements have been made to transfer any other records which must be retained for a specific time period to the department; and
8. Temporarily retained records must be:
 - a. Boxed in banker style boxes;
 - b. Clearly labeled; and
 - c. Indexed with the child-placing agency providing the index to the department in writing and electronically as specified by the department.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-23. Adoption services – Coordination with referral source.

A child-placing agency shall:

1. Distribute information regarding its adoption services to referral sources and inquiring birth and adoptive families;
2. Request complete pertinent information from a referral source including the following:
 - a. Medical and developmental information on child;
 - b. Birth parent medical and social history including birth parent's medical and social history;
 - c. Discharge hospital report and updated medical information on the child after birth of the child;
 - d. The child's life book;
 - e. Child protection and child welfare history information, if applicable;
 - f. Information from foster parents on the child prior to adoptive placement, if applicable;
 - g. Information regarding the child's religious affiliation, if available;
 - h. A certified copy of the termination of parental rights order prior to adoptive placement; and

- i. A copy of the child's birth certificate and social security card, if available.
- 3. Attend the child and family team meetings of any child referred who is in the custody of county social service or the department.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-24. Provision of services to birth parents - Adoption.

- 1. The child-placing agency shall:
 - a. Inform a birth parent of the birth parent's rights, obligations, and responsibilities under state law, or as specified by court order;
 - b. Inform a birth parent of the continuum of openness in adoption and the options available to the birth parent and the child for future contact as allowed by state law;
 - c. Assist the birth parent in making a decision and understanding the finality of relinquishment of parental rights;
 - d. Assist the birth parent to legally terminate the birth parent's parental rights provided this is the decision of the parent and the parent has the legal authority to unilaterally relinquish his or her rights (or make an adoption plan);
 - e. Honor the preference of the birth parent for the religious faith in which their child will be reared, provided it does not unduly delay placement of the child for adoption;
 - f. Include the birth parent, and other significant persons including the child when appropriate, in the development of the case plan;
 - g. Obtain, if assuming custody of a child for voluntary placement purposes,:
 - (1) Written authority from the parent or parents to place the child; and
 - (2) Written authority from the parent or parents to provide medical services for the child;
 - h. Make reasonable efforts to involve the birth father in planning for the adoptive placement of the child; and
 - i. Offer supportive and referral services to the birth parents.
- 2. No fee, with the exception of reasonable fees as verified by the court and allowed by state law, may be paid by the prospective adoptive parents to the birth parents. The services provided birth parents are not dependent on their willingness to relinquish their child for adoption.

3. The child-placing agency arranging the adoptive placement of a foreign-born child is not expected to provide services to the birth parents, but shall obtain available medical and other pertinent information regarding the adoptive child.

History: Effective April 1, 2010
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-25. Provisions of services to the child - Adoption.

1. The child-placing agency shall make every effort to place siblings together in an adoptive home. If it is not possible to place siblings together, the child-placing agency shall add written documentation in the child's file identifying the reasons the siblings could not be placed together and the plans formulated to keep the siblings in contact with one another after the adoption.
2. The child-placing agency shall provide a life book to the child, if the child does not already have one, and shall give the child an opportunity to explore the child's birth history in preparation for the child's adoptive placement.
3. When appropriate to the child's developmental needs, the child-placing-agency shall provide pre-placement counseling to the child to assist the child in adjusting to adoption.
4. The child-placing agency shall begin recruitment efforts immediately upon referral for a child referred to the child-placing agency without an identified family. Diligent recruitment will include listing the child with local, regional, and national child specific recruitment resources as directed by the child's child and family team.

History: Effective April 1, 2010
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-26. Selection of interim care for child pending adoptive placement.

1. The child-placing agency designated by the child's custodian or by the court, shall select the most appropriate form of care for the child consistent with the child's needs.
2. The child-placing agency shall select care that has the capacity to assist in the achievement of the goal of permanency and shall make efforts as appropriate to involve the birth parents in the selection of care.
3. The child-placing agency may make a legal risk adoptive placement, prior to the termination of parental rights, into the home of a prospective adoptive parent of that child, provided that:
 - a. The prospective family home has been fully studied and recommended for adoption placement;

- b. The legal risk adoptive placement is anticipated to be for less than 30 days; and
- c. The prospective adoptive parents sign a document acknowledging that they understand the risk of the birth parent reclaiming the child and that the prospective adoptive parents will return the child to the child-placing agency upon the child-placing agency's request.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-27. Licensed child placing agencies – Interim family foster homes for infants.

- 1. The child-placing agency may recruit and arrange for licensing family foster homes that will provide interim care for infants being relinquished to the custody of the child-placing agency prior to the adoptive placement of the child. Foster homes must be licensed according to North Dakota Century Code chapter 50-11, North Dakota Administrative Code section 75-03-14 and department policy found in manual chapter 622-05.
- 2. The child-placing agency shall provide orientation to a foster parent to increase the foster parent's awareness of the following:
 - a. The foster parents' roles and relationships with adoptable children, birth parents and prospective adoptive parents;
 - b. The estimated time frame for adoptive placement;
 - c. The record of the child's development and needs.
 - d. The child's life book information;
 - e. The provision of pertinent, non-identifying information regarding the child's background, case plan, and written authority from the custodian for medical care including prescribed medication; and
 - f. An explanation of reimbursement procedures for cost of care.
- 3. If the child-placing agency wishes to use a county supervised foster home, the child-placing agency shall secure permission to utilize the home from the appropriate county social service board prior to the placement. Permission must be limited to a specific child for a specific period of time. The child-placing agency shall provide the same information regarding the child to the county foster home as it would provide to the child-placing agency's foster home.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-28. Pre-adoption placement preparation services.

1. A child-placing agency may not place a child into an adoptive home without a full adoption assessment being completed on the prospective adoptive parents; including required fingerprint based criminal history record investigations and child abuse and neglect index investigations.
2. If the age and circumstances of the child warrants, the child-placing agency shall give the prospective adoptive parents an opportunity to review the records of the child in the child-placing agency's possession, and shall provide the prospective adoptive parents an opportunity to meet with the child's case manager, therapists, foster parents and other treatment providers to gain an understanding of the child's needs and the services the child will require upon placement in the prospective adoptive home.
3. If the age of the child allows, the child-placing agency worker shall help the child understand the reasons for placement, shall prepare the child for the new family and environment, and shall be available to the child, and the birth parents for supportive services.
4. If the age or the mental, physical, or emotional condition of the child allows, pre-placement preparation services must include:

 - a. A visit between the adoptive parents and the child in the foster home;
 - b. Sharing the child's life book with the child and the adoptive parents;
 - c. Making arrangements for a physical examination unless the child had a physical examination within one year prior to placement and a copy of the physician's report and the child's immunization record is in the child-placing agency's file for the child;
 - d. Making arrangements for an eye, dental and hearing examination for a child three years of age or older unless the child had these examinations within one year prior to placement and copies of the examination reports are in the child-placing agency's file; and
 - e. The sharing of information regarding the child's development and needs between the foster parents and the adoptive parents.
5. The child-placing agency shall prepare the adoptive parents for an understanding of separation anxiety, grief reaction, and problems related to attachment.
6. The child-placing agency shall notify the referral source of the date of placement.
7. The child-placing agency shall make any interstate adoptive placement in accordance with the Interstate Compact on the Placement of Children.
8. If warranted, the child-placing agency shall discuss the availability of adoption assistance and shall make a referral to county social services when appropriate. The child-placing agency must provide

county social services with supporting documentation of the need for adoption assistance when making the referral.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-29. Adoption placement.

1. The child-placing agency shall adopt written policies for the placement of a child free for adoption. The policies must provide for the following:
 - a. A placement contract as specified in North Dakota Century Code section 50-12-06;
 - b. Placement into an adoptive home as soon as possible after the child is legally free for adoption;
 - c. Placement of an Indian child according to the Indian Child Welfare Act;
 - d. Placement in the best interests of the child;
 - e. Placement with relatives or extended family members if it is in the best interests of the child;
 - f. Placing siblings together, and where this is not possible, a plan to keep separated siblings connected after adoption;
 - g. Placement to meet each child's distinctive needs;
 - h. Prohibition of placement based solely on the basis of race, color, or national origin of the adoptive or foster parent or the child involved;
 - i. Continuation of services to assist the child and family; and
 - j. Delivery of a copy of the child's current medical records to the child's adoptive parents.
2. The child-placing agency shall give notice to the department of any child placed by the child-placing agency for adoption. The child-placing agency shall provide notice within two weeks of placement on the form prescribed by the department.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-30. Post-placement and post finalization.

1. The child-placing agency shall:
 - a. Make continuing supportive services available for children and families following adoptive placement;
 - b. Interview all members of the adoptive family in the family home;
 - c. Have face-to-face visits with the child on a monthly basis primarily in the child's residence and the content of the visits must be documented in the child's file;
 - d. Provide assistance to the adoptive family in completing the legal adoption of the child; and

- e. Make post finalization services available to adoptive parents, birth parents, and the adopted child or adult, when needed. Minimally, the agency shall provide for:
 - (1) An exchange of pictures and letters between birth and adoptive families consistent with contact agreements;
 - (2) Adoption search services; and
 - (3) Information and referral services.
- 2. The child-placing agency may charge a reasonable fee for adoption search services.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-31. Services to prospective adoptive parents.

- 1. A child-placing agency serving minority race children shall have a recruitment plan that actively recruits homes of the same race as the adoptive children to preserve the adoptive child's culture.
- 2. The child-placing agency shall provide information to a prospective adoptive parent about the adoption process, the child-placing agency's policies and practices, legal procedures, and the approximate time the adoption process will take, adoptive standards, children available, the availability of a subsidy if appropriate, and a payment schedule which clarifies provision of services, dates of payment, and an estimate of final costs.
- 3. The child-placing agency shall require the prospective adoptive parent of a foreign-born child to purchase a surety bond, or have \$5000 in savings, to provide financial protection for a possible disruption, or unexpected medical costs prior to finalization unless the adoptive parent is provided a copy of the Decree of Adoption from the foreign court at the time of finalization in the foreign country.
- 4. The child-placing agency shall document the following information in the applicant's record and a summary of the information must be recorded in the adoption assessment:
 - a. Motivation for adoption;
 - b. Strengths and challenges of each member of the family;
 - c. The attitudes and feelings of the family members and extended family regarding adoption, with emphasis, if indicated, on attitudes and feelings about potential special needs and foreign-born children;
 - d. Evidence of stability of the adoptive parents' marital or other significant relationships;
 - e. The applicant's understanding of and plans for assisting a minority or foreign-born child to understand and value the child's racial and cultural background;
 - f. Attitudes of the applicant towards the birth parents and the birth parents' reasons for placement;

- g. The applicant's plan for discussing adoption with the child;
 - h. The applicant's emotional stability and maturity, including a history of treatment for substance abuse, mental health concerns, abuse or neglect issues, or other issues impacting the applicant's emotional stability and maturity. If indicated, the child-placing agency shall make arrangements for psychological evaluation of the applicant's emotional stability and maturity;
 - i. The applicant's parenting skills and willingness to acquire additional skills needed for the child's development;
 - j. The attitude of the applicant's birth children or previously adopted children about adoption, if applicable;
 - k. Reports of the physical examination of the applicant or self disclosure of medical concerns, current within the last twelve months;
 - l. The applicant's ability to provide financially for the child to be adopted with or without financial assistance under subsidized adoption, including the availability of health insurance;
 - m. The applicant's references including at least five personal and community character references;
 - n. The applicant's religious preference, if any;
 - o. Description of the applicant's home and community;
 - p. Substitute care for childcare if the applicant works;
 - q. Plans for care of the child in the event of the death of the applicant after the adoption;
 - r. Results of fingerprint based criminal history record investigation and child abuse and neglect index investigations; and
 - s. Recommendations for adoption in regard to number, age, sex, characteristics, and special needs of children best served by the applicants.
5. During the course of the study, the child-placing agency shall keep the applicant informed of the applicant's status with the child-placing agency. When an applicant is denied a positive recommendation for adoption, the child-placing agency shall inform the applicant, in writing, of the reasons child cannot be placed in the applicant's home. The child-placing agency shall offer services to the applicant as needed.
 6. The child-placing agency shall require an adoptive family assessment be updated at least every two years from the date of completion of the original assessment until a child is placed into the home for the purpose of adoption.
 7. The child-placing agency shall have regular contact with an approved waiting adoptive family to assess their circumstances and current ability to receive a child for adoptive placement.
 8. The child-placing agency shall develop a procedure to allow applicants to grieve the services provided by the child-placing

agency and to allow prospective adoptive parents to appeal the child-placing agency's decision regarding adoption assessment denial.

History: Effective April 1, 2010
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-32. Case plan for adoption.

1. The child-placing agency shall develop a written case plan for each client. The case plan must include a description of specific services to be provided and must include goals and the time frames for meeting those goals.
2. The child-placing agency shall review the case plan periodically.
3. The child-placing agency shall develop the case plan cooperatively with the client, including with a child when developmentally appropriate.
4. The case plan must be signed and dated by the client.
5. The case plan must be signed and dated by the case manager.
6. For a child in the custody of county social services or the department, the case plan must be directed by the child's child and family team.
7. For a child in the custody of the child-placing agency, the child-placing agency may direct the case plan.
8. For a child in the custody of a birth or adoptive parent, the legal custodial parent may direct the case plan.

History: Effective April 1, 2010
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-33. Client adoption case records.

1. The child-placing agency shall maintain a current and systematically-filed case record on each client served. The child-placing agency shall maintain a master file or card catalog on all case records of the child-placing agency. The case records must include the following:
 - a. A face sheet with current addresses of parents of child clients or other significant persons;
 - b. Application documents;
 - c. Child-placing agency assessments and supporting documentation, including criminal history record investigation, child abuse and neglect index investigation results, and medical records with significant family health history for the adoptive parents;
 - d. Medical records with significant family health history for the child and any birth parent;
 - e. Signed statements authorizing necessary medical or surgical treatment for the child;

- f. Correspondence;
 - g. Legal documents;
 - h. Child-placing agency agreements or contracts;
 - i. Reports from schools, specialists, and other agencies;
 - j. A case service plan; and
 - k. Dated, ongoing records of treatment, supervisory visits, conferences, and contacts with other persons concerning services provided to the client.
2. In the event a family is denied a positive recommendation for adoption or did not have a child placed with them, the child-placing agency shall keep on file a narrative clearly indicating the reason and the manner in which the decision was presented to the family.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-34. Adoption disruption. The child-placing agency shall:

- 1. Report immediately to the department any adoption disruptions;
- 2. Provide services to assist the child with feelings of anger, separation, and loss that occur after an adoption disruption;
- 3. Assess the needs of the child when considering replacement options;
- 4. Offer counseling to the adoptive parents to assist them with feelings of anger, separation, and loss; and
- 5. Assess the needs of the adoptive family with whom the child was placed at the time of the disruption prior to considering any future adoptive placement.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-35. Foster care services related to child-placing agencies – programs and services.

- 1. The child-placing agency shall adopt a written program description, which includes the following:
 - a. The purpose or mission of the child-placing agency, as it relates to the child-placing agency's role as a child placing agency;
 - b. A description of the services provided by the child-placing agency, clearly stating which services are provided directly by the child-placing agency and which services are to be provided in collaboration with county social services, division of juvenile services, tribal entities, community resources such as schools, and other appropriate agencies;
 - c. Characteristics and eligibility requirements of individuals appropriate for referral to the child-placing agency;

- d. A list of information that is required to be submitted with the referral; and
 - e. Acknowledgement that final decisions regarding a child referred to the child-placing agency rest with the custodian pursuant to the authority and responsibility conferred on the custodian under North Dakota Century Code section 27-20-38.
 - 2. The child-placing agency shall have a written intake, admission, and discharge policy. The written policy must include:
 - a. An assessment process for screening referrals, including a method of determining the appropriateness of each referral, including the age, sex, and characteristics of a child eligible for child placement;
 - b. Verification that a child referred to the child-placing agency and accepted for services is under the age of eighteen at the time of intake and is determined to be:
 - (1) Unable to receive parental care in the child's own home;
 - (2) Potentially capable of accepting other family ties;
 - (3) Able to participate in families and community life without danger to self or others; and
 - (4) Verification that acceptance for services would not hinder an adoption plan.
 - c. A child-placing agency engaged in providing therapeutic foster care services must follow all requirements contained in the department's policy found at manual chapter 624-05;
 - d. A requirement that the child-placing agency will provide services to a child referred to the child-placing agency's care without discrimination on the basis of race, color, national origin, religion, or sexual orientation;
 - e. A requirement that the child-placing agency accept a child for placement only when legally authorized to do so;
 - f. A process for assisting the applicant or referral source, or both, in obtaining services from other agencies when the child-placing agency's services are not appropriate to the applicant's or referral source's needs;
 - g. A requirement that the child-placing agency discuss with the child and the child's guardian the suitability of the child-placing agency's services in meeting the child's identified needs; and
 - 3. A licensed child-placing agency shall work with the department to set the child-placing agency's foster care rate.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-36. Child-placing agencies' file and documentation requirements for foster care placements.

1. The child-placing agency shall adopt a written file and documentation policy requiring that, within thirty days after placement, the child-placing agency establish and thereafter maintain a file for each child. This file must include:

 - a. The child's full name, birth date, age, and gender;
 - b. Name and contact information including that of the custodian, parents, and other pertinent individuals;
 - c. A signed care agreement, contract, or current court order establishing the child-placing agency's authority to accept and care for the child;
 - d. An explanation of custody and legal responsibility for consent to any medical or surgical care;
 - e. An explanation of responsibility for payment for care and services;
 - f. A current care plan ;
 - g. A copy of the appropriate interstate compact forms;
 - h. Copies of periodic, at least quarterly, written reports to the child's parent, guardian, or legal custodian;
 - i. Medical records, including annual health tracks screenings, and evidence of appropriate medical follow through, immunization records, height and weight records;
 - j. Records of dental exams at intervals not to exceed 6 months. Provide for dental treatments including necessary prophylaxis, repairs, and extractions;
 - k. School records, including individual education plans, if applicable; and
 - l. Records of eye exams at intervals not to exceed two years. Children who are in need of glasses shall be supplied with glasses as required.
2. The child-placing agency shall adopt a written file and documentation policy ensuring that the child-placing agency shall maintain a current and systematically filed case record on each client served. Permanent case records shall be kept in locked, fire-resistant filing cabinets. There shall be a master file or card catalog on all case records of the child-placing agency. The case records shall include at least the following:

 - a. A face sheet with current addresses of parents of child clients or other significant persons;
 - b. Application documents;
 - c. Agency assessments and supporting documentation, including criminal history and CPS registry check results;
 - d. Medical records with significant family health history and signed statements authorizing necessary medical or surgical treatment;
 - e. Correspondence;
 - f. Legal documents;

- g. Child-placing agency agreements or contracts; and
- h. A case service plan.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-37. Child and family plan of care for foster children. The child-placing agency shall adopt a written policy that ensures the child-placing agency will develop a written plan of care for each child and family. The policy must require:

1. The child-placing agency develop the care plan in conjunction with the child and family team;
2. The child's care plan be developed or reviewed within thirty days of placement with the child-placing agency;
3. The child's care plan be developed or reviewed with the appropriate participation and informed consent of the child or, where appropriate, the child's guardian or custodian;
4. Documentation that the child and a child-placing agency representative have participated in child and family team meetings on a regular basis, and that input has been obtained from the custodian, child, family, foster family, and other pertinent team members;
5. Documentation that the child-placing agency has collaborated and communicated at regular intervals with other agencies that are working with the child to ensure coordination of services and to carry out the child's plan;
6. Documentation of services provided by other agencies including arrangements that are made in obtaining them;
7. Documentation of the arrangements by which the child's special needs, including prescribed medication, diets, or special medical procedures, are met;
8. The child-placing agency make reasonable efforts to gather information from the custodian, parents, foster parents, courts, schools, and any other appropriate individuals or agencies;
9. Completion of a strengths and needs assessment of the child, biological family, and foster family.
10. Identification of measurable goals, including time frames for completion;
11. Identification of the measures that will be taken or tasks that will be performed to assist the child and family with meeting the goals;
12. Identification of the individual or entity responsible for providing the service or completing the task;
13. A discharge plan, including a projected discharge date with special attention to discharge planning efforts for a child who is aging out of the foster care system.
14. The child-placing agency to document in a child's service plan evidence of individualized treatment progress, to review the plan at

least every thirty days, or more often if necessary, to determine if services are adequate and still necessary or whether other services are needed.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-38. Family foster homes – Recruitment – Licensing – Foster Parent Training – Support. The child-placing agency shall adopt a written family foster home policy that encompasses the following:

1. The child-placing agency shall recruit family foster homes, and evaluate the homes' suitability to meet the individual and specialized needs of children accepted for family foster care, including those with physical, mental and emotional disabilities;
2. The child-placing agency shall recruit foster parents who have experience or who have the personal characteristics and temperament suited to working with a child placed in their home, who can provide a child with care, protection, and the relationships and experiences that foster normal, healthy childhood development; and
3. The child-placing agency shall make efforts to recruit family foster homes which reflect the race of children being served.
4. The child-placing agency shall arrange for licensing family foster care providers as follows:
 - a. Family foster homes must be licensed according to North Dakota Century Code chapter 50-11 and North Dakota Administrative Code chapter 75-03-14.
 - b. Providers of therapeutic family foster care must meet the requirements of department policy found at manual chapter 624-05;
5. The child-placing agency shall place children only in licensed family foster homes.
6. The child-placing agency shall make available, and shall ensure the foster parents complete, the following training:
 - a. Fire prevention training as specified in North Dakota Century Code chapter 50-11-01.5.
 - b. Training requirements contained in North Dakota Administrative Code chapter 75-03-14.
 - c. Training requirements contained in department policy found in manual chapter 622-05, foster care for children licensing standards.
 - d. Training requirements contained in department policy found in manual chapter 624-05, foster care services – permanency planning policies and procedures, required training for foster parents providing specialized care.

7. The child-placing agency shall provide for ongoing supervision of foster parents to ensure foster parents have the training necessary to provide quality care.
8. The child-placing agency shall provide, and ensure that foster parents have the necessary support from the child-placing agency, and the child welfare system and shall provide an orientation to foster parents on the child-placing agency's policies.
9. The child-placing agency shall ensure staff and foster parents have training in, precautions for severe weather, first aid and CPR.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-39. Foster care placements. The child-placing agency shall create and maintain written policy outlining how the child-placing agency will evaluate placement decisions. The evaluation must consider the appropriateness of initially placing a child with a specific foster family, and must provide for ongoing assessment of the appropriateness of the placement.

Additionally, the evaluation must include:

1. The child's view of the placement and of the foster family;
2. The foster parent's commitment to the child's best interests;
3. The foster parent's relationship with the biological family and support of the biological family;
4. Evidence that the placement supports the child's educational needs, including avoiding change of school placement;
5. Evidence that the placement supports the child's religious and spiritual needs ;
6. Evidence that the placement supports the child's cultural needs;
7. An assessment of the quality of the relationship between the foster family and child;
8. An assessment of the foster family's ability to accept and work with the child's birth family, when applicable;
9. Evidence that the placement supports maintaining sibling connections, i.e. siblings are being placed together, or the vicinity of the placement encourages sibling visits and contacts;
10. Evidence that the placement supports appropriate parent-child visits and contacts; and
11. Use of staff trained to determine the needs of children and their families, to assess placement resources for children found to be in need of placement, and to make decisions necessary to effect appropriate placements.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-40. Service delivery. The child-placing agency shall develop written policy addressing the service delivery component of its programming, including the following:

1. A description of how the child-placing agency engages in the child and family team and wraparound philosophies, and how collaboration efforts occur;
2. A description of how the child-placing agency provides services for a child to accommodate the child's needs, either directly or through cooperative arrangements with other agencies;
3. A description of how the child-placing agency demonstrates that it is guided by the best interests of the child in all matters relating to services for children;
4. Regarding religion and spirituality, a requirement that:
 - a. The child-placing agency assess the religious and spiritual needs of the child and the child's family upon admission;
 - b. The child-placing agency give appropriate consideration to the religious and spiritual needs requests of the child and the child's family when determining programming and placement;
 - c. The child-placing agency and foster parents respect the religious and spiritual beliefs of the child and the child's family;
 - d. The child-placing agency and foster parents make opportunities available for the child to attend religious and spiritual ceremonies of the child's choosing within the area in which the child is placed, whenever possible; and
 - e. The child-placing agency document the religious and spiritual activities in which the child participates;
5. Regarding culturally sensitive programming, a requirement that:
 - a. The child-placing agency assess the cultural needs of the child and the child's adoptive and birth families upon admission;
 - b. The child-placing agency give appropriate consideration to the cultural needs of the child and the child's adoptive and birth families when determining programming and placement;
 - c. The child-placing agency and foster parents respect the cultural beliefs of the child and the child's adoptive and birth families;
 - d. The child-placing agency and foster parents make cultural opportunities available within the area in which the child is placed, whenever possible; and
 - e. The child-placing agency document its efforts to meet the cultural needs of the child and the child's adoptive and birth families;
6. Regarding educational needs, a requirement that:
 - a. The child-placing agency provide opportunities for academic and vocational training;

- b. The child-placing agency attempt to place a child to maintain the child's current school placement; and
 - c. When applicable, the child-placing agency document the reasons why a child had to change schools due to placement;
- 7. Regarding how the child-placing agency supports the state's efforts to maintain sibling connections, a requirement that:
 - a. The child-placing agency make efforts, and document efforts made to place siblings together;
 - b. The child-placing agency document the reasons siblings were not placed together;
 - c. The child-placing agency arrange sibling visits and contacts;
 - d. The child-placing agency document visits between siblings; and
 - e. The child-placing agency educate foster parents on the importance of sibling visits, state requirements regarding these visits, and assist the foster parents with overcoming obstacles regarding sibling visits;
- 8. Regarding how the child-placing agency supports the child welfare system's parent and child visitation policy, a requirement that:
 - a. The child-placing agency arrange visits between a child and the child's parents;
 - b. The child-placing agency document the visits between parents and a child in care;
 - c. When visits are not occurring as required, the child-placing agency document efforts made, and the reasons the visits are not occurring; and
 - d. The child-placing agency educate foster parents on the importance of parent-child visits, and that the visits are required, and assist the foster parents with overcoming obstacles regarding these visits;
- 9. Regarding the clothing and personal items allowance available to foster children, a requirement that:
 - a. The child-placing agency provide each child with clothing, which is individually selected and fitted, appropriate to the season and comparable to that of other children in the community; and
 - b. The child-placing agency provide each child with age appropriate personal hygiene items.
- 10. Addressing how the child-placing agency will participate in preparing adolescents with the skills required for them to live independently.
- 11. Requiring that services are delivered by, or under the supervision of, professionally trained staff who:
 - a. Possess knowledge of child development, family dynamics, and the effects of separation and loss within the child's developmental level;

- b. Have specialized knowledge, skill, or experiences required to provide or locate resources most suitable to the needs of a child in foster care and to help the child and the foster parents make effective use of those resources;
 - c. Help foster parents improve their parenting skills and teach foster parents what they need to know in caring for a child who is not their own; and
 - d. Work collaboratively with the legal custodian in coordinating services for a child, the child's parents, and foster parents to achieve permanent arrangements for the care of the child.
12. Commitment to the involvement of the child's parents in planning for the child.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-41. Rights of the foster child. The child-placing agency shall have written policy indicating that the agency supports the rights of foster children. Specifically, the child-placing agency shall:

- 1. Respect the religious beliefs of the child;
- 2. Respect the biological family;
- 3. Ensure the child has visits and contacts with parents and siblings on a regular basis when not contraindicated by the custodial agency;
- 4. Allow the child to have personal property and a place for safe storage of that property;
- 5. Ensure programming takes into account cultural sensitivities;
- 6. Allow the child to express the child's opinions on issues concerning the child's care or treatment;
- 7. If developmentally appropriate, ensure the child's participation in child and family team meetings;
- 8. If developmentally appropriate, ensure the child's input into the child's plan of care; and
- 9. Ensure the child's right to safety, permanency, and well-being.
- 10. Outline the process that can be utilized by the foster child if the child feels the child's rights are not being protected.

History: Effective April 1, 2010

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

John Hoeven, Governor
Carol K. Olson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED CREATION OF
N.D. ADMIN. CODE CHAPTER 75-03-36
LICENSING OF CHILD-PLACING AGENCIES**

The North Dakota Department of Human Services (the Department) held a public hearing on December 22, 2009, in Bismarck, ND, concerning the proposed creation of N.D. Administrative Code chapter 75-03-36, Licensing of Child-Placing Agencies.

Written comments on these proposed amendments could be offered through 5:00 p.m. on January 4, 2010.

No one attending the public hearing provided comments. Four people submitted written comments within the comment period. The commentors were:

1. Bryan Quigley, Director, Mountrail County Social Services, PO Box 39, Stanley, ND 58784
2. Leanne Johnson, MSSW, LCSW, AASK Director, Catholic Charities North Dakota, 5201 S. Bishops Blvd. Suite B, Fargo, ND 58104
3. Susan R Grundysen, MSW, LCSW, Program Director/Adoption Option, A collaboration between Lutheran Social Services of ND and The Village Family Service Center
4. One commentor who wished not to be identified.

SUMMARY OF COMMENTS

Comment: Clarify that counties are not covered in this policy. It is not clear.

Response: We have added subsection 7 to section 75-03-36-02 to clarify that counties are not subject to chapter 75-03-36.

Comment: Employee background checks: I was told Counties could not legally require fingerprint background checks. If that is the case, why do we require our partners and can we require them to do something not required by "agents of the department".

Response: North Dakota Century Code section 50-12-03 requires criminal history record investigations be completed on owners and employees of child-placing agencies.

Comment: In 75-03-36-12 item 5.. where it talks about an employee changing employment from one lcpa to another within the one year - if they provide documentation of their background check... my question becomes - how would that happen? Would the agencies be allowed to 'share' the results - and that would be seen as 'ok' by the FBI because it's for the same purposes? My question kind of goes to that sharing of FBI results... I'm glad to see this, of course, but am just a bit more curious on the how we can do it here and not for other purposes... that's all.

Response: The agency would not be sharing the results. The employee has the ability to provide a copy of the criminal background check results from a former employment situation to his new prospective employer. No changes needed.

Comment: I am also assuming by this section that we would be sending in employee background checks to the Department, much like adoptive applicants, for the Department to do the interpretation - and not like the current PATH process where they process the checks themselves/internally - correct?

Response: Yes, the department would process the criminal history record investigation request as is currently being done for foster and adoptive parents. No changes needed.

Comment: In 75-06-36-17... the language focuses on foster children through much of it - or "a child in foster care" - I assuming this applies to a child in adoptive placement, not yet finalized - but thought I'd point it out and see if any further clarification was warranted or not.

Response: Yes, this does apply to children in adoptive placement, not yet finalized. We will make the necessary changes to NDAC 75-06-36-17.

Comment: 75-03-36-19 item 2.... Ensuring all records are kept in a safe place, protected from fire damage..... - is this interpreted to mean that our open/current cases that are currently stored in a regular file cabinet would need to be in fireproof filing cabinets..AASK used to store all open cases in fireproof cabinets in the past, but when the COA standard changed, we stopped doing that due to the costs.. the majority of our current cases are stored in regular file cabinets now - will that become problematic under this new rule?

Response: We will strike the word "fire" from section 75-03-36-19.

Comment: On p 9 - does there not need to be any explanation of what happens if prints are not readable after once, twice,?

Response: This is a good suggestion and we have amended 75-03-36-12 to address this.

Comment: On p.22 - do I understand that when we approve families their assessment will be good for two years? That is an awesome change!

Response: No changes needed.

Comment: In section 75-03-36-04, it would be easier for the department to know when it receives an agency's response rather than when the agency submits its response.

Response: Agree. The language was changed to reflect this.

Comment: Does 75-03-36-12(4) need to be clarified to identify when a subsequent criminal history record investigation may be requested for an employee who maintains continuous employment at a child-placing agency?

Response: Subsection 4 has been clarified.

Comment: Should 75-03-36-22 include a timeline by which a child-placing agency must notify the department of the agency's intention to cease operations?

Response: It should. A change has been made to subsection 1 to identify the timeline.

Comment: Can a child-placing agency use a county-supervised foster home any time once it receives initial permission to do so?

Response: No. Language has been added to 75-03-36-27(3) to clarify this.

Comment: In section 75-03-36-31(3), is it optional for the prospective adoptive parent of a foreign-born child to purchase a surety bond or have \$5000 in savings or is it a requirement?

Response: No. The language has been changed to reflect this.

Comment: In 75-03-36-35(2)(c), 75-03-36-38(4)(b), and 75-03-36-38(6)(d) the manual chapter cites are too specific.

Response: We agree. The cites have been changed to reflect the correct references.

Comment: In 75-03-36-35(2)(d), does "...child who needs and seeks..." mean "...to a child referred to..."?

Response: Yes. The language has been changed.

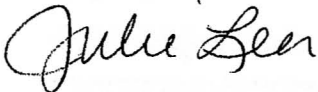
Comment: In 75-03-26-40(9)(b), how will "comparable to that of other children in the community" be determined.

Response: This requirement has been removed.

Comment: In 75-03-36-41(7) and (8), it's not always appropriate for a child to participate or provide input, is it?

Response: We agree. The language has been clarified.

Prepared by:



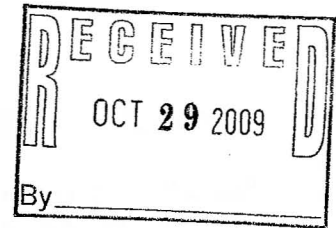
Julie Leer, Director
Legal Advisory Unit
N.D. Dept. of Human Services

In Consultation with:

Jonathan Alm, Department of Human Services
Julie Hoffman, Department of Human Services

January 19, 2010

Cc: Julie Hoffman, CFS
Rhonda Stevens, CFS



MEMO

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Julie Hoffman, Administrator, Adoption Services,

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-03-36

DATE: 10/19/2009

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to proposed creation of North Dakota Administrative Code Article 75-03-36. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Purpose

The purpose of these rules is to provide a standard of regulation for licensure of child placing agencies.

Classes of Persons Who Will be Affected

The classes of person who will most likely be affected by these rules are:

1. Licensed child placement agencies; and
2. Those agencies wanting to become licensed in North Dakota.

Through these proposed rules, these agencies will be provided a concrete and predictable set of standards that they must meet to become licensed and maintain their license.

Probable Impact

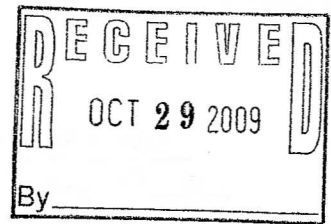
The proposed rules will provide a predictable structure for licensure of child placing agencies. The regulated community will be provided a set of standards that they must meet to become licensed and to maintain their license, in the areas of personnel, organization and administration, foster care services and adoption services.

Probable Cost of Implementation

Since the department is already licensing these agencies by policy, we do not believe there will be any additional cost to the department. Since the currently regulated community is already being licensed, in large part, under the standards proposed in these rules, we do not feel there will be additional cost to the agencies as a result of the rules.

Consideration of Alternative Methods

The department has, for years, licensed these agencies through standards specified in policy. We believe that the time has come to promulgate rules, in order to provide a consistent standard of licensure that will protect the public and ensure quality of services, so no alternative methods were considered.



MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Julie Hoffman, Administrator, Adoption Services, CFS

DATE: October 19, 2009

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed New N.D. Admin. Code chapter 75-03-36

The purpose of this small entity regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This regulatory analysis pertains to proposed new N.D. Admin. Code chapter 75-03-36. The proposed rules are not mandated by federal law.

Consistent with public health, safety, and welfare, the Department has considered using regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. For this analysis, the Department has considered the following methods for reducing the rules' impact on small entities:

1. Establishment of Less Stringent Compliance or Reporting Requirements

Small entities, for the purposes of this rule, are potentially four of the ten licensed agencies. Less stringent compliance or reporting requirements were not considered since foster care and adoption service standards are applied uniformly to all providers. The proposed rules will not alter in any material way any required compliance or reporting requirement for these small entities.

2. Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Entities

Foster care and adoption service standards are applied uniformly to all providers. The proposed rule will not alter in any material way any schedule or deadline for compliance or reporting requirements for these small entities. For this reason, less stringent schedules or deadlines for compliance or reporting requirements were not considered.

3. Consolidation or Simplification of Compliance or Reporting Requirements for Small Entities

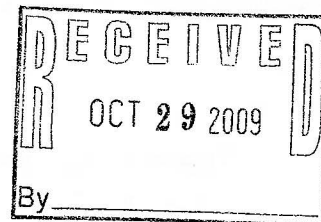
Foster care and adoption service standards are applied uniformly to all providers. The proposed rule will not alter in any material way any schedule or deadline for compliance or reporting requirements for these small entities. For this reason, consolidation or simplification of compliance or reporting requirements were not considered.

4. Establishment of Performance Standards for Small Entities to Replace Design or Operational Standards Required in the Proposed Rules

Foster care and adoption service standards are applied uniformly to all providers. The proposed rule will not alter in any material way any design or operational standards for these small entities. For this reason, establishment of performance standards for small entities to replace design or operation standards were not considered.

5. Exemption of Small Entities From All or Any Part of the Requirements Contained in the Proposed Rules

Foster care and adoption service standards are applied uniformly to all providers. For this reason, an exemption of small entities from all or any part of the requirements was not considered.



MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Julie Hoffman, Administrator, Adoption Services, CFS

DATE: October 19, 2009

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed New N.D. Admin. Code chapter 75-03-36

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to proposed new N.D. Admin. Code chapter 75-03-36. The proposed rules are not mandated by federal law. The proposed rules could have an adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the [new/proposed amended] rules are: licensed child placement agencies.

The following small entities may also be subject to the rule: those agencies seeking licensure as a child placing agency.

2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rule are expected to be: minimal. These agencies are already required to become licensed to provide these services; the proposed rules will simply provide a more consistent standard with which the department will regulate these agencies.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule: There would be no cost to private persons and consumers, as this rule relates only to actions by the agencies.

The probable benefit to private persons and consumers who are affected by the proposed rule: The proposed rule seeks to protect the public, ensure quality of service provision and provide regulatory authority for the department to deal with consumer complaints regarding regulated issues.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be: There will be no impact on state revenues.

5. Alternative Methods

The Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. Those alternatives included: continuing to license these agencies by policy. The alternatives were not selected because: statutory changes to NDCC 50-12 presented the need for rules related to criminal background checks. Because the department has recently licensed new entities, we believe regulation is now necessary to provide consistency in services and protect consumers.

John Hoeven, Governor
Carol K. Olson, Executive Director

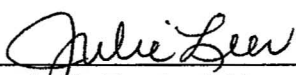
TAKINGS ASSESSMENT

concerning proposed creation of N.D. Admin. Code chapter 75-03-36.

This document constitutes the written assessment of the constitutional takings implications of this proposed rulemaking as required by N.D.C.C. § 28-32-09.

1. This proposed rulemaking does not appear to cause a taking of private real property by government action which requires compensation to the owner of that property by the Fifth or Fourteenth Amendment to the Constitution of the United States or N.D. Const. art. I, § 16. This proposed rulemaking does not appear to reduce the value of any real property by more than fifty percent and is thus not a "regulatory taking" as that term is used in N.D.C.C. § 28-32-09. The likelihood that the proposed rules may result in a taking or regulatory taking is nil.
2. The purpose of this proposed rule is clearly and specifically identified in the public notice of proposed rulemaking which is by reference incorporated in this assessment.
3. The reasons this proposed rule is necessary to substantially advance that purpose are described in the regulatory analysis which is by reference incorporated in this assessment.
4. The potential cost to the government if a court determines that this proposed rulemaking constitutes a taking or regulatory taking cannot be reliably estimated to be greater than \$0. The agency is unable to identify any application of the proposed rulemaking that could conceivably constitute a taking or a regulatory taking. Until an adversely impacted landowner identifies the land allegedly impacted, no basis exists for an estimate of potential compensation costs greater than \$0.
5. There is no fund identified in the agency's current appropriation as a source of payment for any compensation that may be ordered.
6. I certify that the benefits of the proposed rulemaking exceed the estimated compensation costs.

Dated this 19th day of October, 2009.

by: 
N.D. Dept. of Human Services