

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

<b>N.D. Admin. Code Chapters</b>	<b>)</b>	<b><u>REPORT OF THE DEPT. OF</u></b>
<b>75-03-07, 75-03-07.1, 75-03-08,</b>	<b>)</b>	<b><u>HEALTH AND HUMAN SERVICES</u></b>
<b>75-03-09, 75-03-10, 75-03-11, and</b>	<b>)</b>	
<b>75-03-11.1, In-Home Child Care</b>	<b>)</b>	
<b>Early Childhood Services, Self-</b>	<b>)</b>	<b>March 5, 2024</b>
<b>Declaration Providers Early</b>	<b>)</b>	
<b>Childhood Services, Family Child</b>	<b>)</b>	
<b>Care Early Childhood Services,</b>	<b>)</b>	
<b>Group Child Care Early Childhood</b>	<b>)</b>	
<b>Services, Child Care Center Early</b>	<b>)</b>	
<b>Childhood Services, Preschool</b>	<b>)</b>	
<b>Early Childhood Services, and</b>	<b>)</b>	
<b>School-Age Child Care Program</b>	<b>)</b>	
<b>Early Childhood Services</b>	<b>)</b>	
	<b>)</b>	
<b>(Pages 303-411)</b>	<b>)</b>	
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For its report, the North Dakota Department of Health and Human Services (Department) states:

1. The proposed amendments to N.D. Admin. Code Chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1, relating to In-Home Child Care Early Childhood Services, Self-Declaration Providers Early Childhood Services, Family Child Care Early Childhood Services, Group Child Care Early Childhood Services, Child Care Center Early Childhood Services, Preschool Early Childhood Services, and School-Age Child Care Program Early Childhood Services, are necessary to comply with 2023 House Bill No. 1144 and 2023 Senate Bills No. 2082

and 2104.

2. These rules are not related to changes in a federal statute or regulation.
3. The Department 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 human service zone directors, 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 rulemaking. Oral comments are recorded. Oral comments, as well as any written comments that have been received, are summarized and presented to the Department's commissioner, together with any response to the comments that may seem appropriate and a re-drafted rule incorporating any changes occasioned by the comments and the Attorney General's review.
4. A public hearing on the proposed rules was held in Bismarck on December 18, 2023. The record was held open until 5:00 PM on December 28, 2023, to allow written comments to be submitted. Two individuals attended the public hearing and provided comments. Fourteen written comments were received within the comment period. A summary of comments 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 \$3,895.37.

6. The proposed rules amend chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1. The following specific changes were made:

**Section 75-03-07-04** is amended to remove the term “authorized agent”, to replace the term “sudden infant death prevention” with “safe sleep training”, and to add mandated reporter training requirements.

**Section 75-03-07-06** is amended to replace “person” with “individual”.

**Section 75-03-07.1-02** is amended to remove the term “authorized agent”, to replace “operator” with “provider”, to replace the term “sudden infant death prevention” with “safe sleep training”, to amend a reference to “the department”, and to add provider and emergency designee training requirements on mandated reporter duties and on safe sleep. The section is amended to revise self-declaration requirements, including drinking-water supply and aquatic safety requirements.

**Section 75-03-07.1-06** is amended to replace the term “person” with “individual”, to remove “authorized agent”, and to change a reference from “child care” to “self-declaration program”.

**Section 75-03-07.1-07** is amended to change references from “child care” to “self-declaration program”.

**Section 75-03-07.1-08** is amended to change a reference from “child care” to “self-declaration program”.

**Section 75-03-07.1-10** is amended to remove the term “authorized agent”, and to update the correction order timeline and method of

correspondence regarding a correction order.

**Section 75-03-08-03** is amended to remove the definition of “provider”.

**Section 75-03-08-07** is amended to remove the term “authorized agent”.

**Section 75-03-08-08.1** is amended to remove the term “authorized agent” and to replace the term “child care program” with “family child care”.

**Section 75-03-08-10** is amended to replace the term “sudden infant death prevention” with “safe sleep training” and to add mandated reporter training requirements.

**Section 75-03-08-12** is amended to require provider staff to complete annual mandated reporter and safe sleep training and to add orientation requirements for new provider staff.

**Section 75-03-08-14** is amended to replace the term “operators” with “providers”, to replace “public health division of the department of human services” with “department of environmental quality”, to require annual drinking water supply testing, and to remove “authorized agent”.

**Section 75-03-08-19** is amended to replace the term “child care program” with “family child care”.

**Section 75-03-08-21.1** is amended to change references to “department” and to replace “child care program” with “family child care”.

**Section 75-03-08-22** is amended to remove the term “authorized agent” and to change a reference to “department”.

**Section 75-03-08-27** is amended to replace “person” with “individual”.

**Section 75-03-08-28** is amended to remove the term “authorized agent”.

**Section 75-03-08-29** is amended to remove “authorized agent” and to amend the correction order timeline and method of correspondence, to replace “child care program” with “family child care”, and replace “program” with “provider”.

**Section 75-03-09-03** is amended to create a definition for “owner” and to revise definitions of “operator” and “provider”.

**Section 75-03-09-07** is amended to remove “authorized agent”.

**Section 75-03-09-08** is amended to replace “child care program” with “group child care”, to remove “authorized agent”, to add group child care language.

**Section 75-03-09-10** is amended to replace “sudden infant death prevention” with “safe sleep training” and to add mandated reporter training requirements.

**Section 75-03-09-12** is amended to add orientation requirements for new provider staff, to replace “sudden infant death prevention” with “safe sleep training”, to add mandated reporter training requirements, and to add group child care language.

**Section 75-03-09-14** is amended to remove “authorized agent”, to require annual drinking water testing, and to replace “operator” with “provider”.

**Section 75-03-09-16** is amended to require monthly fire and emergency evacuation drills.

**Section 75-03-09-17** is amended to remove “authorized agent”.

**Section 75-03-09-18** is amended to remove certain public health inspection requirements, and to add a group child care reference.

**Section 75-03-09-22** is amended to update a reference to

department and to remove “authorized agent”.

**Section 75-03-09-24** is amended to replace “program” with “group child care”.

**Section 75-03-09-26** is amended to replace “operator” with “provider” and to update a reference to the department.

**Section 75-03-09-27** is amended to replace “person” with “individual”.

**Section 75-03-09-28** is amended to add references to an “operator” and to remove “authorized agent”.

**Section 75-03-09-29** is amended to revise the correction order timeline and method of correspondence, to remove “authorized agent”, and replace “facility” with “group child care”.

**Section 75-03-10-03** is amended to revise the definition of “operator” and to create a definition of “owner”.

**Section 75-03-10-04** is amended to replace “center” with “child care center”.

**Section 75-03-10-06** is amended to replace “operator” with “owner” and to replace “center” with “child care center”.

**Section 75-03-10-06.1** is amended to replace “operator” with “owner”.

**Section 75-03-10-07** is amended to remove “authorized agent” and to replace “operator” with “owner”.

**Section 75-03-10-08** is amended to replace “center” with “child care center”.

**Section 75-03-10-09** is amended to replace “center” with “child care center”, to replace “person” with “individual”, to remove “authorized agent”, and to remove the requirement that an operator must apply for a license for the child care center.

**Section 75-03-10-10** is amended to replace “sudden infant death prevention” with “safe sleep training” and to add mandated reporter and safe sleep training requirements.

**Section 75-03-10-11.1** is amended to replace “sudden infant death prevention” with “safe sleep training” and to add safe sleep and mandated reporter training requirements.

**Section 75-03-10-12** is amended to replace “sudden infant death prevention” with “safe sleep training”, to add mandated reporter training requirements, to remove the term “two-day onsite” from orientation requirements, to replace “child care program” with “child care center”, and to replace “nutrition problems” with “nutrition instructions”.

**Section 75-03-10-17** is amended to remove “authorized agent”.

**Section 75-03-10-18** is amended to revise food establishment license requirements at child care centers, to remove “authorized agent”, and to add references to “child care center”.

**Section 75-03-10-21** is amended to remove “authorized agent”.

**Section 75-03-10-22** is amended to revise a reference to department and to remove “authorized agent”.

**Section 75-03-10-24** is amended to replace “program” with “child care center”.

**Section 75-03-10-26** is amended to revise a reference to department and to replace “program” with “operator”.

**Section 75-03-10-27** is amended to replace “operator” with “owner” and to replace “person” with “individual”.

**Section 75-03-10-28** is amended to add the term “owner” and to remove “authorized agent”.

**Section 75-03-10-29** is amended to update the correction order

timeline and method of correspondence, to remove “authorized agent”, and to add “owner” and replace “operator” with “owner”.

**Section 75-03-11-03** is amended to amend the definition of “operator” and to add a definition of “owner”, and to remove the definition of “preschool”.

**Section 75-03-11-06** is amended to replace “operator” with “owner”.

**Section 75-03-11-06.1** is amended to replace “operator” with “owner”.

**Section 75-03-11-07** is amended to remove “authorized agent” and to replace “operator” with “owner”.

**Section 75-03-11-08** is amended to remove “authorized agent”, to replace “child care center” with “preschool”, and to remove the requirement for an operator to apply for a license for the preschool.

**Section 75-03-11-10** is amended to add staff orientation requirements for new preschool staff.

**Section 75-03-11-13** is amended to add mandated reporter training requirements and to add a substitute staff and emergency designee annual training exemption to provide consistency among all provider types.

**Section 75-03-11-17** is amended to remove “authorized agent”.

**Section 75-03-11-18** is amended to revise food establishment license requirements at preschools, to revise references to department, to remove “authorized agent”, and to replace “program” with “preschool”.

**Section 75-03-11-19** is amended to replace “operator” with “owner”.

**Section 75-03-11-20** is amended to replace “program” with “preschool”.

**Section 75-03-11-21** is amended to include minimum food safety

standards to provide consistency among all provider types.

**Section 75-03-11-22** is amended to remove “authorized agent” and to revise a reference to department.

**Section 75-03-11-26** is amended to revise a reference to department.

**Section 75-03-11-27** is amended to replace “operator” with “owner” and to replace “person” with “individual”.

**Section 75-03-11-28** is amended to add the term “owner” and to remove “authorized agent”.

**Section 75-03-11-29** is amended to update the correction order timeline and method of correspondence, to remove “authorized agent”, and to add “owner” and replace “operator” with “owner” and replace “preschool” with “owner and operator”.

**Section 75-03-11.1-03** is amended to amend the definition of “operator” and to add a definition of “owner”, and to remove the definition of “school age child care program” or “program”.

**Section 75-03-11.1-06** is amended to replace “operator” with “owner”.

**Section 75-03-11.1-06.1** is amended to replace “operator” with “owner”.

**Section 75-03-11.1-07** is amended to remove “authorized agent” and to replace “operator” with “owner”.

**Section 75-03-11.1-08** is amended to replace “person” with “individual”, to remove “authorized agent”, to replace “child care center” with “school-age child care program”, and to remove the requirement for an operator to apply for a license for the school-age child care program.

**Section 75-03-11.1-08.1** is amended to add mandated reporter

training requirements.

**Section 75-03-11.1-08.3** is amended to add mandated reporter training requirements.

**Section 75-03-11.1-08.4** is amended to add mandated reporter training requirement, to add substitute staff and emergency designee annual training exemption to provide consistency among all provider types, and to remove the term “two-day onsite” from orientation requirements.

**Section 75-03-11.1-17** is amended to remove “authorized agent”.

**Section 75-03-11.1-18** is amended to revise food establishment license requirements at school-aged child care programs, to revise references to department, and to remove “authorized agent”.

**Section 75-03-11.1-21** is amended to remove “authorized agent”.

**Section 75-03-11.1-22** is amended to remove “authorized agent” and to revise a reference to department.

**Section 75-03-11.1-26** is amended to revise a reference to department and to replace “program” with “operator”.

**Section 75-03-11.1-27** is amended to replace “operator” with “owner” and to replace “person” with “individual”.

**Section 75-03-11.1-28** is amended to add the term “owner” and to remove “authorized agent”.

**Section 75-03-11.1-29** is amended to update the correction order timeline and method of correspondence, to remove “authorized agent”, and to add “owner” and replace “operator” with “owner” and replace “school age child care program” with “owner and operator”.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The rule amendments are 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. The anticipated fiscal impact resulting from implementation of the proposed amendments is minimal.
10. A constitutional takings assessment was prepared and is attached to this report.
11. These rules were not adopted as emergency (interim final) rules.

Prepared by:

Jonathan Alm  
Legal Division  
North Dakota Department of Health and Human Services  
March 1, 2024

**SUMMARY OF COMMENTS RECEIVED  
REGARDING PROPOSED AMENDMENTS TO  
N.D. ADMIN. CODE CHAPTERS 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10,  
75-03-11, AND 75-03-11.1**

**IN-HOME CHILD CARE EARLY CHILDHOOD SERVICES, SELF-DECLARATION  
PROVIDERS EARLY CHILDHOOD SERVICES, FAMILY CHILD CARE EARLY CHILDHOOD  
SERVICES, GROUP CHILD CARE EARLY CHILDHOOD SERVICES, CHILD CARE  
CENTER EARLY CHILDHOOD SERVICES, PRESCHOOL EARLY CHILDHOOD SERVICES,  
AND SCHOOL-AGE CHILD CARE PROGRAM EARLY CHILDHOOD SERVICES**

The North Dakota Department of Health and Human Services (the Department) held a public hearing on Monday, December 18, 2023, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1, In-Home Child Care Early Childhood Services, Self-Declaration Providers Early Childhood Services, Family Child Care Early Childhood Services, Group Child Care Early Childhood Services, Child Care Center Early Childhood Services, Preschool Early Childhood Services, and School-Age Child Care Program Early Childhood Services.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Thursday, December 28, 2023.

Two individuals attended the public hearing and both provided comments. Fourteen written comments were received within the comment period. The commentors were:

1. Jennifer Moser, KinderKidz Central, 1815 1<sup>st</sup> Street W, Dickinson, ND 58601
2. Deb Habedank, Director, NDSU Center for Child Development, Box 6050, Dept. 3142, Fargo, ND 58108
3. Alexis Depee, 5315 8<sup>th</sup> Street W, West Fargo, ND 58078
4. Greg Depee, 5315 8<sup>th</sup> Street W, West Fargo, ND 58078
5. Angie Lynnes, 1240 25<sup>th</sup> Street S, Fargo, ND 58103
6. Mayor Kory Peterson of Horace, ND through Representative Brandy Pyle, 215 Park Drive E, Horace, ND 58047
7. Representative Brandy Pyle, PO Box 337, Casselton, ND 58012
8. Kayla Graetz, 4010 Morning Star S, Mandan, ND 58554
9. Malachi Peterson, 1238 Highland Lane W, West Fargo, ND 58078
10. Robin Nelson, Boys and Girls Club of Red River Valley, 2500 18<sup>th</sup> Street S, Fargo, ND 58103
11. Beth Wolff, 10903 96<sup>th</sup> Street SE, Oakes, ND 58474, public hearing
12. Courtney Wolff, 10903 96<sup>th</sup> Street SE, Oakes, ND 58474, public hearing
13. Shanna Dockter Brady, 1000 Schick Drive, Bismarck, ND 58501, two separate comments
14. Shannon Full, President/CEO, FMWF Chamber of Commerce, 3312 42<sup>nd</sup> Street S, Suite 101, Fargo, ND 58104

**LEGAL**

N.D. Admin. Code Chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1  
Summary of Comments  
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15. Earleen Friez, PO Box 1101, Hettinger, ND 58639

## **SUMMARY OF COMMENTS**

**Comment:** 75-03-10-03: "Annual" is defined as the provider's ~~licensing~~ ~~calendar~~ year.

The above definition can lead to some confusion. For example, if my Center license expires every January each year. My licensor Emily Dolinar requires us to have all training completed when we submit our application which is required 3 months prior to expiring. Therefore, only giving my staff members about 9 months to complete "Annual" trainings.

Our licensor also requires that the training be on ND Growing Futures transcript before she will expect it as completed training even when we provide her with copies of the certificates. Which is a concern on its own due to the extremely slow process of NDGF.

I noticed in the century code there is verbiage of NDGR only "Department approved" training. I request there be a definition of "department approved training" and if that is NDGF.

**Response:** Thank you for the comment. The Department has abandoned the proposed changes to the definition of "annual" in section 75-03-07.1-00.1, 75-03-08-03, 75-03-09-03, 75-03-10-03, 75-03-11-03, and 75-03-11.1-03. Subsection 11 of section 50-11.1-03 of the North Dakota Century Code only permits the applicant's Department-approved training hours completed after submitting the fees and application to be counted toward the licensing annual requirements for the following year. Subsections 8 and 9 of section 50-11.1-03 of the North Dakota Century Code establishes the timeline as to when a completed application, including training hours, is required to be submitted to the Department. State law does permit a provider to submit a completed application within sixty days before the expiration date of the applicant's current license or self-declaration; however, the application fees are doubled, and the Department still has thirty days to approve or deny the application.

Department-approved training is outlined in Early Childhood Policy [EarlyChildhood \(nd.gov\)](http://EarlyChildhood.nd.gov). All training for licensing requirements must be approved by the Department's Workforce Registry system.

The Workforce Registry will accept early childhood/school-age related training from:

1. Accredited colleges and universities
2. Federal and North Dakota state agencies when specific to early childhood care and education
3. IACET accredited organizations
4. Nationally recognized organizations listed in the Workforce Registry's
5. National Workforce Registry Alliance (NWRA) Training Organization Recognition list

**Comment:** Section 75-03-10-12: Ensure safe care for children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or

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hearing range of an infant, toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child.

I was told by my licensor that you have to be in the same room as the children at all times, if you have to use the restroom you must have another staff member relieve you. Could you define "within sight or hearing range" for centers?

**Response:** The Department is not currently proposing any amendments to subsection 3 of section 75-03-10-12, thus no changes can be made to subsection 3 of section 75-03-10-12. The application of "within sight or hearing range" is fact specific for each location and situation, including the children's age, individual needs, and activity. The main premise behind the use of "within sight or hearing range" is that staff members are in a position to supervise and intervene to protect the health and safety of the child. Requests for clarification of Department policy can be submitted to early childhood licensors or the Early Childhood Section or by view Early Childhood Policy 620-01-95-01.

**Comment:** Subsection 5 of section 75-03-10-27:

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

We have been told by our licensor that staff members are not allowed to start working until their fingerprint results memo are returned from the CBCU and clear. Adding this verbiage would be great because this is saying that as long as the operator submits the forms they are meeting compliance.

**Response:** The Department appreciates the comment. The current rule already addresses this comment as subsection 4 of section 75-03-10-27 states the "operator shall establish written policies and engage in practices that conform to those policies to effectively implement this section before hiring any staff member." In addition, subsection 1 of section 75-03-10-27 states that "a child care center may not employ or allow, in any capacity that involves or permits contact between the emergency designee, substitute staff member, or staff member and any child care for by the child care center, an operator, emergency designee, substitute staff member, director, supervisor, or staff member who has been found guilty of, plead guilty to, or pled no contest to...." If a staff member starts employment without having a background

completed and cleared, the provider's licensing status could be in jeopardy of being revoked or a correction order could be issued if the staff member has a criminal conviction.

**Comment:** Portal: I would request to add in the century code that "operators need to keep all staff member's documents current and updated on the licensing portal."

**Response:** Thank you for your comment. Any changes to the North Dakota Century Code would need to occur during the next legislative assembly. However, the need to use the Child Care Licensing System to apply, renew, and enter licensing requirements is currently addressed throughout the Early Childhood Licensing policies based on the Department's current authority under state law and administrative code to process, approve, or deny applications.

**Comment:** Page 53: Add Department definition.

**Response:** Thank you for the comment. The definition of "department" is located in subsection 3 of section 50-11.1-02 of the North Dakota Century Code. Since the definition of "department" is stated in state law, there is no need to repeat the definition in administrative code.

**Comment:** Page 61: Like the idea of Safe Sleep compared to Sudden Infant Death Prevention and under section 44, subsection 6 indicate Safe Sleep annual completion for those professionals working with infants. Mandated reporting is part of the Getting Started Growing Futures training required by all child care and education providers. Make sure it is very clear that mandated reporting is required annually by all.

**Response:** Thank you for the comment. Section 50-11-02.4 of the North Dakota Century Code requires annual completion of the online interactive training module provided by the Department for mandated reports of suspected child abuse or neglect. In addition to subsection 6 of section 75-03-10-11.1, paragraph 6 of subdivision f of subsection 1 of section 75-03-10-12 also requires one hour on mandated reporter of suspected child abuse or neglect training for all staff members

**Comment:** Page 62: Under (f)(5), is department-approved training the same as Growing Futures approved training? Clarification is needed.

**Response:** Thank you for the comment. Department-approved training is outlined in Early Childhood Policy [EarlyChildhood\(nd.gov\)](http://EarlyChildhood(nd.gov)). All training for licensing requirements must be approved by the Department's Workforce Registry system.

The Workforce Registry will accept early childhood/school-age related training from:

1. Accredited colleges and universities
2. Federal and North Dakota state agencies when specific to early childhood care and education
3. IACET accredited organizations

N.D. Admin. Code Chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1

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4. Nationally recognized organizations listed in the Workforce Registry's
5. National Workforce Registry Alliance (NWRA) Training Organization Recognition list

**Comment:** Page 63, #2: I would recommend you indicate the number of days of orientation very specifically. Ex. What if a new employee starts on a Wednesday, their first week of orientation would be Wednesday, Thursday, and Friday. Indicate 5 days if that is what you mean. Also, are you creating a new Employee Orientation Certificate form?

**Response:** Thank you for the comment. The current rule uses "during the first week of employment", meaning seven days. Department strives to provide clear and concise messaging as it pertains to licensing requirements and will take your comment into consideration to update forms Early Childhood Licensing policies to ensure universal interpretation of the rule by licensors and providers.

**Comment:** On page 33, #1: There is much confusion in the field on the calendar year definition. Is it the program's licensing calendar year or January-December? Our program has run into problems with the acceptance of Growing Futures approved trainings because ND licensing has said training had to be in the licensing year. Clarification needed.

**Response:** Thank you for the comment. The Department has abandoned the proposed changes to the definition of "annual" in section 75-03-07.1-00.1, 75-03-08-03, 75-03-09-03, 75-03-10-03, 75-03-11-03, and 75-03-11.1-03. Subsection 11 of section 50-11.1-03 of the North Dakota Century Code only permits the applicant's Department-approved training hours completed after submitting the fees and application to be counted toward the licensing annual requirements for the following year. All other training would need to occur within the program's licensing year and prior to submitting an application pursuant to subsections 8 and 9 of section 50-11.1-03 of the North Dakota Century Code.

**Comment:** I am writing in opposition to changes in ND Admin Code chapter 75-03-08-14, specifically this passage:

8. The provider shall ensure that exterior play areas ~~in close proximity to busy streets and other unsafe areas are contained or fenced within a fence, wall, or have solid natural barriers, to restrict children from those unsafe areas barrier that is at least four feet high. There shall be no gap five by five inches [12.7 by 12.7 centimeters] or greater in or under the fence or barrier.~~ Outdoor play areas must be inspected daily for hazards and necessary maintenance.

If this wording is approved, the licensed home daycare that my children attend will be forced to close, along with many other home daycares in North Dakota. My provider is not able to fulfill this requirement as she currently rents her home and fences are not allowed per her lease. Even if providers are willing and able to put up a fence/wall, to do so by April 2024 is an inappropriate timeline for a project of such magnitude and expense.

The closure of my children's daycare would be devastating to our family and many others. My two boys (ages 3 and 7 months) are thriving under the care that they receive at Muddy River Nature School in Horace, North Dakota. I have never had any safety concerns regarding the backyard play area and trust my provider and licensor to determine if the area is appropriate.

My husband and I were born, raised, and currently reside and work in North Dakota. There is a childcare crisis throughout the nation and the West Fargo/Fargo area where we live. Reliable, licensed childcare is so hard to find here. If our current licensed daycare were to close, I would be forced to consider leaving my job in healthcare because of the limited options available for my children.

I plead with you to reconsider the proposed amendments and consider the providers who have limitations due to their lease agreements. I believe there is a balance between ensuring child safety and putting unrealistic expectations and timelines on licensed in-home daycares.

**Response:** Thank you for your comment. The Department has considered the comments it has received regarding the proposed amendments on fencing and has decided to abandon the proposed changes. Therefore, subsection 8 of section 75-03-08-14 will read as follows:

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

**Comment:** I am writing to bring to your attention my concerns regarding the proposed changes to childcare facility requirements, specifically the mandate for fences or barriers around exterior play areas. While I acknowledge the importance of ensuring child safety, I believe that the proposed requirement may have unintended consequences and adversely affect childcare providers, especially those in unique circumstances.

One of the significant concerns is the potential impact on providers (Muddy River Nature School - Horace, ND) who do not own the property where they operate. For instance, our childcare provider leases their facility, and the terms of their lease explicitly prohibit the installation of fences. This restriction could force them to cease operations, leading to a loss of income for both the husband and wife who jointly manage the school and daycare services.

The consequences of closures like these could exacerbate the existing labor shortage in North Dakota, where childcare services are already challenging to find, resulting in extended wait times for parents seeking quality childcare for their children.

My wife and I, both employed in high-demand fields (healthcare and cybersecurity), understand the importance of reliable childcare services. The potential closure of facilities due to stringent requirements would force us and others in similar situations to reconsider our work commitments, possibly taking one of us away from full-time employment or prompting a career

N.D. Admin. Code Chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11,

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change. This, in turn, could contribute to the broader issue of workforce challenges in our state.

Moreover, the proposed timeline for compliance with the fence requirement appears impractical, especially considering North Dakota's harsh winters. The installation and maintenance of fences necessitate a considerable upfront cost and ongoing commitment. Given the climate conditions, expecting providers to meet this deadline is not only challenging but may divert attention from the primary focus – the supervision and safety of children.

I respectfully urge you to reconsider the mandatory fence requirement and explore alternative measures that prioritize child safety without placing an undue burden on childcare providers, especially those in unique leasing situations. Collaborative efforts between the state and childcare providers can help formulate regulations that achieve the intended goals without jeopardizing the viability of these essential services.

**Response:** The Department has considered the comments it has received regarding the proposed amendments on fencing and has decided to abandon the proposed changes.

**Comment:** I am writing to you about the importance of childcare in our community, especially since our area is already facing a childcare crisis. North Dakota already has a higher demand for childcare than is readily available to families. Which is why imposing more restrictions on existing providers seems counter-productive to resolving such an issue.

I am referencing the proposed amendment changes to ND childcare codes that would go into effect in 2024. Specifically, the changes proposed to Family Child Care Early Childhood Services 75-03-08-14, which will be requiring a 4 ft fence, wall, or natural barrier on the exterior play area of the property. Historically, the verbiage allowed for the licensor's risk assessment of each individual childcare. My children's childcare provider, along with many others across the state, currently rent their home. The property management company they rent from does not allow for fencing on the property. Therefore, if this proposed change is passed, our provider will be closing. Not only is this one less provider in our area, but a provider of extreme quality and a program that is unique to ND and often sought after by families with an already long wait list.

On the other hand, if fencing were allowed, one would have to take into consideration actually putting up the required fencing. In an economy where we are already struggling with inflated costs for materials and labor, the cost of this would likely then be pushed onto the families in the form of an increase in childcare cost. Many families are already struggling to afford childcare the way it is. What about the time frame for all of this? Amendment changes would go into effect in April of 2024. Providers would have January through April to put up a fence. A time when we are still experiencing winter weather and freezing temperatures.

Please have a look at one of the childcare programs that will be directly affected by these proposed changes that is within your district. It is an amazing program that my children have

grown and learned so much from already. I would hate to see them lose such an amazing and unique childcare experience and for those future kiddos to lose out such an opportunity as well.

### **Muddy River Nature School**

Website: <https://www.muddyrivernatureschool.com/>

Facebook: <https://www.facebook.com/MuddyRiverNatureSchool>

Instagram: <https://www.instagram.com/muddyrivernatureschool/>

I am asking you to take a closer look at these proposed changes. While I completely understand the purpose of this specific change in regards to the safety of children, I still feel there should be some exceptions to allow for certain factors, i.e. renters, apartment home daycares, etc. The verbiage should remain. At this time, Horace is one the fastest growing cities in North Dakota. Why close down a thriving business, providing essential services in an area where the demand for these services will only continue to grow?

Thank you for taking the time to read this. I hope you take this into consideration.

**Response:** The Department has considered the comments it has received regarding the proposed amendments on fencing and has decided to abandon the proposed changes. Therefore, subsection 8 of section 75-03-08-14 will read as follows:

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

**Comment:** I am reaching out because my wife and I's daycare (located in Horace) just posted on their Facebook page the attached letter from the ND. Dept. of Health & Human Services and stated that they might have to close down due to new rules being considered for in-home daycares in North Dakota which would require 4ft fences to be installed for all daycares. Unfortunately, our daycare provider rents her home and is not allowed under her lease to make changes to the back yard such as the installation of a fence. I know from my past experience as a city planner for the City of West Fargo that there's many in-home daycare providers that will more than likely be in a similar situation in the metro area if these new rules are passed. The relationship between access to childcare and workforce attraction/retention has been a matter of public discussion for quite some time in our state and this rule would negatively impact both those topics.

**Response:** The Department has considered the comments it has received regarding the proposed amendments on fencing and has decided to abandon the proposed changes.

**Comment:** Representative Pyle shares the concerns expressed to Mayor Peterson, of Horace, by a Horace residence. Additional questions for the department to consider:

- What problem is the four-foot fence requirement solving?
- How will this benefit the state considering the shortage of daycare providers?
- Why are we creating barriers for this essential business?

**Response:** The Department has considered the comments it has received regarding the proposed amendments on fencing and has decided to abandon the proposed changes.

**Comment:** I am writing to you today in opposition to the amendment of chapter code 75-03-08-14 and 75-03-09-18. My home is located in rural Morton County minutes from Mandan city limits. My property spans over one acre. The back of the lot is lined with tall mature pine trees, with another lot with a home behind that. there are only five homes on the road my home resides, there is minimum traffic throughout the day. Because of these factors, I have never felt the need to have a fence, nor has my licensor ever told me I would need one. I am far enough from high traffic roads and do not have any bodies of water near my property.

I have a large paved driveway that we utilize often as the children love to ride on bikes, trikes, scooters, Cozy Coups, draw with chalk, play basketball. As well as my large backyard has equipment spread throughout to encourage more movement. Most of my larger equipment is permanently fixed in the ground with a cement foundation. Fencing in the outdoor areas we use would be financially crippling for my family. And we would lose access to the driveway for outdoor playtime, which is a large part of our outdoor time.

If amendment 75-03-08-14 and 75-03-09-18 is approved and implemented into the ND Code for all licensed providers, my options would be as follows: I would be forced to drop my status as a licensed provider. Thus, dropping my ratio to five children, I have two children myself. I would then have to tell four families I can no longer provide care for their child anymore. The remaining three families I would then have to more than double my price to make up for the loss of income from the other four families. Or, I would have to close my daycare completely and pursue another job outside my home. Finding a job outside my home creates a whole set of new problems and obstacles for my family. All of which eventually will financially burden us.

This situation is not just unique to me. I have spoken with many other providers that are in the same situation as myself. They either cannot afford to fence their outdoor space, or the convents where they live do not allow fencing to be put up on any portion of the property. They will be forced to drop their license or close their childcare altogether.

There is already an extreme shortage for daycare, especially for infant care. Implementing 75-03-08-14 and 75-03-09-18 will have devastating consequences on ND childcare, leaving care incredibly difficult to secure for families with newborns, and especially families who need licensed providers to utilize CCAP. Those lucky enough to find care may be met with a high bill to pay. Parents and providers will surely suffer financially.

**Response:** The Department has considered the comments it has received regarding the proposed amendments on fencing and has decided to abandon the proposed changes.

N.D. Admin. Code Chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1

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Therefore, subsection 8 of section 75-03-08-14 and subsection 8 of section 75-03-09-18 will read as follows:

75-03-08-14:

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

75-03-09-18:

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

**Comment:** The proposed amendment to N.D. Admin Code Chapter 75-03-08 which would require all childcare providers to ensure exterior play areas are "contained within a fence, wall, or solid natural barrier that is at least four feet high" would negatively impact my daughter's childcare provider and her business, as well as jeopardize the childcare for the other nine families who have children enrolled at Muddy River Nature School. While I believe the intention of the amendment as written is to protect children statewide, I believe that the amendment would have the unintended consequence of limiting the number of childcare providers able to operate in North Dakota which would in turn have economic consequences as families struggle to find replacement childcare and employers are forced to deal with temporary or permanent absences of employees who are parents. Please see below for my reasoning.

1. **Some daycares are in rental properties and are not allowed to build fences** - Like many other in-home daycares in the Fargo-Moorhead Metropolitan area, our daycare provider rents her home from a rental company. As part of her rental agreement and lease she does not have the ability to construct a fence on the property. Therefore, should the amendment as written go into effect, she would be out of compliance with the administrative rules and be forced to close her daycare leaving us and the other families without reliable childcare. In my experience as a former City Planner for the City of West Fargo, there are many in-home daycare providers who would be in similar situations in the metro area.
2. **Fences are an expensive business expenditure** - Depending on the fence company and the type of fence installed, costs for a fenced-in backyard can be an expensive business expenditure which could negatively impact the finances of small, self-employed daycare providers such as Muddy River Nature School. Earlier this year my wife and I received cost estimates from three fence companies in the Fargo-Moorhead area to construct a 5-foot iron fence with two gates around our 3,750 square foot

backyard and received estimates between \$10,000 to \$12,000.

3. **Some daycares are in areas where a fence is not necessary-** The Administrative Rules currently allow for some bureaucratic discretion as they allow the daycare provider to work with the Department of Health & Human Services to determine if exterior play areas "are in close proximity to busy streets and other unsafe areas." While a fence might be necessary for a large daycare center located along an arterial street such as 32<sup>nd</sup> Ave in Fargo it doesn't make sense to require one for a daycare located on a local street. In some cases, a fence might even be detrimental to the learning and play provided for children due to the daycare's location. For example, Muddy River Nature School is located on a local street in Horace and the backyard of the property backs directly up to a public playground and park which allows for ease of access to the children. In this particular case, a fence would deter children not from playing in the street but playing on a playground.

**Response:** The Department has considered the comments it has received regarding the proposed amendments on fencing and has decided to abandon the proposed changes. Therefore, subsection 8 of section 75-03-08-14 will read as follows:

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

**Comment:** Thank you for your continued work to ensure children and their families have access to safe, productive and affordable child care operations across North Dakota. I am writing to share my observations about the proposed amendments to Administrative Rules, specifically 75-03-11.1-18(4).

*The operator shall ensure that exterior play areas ~~in close proximity to busy streets and other unsafe areas~~ are contained or ~~fenced~~within a fence, wall, or have solid natural barriers to restrict children from those unsafe areas~~barrier that is at least four feet high. There shall be no gap five by five inches [12.7 by 12.7 centimeters]~~ or greater in or under the fence or barrier. Outdoor play areas must be inspected daily for hazards and necessary maintenance.*

The Boys & Girls Clubs of the Red River Valley have been offering licensed child care in school sites since 1986. We operate 13 center/group licensed child care sites, 11 of those in elementary schools, in which we serve approximately 850 school-age youth every day.

I had a pleasant phone visit with Kay Larson about this topic. She told me the intent was to remove the ambiguity of what is determined to be "busy streets and other unsafe areas." We also discussed natural barriers such as tree lines, and possible grandfathering of rules.

While we respect to the well intentions of the proposed language change, we remain opposed for a number of reasons affecting our business model, as well also other licensing types.

- We are unable to install perimeter fences or natural barriers on school properties that are not ours. The same could be true for child cares that operate in churches or apartment complexes, and those sites that are rented or leased. Those providing care that must adhere to homeowner association rules could be limited as well.
- This could potentially prohibit field trips in spaces not contained by fences.
- We currently serve 850 youth daily. If this were enacted, we would only be able to serve 230, potentially leaving 620 youth without care.
- We are opposed to a grandfathering option since new elementary schools are continuing to be built across the state; therefore, prohibiting licensed child care from being offered there and forgoing necessary community partnerships that ultimately limits costs to families.

Our methods of mitigating safety concerns are numerous and include playground zones that are monitored by assigned staff members to ensure full coverage. Please keep in mind that we serve school-age students who already utilize the same outside space during the school day, and in fact typically with larger youth-to-staff ratios.

I respectfully request you consider the reasons shared above that would end the business model of utilizing school sites and prohibiting us from adding more school-based sites; consequently, ending a long-standing, effective and popular child care option for parents, communities, and school districts.

**Response:** The Department has considered the comments it has received regarding the proposed amendments on fencing and has decided to abandon the proposed changes. Therefore, subsection 4 of section 75-03-11.1-18 will read as follows:

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

**Comment:** I'm concerned about the fence requirement. As a provider for 40 years, it concerns me that we're going to mandate fencing. I feel that it's going to have a prohibitive cost to childcare providers. I feel that if we're going to mandate that it's begins April 1, 2024, then I'm worried that those providers who need to use a contractor to put a fence in place are not going to have time to line a contractor up. Most of them will be booked out until July or August, at least in our town, and with those that I've checked with. And I'm also concerned that they're not going to be able to financially come up with the funds in that time period to purchase the fence.

I also feel that the true issue here is a supervision issue, and not necessarily a fencing issue. I feel very strongly that our licensing supervisor or specialist should know our property and they should know what is safe and what is unsafe. In our program, we are a nature based property. We live on 7 acres, we have a fenced play yard that we use the fence, well it's fenced on 2 sides permanently, on one side, there's a spot we leave open for the lawn mover. The other side we take down for snow removal. Like I said, we live on 7 acres and we raise sheep. So we have to be able to move that fence so we can get the snow out of our driveway and not have to pile it in spots where we have to get to our sheep. That way, my husband's able to put it in our play yard. We have hills to play on, sledding, things like that.

We also use the, that's 1 acre that we use, that's dedicated play space. But we use the remainder of our 6 acres then for nature walks, for adventure hikes. We have a slough that gets to be about anywhere from 6 to 8 inches deep. We look for snails, we find toads, it's a big part of our program. Yes, it is fenced in because it's also part of our property. But I'm concerned that the fence, at some point, is not going to be what licensing is going to say is safe fencing. Because it's livestock fence, which means it's got barbed wire on the top. We had stockade panels but the top is barbed wire. Now the kids understand the risk involved with that. We also have two different what we call forests that we go and we and play in. Again, pasture areas that are fenced, again with the top part of the fencing being barb wired. So, that on a personal note, that concerns me.

I also feel like children need to learn risk assessments. I feel very strongly that having a line drawn in the sand is a great way to learn risk assessment for children. When we take our fence down that leads into our driveway area, the kids know we may not cross that line. We're able to leave the posts up so they have the visual of the post, but of course there's no fence there. They know they can't go past that. That is a trust thing that we start with the kids from the time they're little. We're outside anywhere from 7-8 hours a day from April until the end of October, then we're outside from 2-3 hours a day during the winter months. They're taught that's a line. I just truly feel that a lot of this needs to come from a training from you guys to the licensing specialist on what to look for. I feel strongly that, consistency I understand, I understand consistency in the rules, but I also feel like that's going to change from program to program so your licensing specialist need to be trained into what to look for and how to understand the trust that a provider has built with their children. I truly feel like that falls on the department of human services to provide that for the licensors.

The childcare crisis is real. Just looking on our North Dakota United Childcare page, I don't know if any of you are a part of that page, but holy smokes, this through up a whole lot of "I'm quitting," "I'm done," "If they make me do this, I'm out." We went through that with the insurance. We were able to calm a lot of people down. You know the liability insurance is good for you to have as part of your business practice. I don't know that we're going to be able to calm them down. I can't calm my husband down. He's like I guess you're retiring early if you have to put up a permanent fence. The childcare crisis in North Dakota is real, but it's not just for the parents, it's for the providers as well. We face financial costs, our propane is up, our

electricity is up, our groceries are astronomical. We don't get any where near close to what, from the food program, to what we spend.

And I think adding an additional, and I understand it's a one time cost, but it's a one time cost that some people have just said absolutely not. We are not going to do this. I don't know if you're aware, in Sioux Falls, you know Apple Tree Child Care closed 4 of their, they had 1000 children looking for childcare in Sioux Falls because of financial hardships. All it takes is just something like this for providers to say that's it, I'm done, I cannot do anymore. I think, let me check my answers, or my notes, I think that's about all I have. I really just think that, you know, as a provider with 40 years of experience, we have to teach out children risk assessment. We can't bubble wrap them. And I truly feel that fencing is part of the bubble wrap philosophy. We need to trust providers to build the relationships to trust their children, and for their children to trust them. That comes through training, and through training for the licensing specialist as well. I'll go ahead and sit down if Courtney has anything.

When you look at the, you know, the accidents and the incurrences that have happened with children, it hasn't been because of lack of a fence. It's been children running out the front door or a door that they have access to. So again I think it's more of a supervision issue, if you want to call it that, than having a fence.

**Response:** The Department has considered the comments it has received regarding the proposed amendments on fencing and has decided to abandon the proposed changes.

**Comment:** I am writing this letter in opposition of the proposed ND Admin Code regarding the fencing requirements. I am a group licensed provider in Bismarck. I have been a childcare provider for almost 17 years. I live on a 1.5 acre rural property. We built this house in 2018 and we designed it starting with my childcare space. We purchased this piece of land knowing that per the regulations I did not need to have a fence. Our covenants do not allow for a fence nor does my budget. I live in a quiet development and the only traffic is residents and visitors. Our children can safely ride bikes on the streets as well as walk. Why change a regulation when it has been working just fine for all these years? If the issue is a safety issue, I would like to see the data on how many kids have escaped from a non-fenced facility vs a fenced facility. All of the ones I know of happened in a fenced facility and the child(ren) escaped out of the gate that was left open. When I lived in town on a busy street I had a fence so I am not against fencing when appropriate. I can tell you that when I had a fence in town, I never did teach the children safety about not going through the gate. Since I do not have a fence now, I am more aware of our surroundings, where each child is at all times and we always discuss boundaries while inside and outside. I can let all 11 of my currently enrolled children outside in my backyard and not a single one would dart for the street. This brings me to my next question. How do you advise we fence in a driveway? Part of my program is that I teach the kids to ride a bike without training wheels before heading off to kindergarten. This means we often play in the driveway riding bikes, coloring with chalk, playing with sand, participating in aquatic play including washing our bikes. Again, not a single one of my kids would dart into the street. However, if they did, it would not be a problem because I live on a quiet rural street

where we have over 50 children living here in 32 homes and residents are aware of the constant flow of kids on the streets.

Does the state have any funds set aside for providers to pay for a fence? This will be an incredible hardship for many of us. I would imagine a fence around a rural property would be nearly \$50,000 if not more. What about those providers like myself that have a covenant that doesn't allow a fence? Are we just supposed to up and move if we want to continue daycare? Natural barriers take years and years to grow. I also happen to live in a place with alkali. It has killed many of our evergreens we had planted for a natural windbreak. What are my options?

What about when we want to take the kids to a local park without a fence? Will we not be allowed to anymore since fencing will be required where the children are playing? Many programs take children to local parks during the nice months for a change of scenery.

If this amendment passes, I will have no choice but to give up my license and move to unlicensed care. That would create an even greater hardship for parents who depend on me for care as well as any future parents needing care. I recently had a fire inspection and the assistant chief said it so well, "if there is no fence there is nothing for the kids to escape from."

**Response:** The Department has considered the comments it has received regarding the proposed amendments on fencing and has decided to abandon the proposed changes.

**Comment:** I am writing this letter in opposition of the proposed ND Admin Code regarding the business liability insurance requirements. I am a group licensed provider in Bismarck. I have been a childcare provider for almost 17 years. Didn't we just fight this same fight in the legislative session and it failed? I, personally, carry business liability insurance by choice. Trying to obtain my current policy was not easy though. I fear other providers may face the same issues I did.

The first company I contacted denied me because I had no fence even though per regulations I am not required to have a fence. The second company denied me because I am licensed for 12 children by myself. They required 1 adult per 6 children and again I am perfectly within regulations. The third company denied me because I take special needs children. At the time I had a child with celiac disease. This fourth company finally did approve my policy. When the time comes that they no longer insure me, then what? Not every provider can afford liability insurance, could you? Why is the state so pressed for us to have liability insurance? If something happens in our facility right now without liability insurance, does the state have any stake in it? Would you stand behind providers if we got sued by a parent if we had liability insurance or would you simply step back?

**Response:** Thank you for your comment. The Department has considered the comments it has received regarding the proposed amendments on liability insurance and has decided to abandon the proposed changes. However, it is still in the best interest of the provider to have liability insurance.

**Comment:** On behalf of our over 1,800 member businesses throughout the Fargo Moorhead West Fargo region, alongside the undersigned childcare providers, I would like to express our opposition to the proposed amendment to Section 18 of Chapter 75-03-10 of the North Dakota Administrative Code, specifically relating to the revisions made to the language regarding exterior play area enclosure requirements.

While we acknowledge the well-intentioned nature of the proposed amendments to Section 18 of Chapter 75-03-10, we would ask that the North Dakota Department of Health and Human Services (DHHS) carefully consider the unintended consequences that may arise if the current language were enacted. Currently, as written, the amendment would require that all licensed childcare providers throughout the State of North Dakota would have to enclose their exterior play areas with a fence, wall, or solid natural barrier, but does not grant flexibility to meet the unique situations of each childcare provider's physical location.

While some providers may already comply, others would not be permitted to construct a fence, wall, or natural barrier due to extenuating circumstances. For example, licensed providers that offer childcare and afterschool care in public schools, churches, rented or leased spaces, and developments with homeowner associations, may not be permitted to construct this infrastructure. If implemented as written, the proposed amendment could consequently have repercussions on the operational frameworks of existing providers, potentially impeding their capacity to function in their current locations or, in some cases, altogether. This, in turn, may reduce access to childcare services and pose affordability challenges across our state.

In closing, we would ask that the North Dakota DHHS and the Legislative Assembly examine this amendment and other amendments to the State's Administrative Code with judiciousness to ensure they are reasonable and pragmatic for businesses throughout North Dakota.

**Response:** The Department has considered the comments it has received regarding the proposed amendments on fencing and has decided to abandon the proposed changes. Therefore, subsection 9 of section 75-03-10-18 will read as follows:

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

**Comment:** Liability Insurance Requirement: (1) It certainly is good business practice to carry liability insurance and except for the first few years of being licensed, I always carried liability insurance. (2) This requirement was first put into effect in rule for a short time back in the 1980's. Immediate result was that insurance companies tremendously raised rates and numerous companies quit providing coverage. This left providers in a real bind and many

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dropped back to only caring for the number of children the state allowed with at that time no regulations. Please keep in mind that at that time statewide, there were very few centers. DHS soon had to drop the requirement for liability insurance. (3) Bills before both the 2021 and 2023 ND Legislature requiring liability insurance failed. (4) Tom Copeland leading child care business expert nationwide, attests to the negative effect requirement of liability insurance places upon licensed child care provided in a home setting and ultimately the parents of children seeking licensed child care.

**Response:** The Department has considered the comments it has received regarding the proposed amendments on liability insurance and has decided to abandon the proposed changes. However, it is still in the best interest of the provider to have liability insurance.

**Comment:** Fence Requirement: (1) We live in a neighborhood at the edge of Hettinger on a dead-end street and no through traffic either. Although not required for safety by licensor, we erected a 48 high woven wire fence which has 2 by 3 inches spacing and was purchased from our local lumberyard at a very reasonable cost. Since this type of fence uses steel posts they might not be allowed either. Children also spent time playing in our unfenced front yard and driveway. (2) For many they would be looking at installing a chain link fence which is very expensive and often requires hiring an installer. (3) A solid wooden fence is also an option however keep in mind that city regulations are, at least here in Hettinger, that with such a fence the finished side must face outward which means that the children would be tempted to try and climb the horizontal support boards on the inside of the fence which then is a safety issue. (4) Installing a fence is not an allowable option for many who operate out of a rented home. If owner allowed one and they would build a fence, it would then be considered part of the yard and could not be removed and taken with them when or if the family moved. (5) In developments with home covenants, fences of any kind are usually forbidden. (6) Some communities by ordinance do not allow fences in certain residential areas. (7) Obviously grandfathering in those currently not required by licensor to have a fence, is not a reasonable option either. (8) Determination of a need for a fence, needs to be up to the licensor with the option of appeal process by the license holder. Training for licensors needs to be developed for them to make reasonable decisions.

**Response:** The Department has considered the comments it has received regarding the proposed amendments on fencing and has decided to abandon the proposed changes.

Prepared by:

Jonathan Alm

Legal Division

N.D. Dept. of Health and Human Services

In Consultation with: Carmen Traeholt, Early Childhood Services

Mariah Hill, Early Childhood Services

cc: Carmen Traeholt, Early Childhood Services

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Mariah Hill, Early Childhood Services

Kay Larson, Early Childhood Services

Jessica Thomasson, Executive Director of Human Services Division

TO WHOM IT MAY CONCERN:

I am writing in opposition to changes in ND Admin Code Chapter 75-03-08-14, specifically this passage:

8. The provider shall ensure that exterior play areas ~~in close proximity to busy streets and other unsafe areas are contained or fenced within a fence, wall, or have solid natural barriers, to restrict children from those unsafe areas~~  
barrier that is at least four feet high. There shall be no gap five by five inches [12.7 by 12.7 centimeters] or greater in or under the fence or barrier.  
Outdoor play areas must be inspected daily for hazards and necessary

If this wording is approved, the licensed home daycare that my children attend will be forced to close, along with many other home daycares in North Dakota. My provider is not able to fulfill this requirement as she currently rents her home and fences are not allowed per her lease. Even if providers are willing and able to put up a fence/wall, to do so by April 2024 is an inappropriate timeline for a project of such magnitude and expense.

The closure of my children's daycare would be devastating to our family and many others. My two boys (ages 3 and 7 months) are thriving under the care that they receive at Muddy River Nature School in Horace, North Dakota. I have never had any safety concerns regarding the backyard play area and trust my provider and licensor to determine if the area is appropriate.

My husband and I were born, raised, and currently reside and work in North Dakota. There is a childcare crisis throughout the nation and the West Fargo/Fargo area where we live. Reliable, licensed childcare is so hard to find here. If our current licensed daycare were to close, I would be forced to consider leaving my job in healthcare because of the limited options available for my children.

I plead with you to reconsider the proposed amendments and consider the providers who have limitations due to their lease agreements. I believe there is a balance between ensuring child safety and putting unrealistic expectations and timelines on licensed in-home daycares.

Thank you for your consideration. I will leave my contact information below and would be happy to discuss this further.

Sincerely,  
Alexis Depee  
701-200-4179  
[alexisganser@gmail.com](mailto:alexisganser@gmail.com)  
5315 8<sup>th</sup> St W, West Fargo, ND 58078

**RECEIVED**  
NOV 20 2023

**HHS – Legal**

**From:** Roers, Kristin <[kroers@ndlegis.gov](mailto:kroers@ndlegis.gov)>  
**Sent:** Monday, December 11, 2023 3:42 PM  
**To:** Lynnes, Angie R. <[alynnes@fargoND.gov](mailto:alynnes@fargoND.gov)>  
**Subject:** Re: Proposed Amendment Changes to ND Childcare Codes

Thank you for reaching out. We had heard these concerns from some other parents in your situation and I know for sure the chair of the Administrative Rules committee was aware of these concerns. I have not seen when this is scheduled to be in front of the Admin Rules committee (they are meeting today and it wasn't on there) so I believe there is still time to submit your comments.

I looked everywhere to see where to submit your comments and could not find it!!! However, I will submit it to some individuals that I think would be able to get them to the right place...

Thank you for reaching out

Kristin

**From:** Angie Lynnes <[alynnes@FargoND.gov](mailto:alynnes@FargoND.gov)>  
**Sent:** Monday, December 11, 2023 10:48 AM  
**To:** Roers, Kristin <[kroers@ndlegis.gov](mailto:kroers@ndlegis.gov)>  
**Subject:** Proposed Amendment Changes to ND Childcare Codes

Dear Representative Roers,

I am writing to you about the importance of childcare in our community, especially since our area is already facing a childcare crisis. North Dakota already has a higher demand for childcare than is readily available to families. Which is why imposing more restrictions on existing providers seems counter-productive to resolving such an issue.

I am referencing the proposed amendment changes to ND childcare codes that would go into effect in 2024. Specifically, the changes proposed to Family Child Care Early Childhood Services 75-03-08-14, which will be requiring a 4 ft fence, wall, or natural barrier on the exterior play area of the property. Historically, the verbiage allowed for the licensor's risk assessment of each individual childcare. My children's childcare provider, along with many others across the state, currently rent their home. The property management company they rent from does not allow for fencing on the property. Therefore, if this proposed change is passed, our provider will be closing. Not only is this one less provider in our area, but a provider of extreme quality and a program that is unique to ND and often sought after by families with an already long wait list.

On the other hand, if fencing were allowed, one would have to take into consideration actually putting up the required fencing. In an economy where we are already struggling with inflated costs for materials and labor, the cost of this would likely then be pushed onto the families in the form of an increase in childcare cost. Many families are already struggling to afford childcare the way it is. What about the time frame for all of this? Amendment changes would go into effect in April of 2024. Providers would have January through April to put up a fence. A time when we are still experiencing winter weather and freezing temperatures.

Please have a look at one of the childcare programs that will be directly affected by these proposed changes that is within your district. It is an amazing program that my children have grown and learned so much from already. I would hate to see them lose such an amazing and unique childcare experience and for those future kiddos to lose out such an opportunity as well.

### **Muddy River Nature School**

Website: <https://www.muddyrivernatureschool.com/>

Facebook: <https://www.facebook.com/MuddyRiverNatureSchool>

Instagram: <https://www.instagram.com/muddyrivernatureschool/>

I am asking you to take a closer look at these proposed changes. While I completely understand the purpose of this specific change in regards to the safety of children, I still feel there should be some exceptions to allow for certain factors, i.e. renters, apartment home daycares, etc. The verbiage should remain. At this time, Horace is one the fastest growing cities in North Dakota. Why close down a thriving business, providing essential services in an area where the demand for these services will only continue to grow?

Thank you for taking the time to read this. I hope you take this into consideration.

Have a good day!



**Angie Lynnes, RD, LRD**

**WIC Nutritionist**

**1240 25th Street South**

**Fargo, ND 58103-2367**

**o: 701.277.1455 d: 701.476.4155**

[ALynnes@FargoND.gov](mailto:ALynnes@FargoND.gov)

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**From:** bigwhite@ndsupernet.com <bigwhite@ndsupernet.com>  
**Sent:** Wednesday, December 27, 2023 1:06 PM  
**To:** -Info-DHS Early Childhood <dhsec@nd.gov>  
**Cc:** bigwhite@ndsupernet.com  
**Subject:** Comments on Proposed Early Childhood Rules Revisions for Family and Group

TO: Department of Health and Human Services  
  
FROM: Earleen Friez, 808 3rd St N PO Box 1101 Hettinger, ND 58639 701-567-3102  
  
RE: Written testimony regarding proposed rule changes for Early Childhood Chapters  
75.03.08 Family and 75.03.09 Group specifically fence and liability insurance requirements

MY CONNECTION WITH CHILD CARE: Group or Family provider in our Hettinger home for 26 years, then was Office Manager for Hettinger Chamber and Adams County Economic Development for 17 years which allowed me to see frantic employees unable to hire due to lack of sufficient child care. From 1986 to a few years ago I was active in child care leadership on the state level including serving on numerous DHS committees. I served on the committee mandated by the ND Legislature to review and revise all Early Childhood Chapters which was an over year long project. Although our goal was to make the rules as uniform as possible across the chapters this was not always realistic thus the difference in requirements for a fence and liability insurance between centers and large groups, and family and group settings. I am also a great grandma of children in child care. If these proposed changes go into effect, result would be a significant reduction in the number of group and family facilities which would in turn negatively impact parental choices for care of their children

Liability Insurance Requirement: (1) It certainly is good business practice to carry liability insurance and except for the first few years of being licensed, I always carried liability insurance. (2) This requirement was first put into effect in rule for a short time back in the 1980's. Immediate result was that insurance companies tremendously raised rates and numerous companies quit providing coverage. This left providers in a real bind and many dropped back to only caring for the number of children the state allowed with at that time no regulations. Please keep in mind that at that time statewide, there were very few centers. DHS soon had to drop the requirement for liability insurance. (3) Bills before both the 2021 and 2023 ND Legislature requiring liability insurance failed. (4) Tom Copeland leading child care business expert nationwide, attests to the negative effect requirement of liability insurance places upon licensed child care provided in a home setting and ultimately the parents of children seeking licensed child care.

Fence Requirement: (1) We live in a neighborhood at the edge of Hettinger on a dead-end street and no through traffic either. Although not required for safety by licensor, we erected a 48 high woven wire fence which has 2 by 3 inches spacing and was purchased from our local lumberyard at a very reasonable cost. Since this type of fence uses steel posts they might not be allowed either. Children also spent time playing in our unfenced front yard and driveway. (2) For many they would be looking at installing a chain link fence which is very expensive and often requires hiring an installer. (3) A solid wooden fence is also an option however keep in mind that city regulations are, at least here in Hettinger, that with such a fence the finished side must face outward which means that the children would be tempted to try and climb the horizontal support boards on the inside of the fence which then is a safety issue. (4) Installing a fence is not an allowable option for many who operate out of a rented home. If owner allowed one and they would build a fence, it would then be considered part of the yard and could not be removed and taken with them when or if the family moved. (5) In developments with home covenants, fences of any kind are usually forbidden. (6) Some communities by ordinance do not allow fences in certain residential areas. (7) Obviously grandfathering in those currently not required by licensor to have a fence, is not a reasonable option either. (8) Determination of a need for a fence, needs to be up to the licensor with the option of appeal process by the license holder. Training for licensors needs to be developed for them to make reasonable decisions.

In closing the main focus needs to be what is best for retention of current family and group facilities and encouraging new group and family facilities opening. Therefore I am asking that the proposed rules regarding requirement for liability insurance coverage and a fenced yard be withdrawn. Working parents with young children need child care and parents need a choice be it center, group or family, etc. regardless of the size of community they live in. Reality is that in smaller communities centers are not economically feasible.

I'm sorry I wasn't able to mail this in a timely manner for you to receive it by 5 on the 28th. Last week I was busy with my 102 year old Mom's funeral and mail truck didn't run due to icy roads.



December 26<sup>th</sup>, 2023

Interim Commissioner Sara Stolt  
Department of Health and Human Services  
State Capitol - Judicial Wing  
600 E. Boulevard Ave, Dept 325  
Bismarck, ND 58505-0250

RE: Opposition | Amendment to North Dakota Administrative Code | Exterior Play Area

Interim Commissioner Stolt,

On behalf of our over 1,800 member businesses throughout the Fargo Moorhead West Fargo region, alongside the undersigned childcare providers, I would like to express our opposition to the proposed amendment to Section 18 of Chapter 75-03-10 of the North Dakota Administrative Code, specifically relating to the revisions made to the language regarding exterior play area enclosure requirements.

While we acknowledge the well-intentioned nature of the proposed amendments to Section 18 of Chapter 75-03-10, we would ask that the North Dakota Department of Health and Human Services (DHHS) carefully consider the unintended consequences that may arise if the current language were enacted. Currently, as written, the amendment would require that all licensed childcare providers throughout the State of North Dakota would have to enclose their exterior play areas with a fence, wall, or solid natural barrier, but does not grant flexibility to meet the unique situations of each childcare provider's physical location.

While some providers may already comply, others would not be permitted to construct a fence, wall, or natural barrier due to extenuating circumstances. For example, licensed providers that offer childcare and afterschool care in public schools, churches, rented or leased spaces, and developments with homeowner associations, may not be permitted to construct this infrastructure. If implemented as written, the proposed amendment could consequently have repercussions on the operational frameworks of existing providers, potentially impeding their capacity to function in their current locations or, in some cases, altogether. This, in turn, may reduce access to childcare services and pose affordability challenges across our state.

In closing, we would ask that the North Dakota DHHS and the Legislative Assembly examine this amendment and other amendments to the State's Administrative Code with judiciousness to ensure they are reasonable and pragmatic for businesses throughout North Dakota.

Thank you for your leadership and consideration of this critical matter!

Sincerely,

A handwritten signature in blue ink that reads 'Shannon Full'.

Shannon Full  
President/ CEO  
FMWF Chamber of Commerce,

and the undersigned childcare providers:

Boys & Girls Clubs of the Red River Valley

Bright Futures Learning Centers

Tani Rheault (Home Provider)

CC:

The Honorable Doug Burgum, Governor

Senator David Hogue, Senate Majority Leader

Representative Mike Lefor, House Majority Leader

Jessica Thomasson, Executive Director of Human Services Division

N.D. Admin Code Chapters  
SECTION 14. Section 75-03-08-14

Greg Depee  
5315 8<sup>th</sup> St W  
West Fargo, ND 58078  
[Greg.Depee@Gmail.com](mailto:Greg.Depee@Gmail.com)  
(701) 371-1546  
November 22<sup>nd</sup>, 2023

8. The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced within a fence, wall, or have solid natural barriers, to restrict children from those unsafe areasbarrier that is at least four feet high. There shall be no gap five by five inches [12.7 by 12.7 centimeters] or greater in or under the fence or barrier. Outdoor play areas must be inspected daily for hazards and necessary

To whom it may concern:

I am writing to bring to your attention my concerns regarding the proposed changes to childcare facility requirements, specifically the mandate for fences or barriers around exterior play areas. While I acknowledge the importance of ensuring child safety, I believe that the proposed requirement may have unintended consequences and adversely affect childcare providers, especially those in unique circumstances.

One of the significant concerns is the potential impact on providers (*Muddy River Nature School – Horace, ND*) who do not own the property where they operate. For instance, our childcare provider leases their facility, and the terms of their lease explicitly prohibit the installation of fences. This restriction could force them to cease operations, leading to a loss of income for both the husband and wife who jointly manage the school and daycare services. The consequences of closures like these could exacerbate the existing labor shortage in North Dakota, where childcare services are already challenging to find, resulting in extended wait times for parents seeking quality childcare for their children.

My wife and I, both employed in high-demand fields (healthcare and cybersecurity), understand the importance of reliable childcare services. The potential closure of facilities due to stringent requirements would force us and others in similar situations to reconsider our work commitments, possibly taking one of us away from full-time employment or prompting a career change. This, in turn, could contribute to the broader issue of workforce challenges in our state.

Moreover, the proposed timeline for compliance with the fence requirement appears impractical, especially considering North Dakota's harsh winters. The installation and maintenance of fences necessitate a considerable upfront cost and ongoing commitment. Given the climate conditions, expecting providers to meet this deadline is not only challenging but may divert attention from the primary focus – the supervision and safety of children.

I respectfully urge you to reconsider the mandatory fence requirement and explore alternative measures that prioritize child safety without placing an undue burden on childcare providers, especially those in unique leasing situations. Collaborative efforts between the state and childcare providers can help formulate regulations that achieve the intended goals without jeopardizing the viability of these essential services.

Thank you for your attention to this matter, and I appreciate your dedication to enhancing childcare standards in our state.

Sincerely,

  
Greg Depee

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To whom it may concern,

My name is Kayla Graetz and I am a licensed childcare provider based out of Morton County. I have maintained my licensed home childcare status since 2015 and I have been working in the childcare field since 2007. I also received my Early Childhood Development degree in the spring of 2011. So to put it out there this is more than just a job, this is my passion and I love what I do on a daily basis.

When I opened my home childcare in 2015 after the birth of my first child, I discovered a new passion in the field of childcare I hadn't experienced yet. I fell in love all over again as I got to know the children and families I catered to throughout the years. These families became my family as we maintain a close relationship communicating daily and getting to know each other extremely well.

I am writing to you today in opposition to the amendment of chapter code 75-03-08-14 and 75-03-09-18. My home is located in rural Morton County minutes from Mandan city limits. My property spans over one acre. The back of the lot is lined with tall mature pine trees, with another lot with a home behind that. There are only five home on the road my home reside, there is minimum traffic throughout the day. Because of these factors I have never felt the need to have a fence, nor has my licensor ever told me that I would need one. I am far enough from high traffic roads and do not have any bodies of water near my property.

I have a large paved driveway that we utilize often as the children love to ride on bikes, trikes, scooters, Cozy Coups, draw with chalk, play basketball. As well as my large backyard has equipment spread throughout to encourage more movement. Most of my larger equipment is permanently fixed in the ground with a cement foundation. Fencing in the outdoor areas we use which be finically crippling for my family. And we would lose access to the driveway for outdoor playtime, which is a large part of our outdoor time.

If amendment 75-03-08-14 and 75-03-09-18 is approved and implemented into the ND Code for all licensed providers, my options would be as follows: I would be forced to drop my status as a licensed provider. Thus, dropping my ratio to five children, I have two children myself. I would then have to tell four families I can no longer provide care for their child anymore. The remaining three families I would then have to more than double my price to make up for the loss of income from the other four families. Or, I would have to close my daycare completely and pursue another job outside of my home. Finding a job outside of my home creates a whole set of new problems and obstacles for my family. All of which eventually will finically burden us.

This situation is not just unique to me. I have spoke with many other providers that are in the same situation as myself. They either cannot afford to fence their outdoor space, or the convents where they live do not allow fencing to be put up on any portion of the property. They will be forced to drop their license or close their childcare altogether.

There is already an extreme shortage for daycare, especially for infant care. Implementing 75-03-08-14 and 75-03-09-18 will have devastating consequences on ND childcare, leaving care incredible difficult to secure for families with newborns, and especially for families who need licensed providers to utilize CCAP. Those lucky enough to find care may be meet with a high bill to pay. Parents and providers will surely suffer financially.

In closing please take providers, like myself, into consideration when discussing this issue and do not allow it to become part of the standard.

- Kayla Graetz

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November 7, 2023

RE: Public input into the formulations of the rules prior to adoption.

Sara Stolt Interim Commissioner,

Below are some highlighted proposed amendments I am requesting for Child Care Center Early childhood services.

NOTE

- **In bold** is either the definition or century code that is in reference.
- Underlined is the current written code.
- ***Italic/ highlighted*** is the reason and explanation on why I am requesting change for clarification.

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

*The above definition can lead to some confusion, for example if my CENTER license expires every January each year. My licensor Emily Dolinar requires us to have all training completed when we submit our application which is required 3 months prior to expiring. Therefore, only giving my staff members about 9 months to complete "Annual" trainings.*

*Our licensor also requires that the training be on the ND Growing Futures transcript before she will expect it as completed training even when we provide her with copies of the certificates. Which is a concern on its own due to the extremely slow process of NDGF.*

*I noticed in the century code there is verbiage of NDGR only "Department approved" training. I request there be a definition of "department approved training" and if that is NDGF.*

SECTION 45. Section 75-03-10-12 is amended as follows: 75-03-10-12. Minimum qualifications for all staff members responsible for caring for or teaching children.

Ensure safe care for children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant,

toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child.

*I was told by my licensor that you have to be in the same room as the children at all times, if you have to use the restroom you must have another staff member relieve you. Could you define "within sight or hearing range" for centers.*

SECTION 52. Subsection 5 of section 75-03-10-27 is amended as follows:

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

*We have been told by our licensor that staff members are not allowed to start working UNTIL their fingerprint results memo are returned from the CBCU and clear. Adding this verbiage would be great because this is saying that as long as the operator submits the forms they are meeting compliance.*

PORTAL *I would request to add in the century code that" operators need to keep all staff member's documents current and updated on the licensing portal."*

Thank you for your time in this matter. Century Code has also been difficult to understand. Many times, licensor and providers/operators have a different interpretation which can lead to the confusions.

Well Wishes,



Jennifer Moser

Hello,

My name is Malachi Petersen and I'm the father of a 1.5-year-old daughter named Carolyn who goes to the Muddy River Nature School / Daycare in Horace, ND. The proposed amendment to N.D. Admin Code Chapter 75-03-08 which would require all childcare providers to ensure exterior play areas are "contained within a fence, wall, or solid natural barrier that is at least four feet high" would negatively impact my daughter's childcare provider and her business, as well as jeopardize the childcare for the other nine families who have children enrolled at Muddy River Nature School. While I believe the intention of the amendment as written is to protect children statewide, I believe that the amendment would have the unintended consequence of limiting the number of childcare providers able to operate in North Dakota which would in turn have economic consequences as families struggle to find replacement childcare and employers are forced to deal with temporary or permanent absences of employees who are parents. Please see below for my reasoning.

1. **Some daycares are in rental properties and are not allowed to build fences** – Like many other in-home daycares in the Fargo-Moorhead Metropolitan area, our daycare provider rents her home from a rental company. As part of her rental agreement and lease she does not have the ability to construct a fence on the property. Therefore, should the amendment as written go into effect, she would be out of compliance with the administrative rules and be forced to close her daycare leaving us and the other families without reliable childcare. In my experience as a former City Planner for the City of West Fargo, there are many in-home daycare providers who would be in similar situations in the metro area.
2. **Fences are an expensive business expenditure** – Depending on the fence company and the type of fence installed, costs for a fenced-in backyard can be an expensive business expenditure which could negatively impact the finances of small, self-employed daycare providers such as Muddy River Nature School. Earlier this year my wife and I received cost estimates from three fence companies in the Fargo-Moorhead area to construct a 5-foot iron fence with two gates around our 3,750 square foot backyard and received estimates between \$10,000 to \$12,000.
3. **Some daycares are in areas where a fence is not necessary** – The Administrative Rules currently allow for some bureaucratic discretion as they allow the daycare provider to work with the Department of Health & Human Services to determine if exterior play areas "are in close proximity to busy streets and other unsafe areas." While a fence might be necessary for a large daycare center located along an arterial street such as 32<sup>nd</sup> Ave in Fargo it doesn't make sense to require one for a daycare located on a local street. In some cases, a fence might even be detrimental to the learning and play provided for children due to the daycare's location. For example, Muddy River Nature School is located on a local street in Horace and the backyard of the property backs directly up to a public playground and park which allows for ease of access to the children. In this particular case, a fence would deter children not from playing in the street but playing on a playground.

Please reconsider the requirement for a fence during your review and consideration of the proposed amendment.

Thank you for your time,

Malachi Petersen (1238 Highland Ln W, West Fargo ND 58078)



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**ABOVE:** A class picture of the Muddy River Nature School / Daycare. The goal of the Montessori daycare is to have students spend at least 1,000 hours outside every year.

**Left:** Muddy River Nature School / Daycare students play with water tables in the backyard of the daycare. In the background can be seen the Horace Neighborhood public park that is directly adjacent to the rental property. The requirement of a fence in this area is unnecessary.



As part of enrollment each child at the Muddy River Nature School / Daycare is provided with adequate clothing for outdoor learning activities in all seasons. Because the daycare is located within a rental property it is unable to construct fences as part of its lease. Muddy River therefore would not be able to comply to the proposed amendments to N.D. Admin Code Chapter 75-03-08 as they are currently written.

Comments for Child Care Center Early Childhood Services

Submitted by Debra Habedank, NDSU Center for Child Development, Box 6050 Dept 3142, NDSU, Fargo, ND 58108-6050 Phone: 701-231-8281 E-Mail [Debra.habedank@ndsu.edu](mailto:Debra.habedank@ndsu.edu)

Page 53 Add Department definition.

Page 61 Like the idea of Safe Sleep compared to Sudden Infant Death Prevention and under section 44 Subsection 6 indicate Safe Sleep annual completion for those professional working with Infants.

Mandated Reporting is part of the Getting Started Growing Futures training required by all child care and education providers. Make sure it is very clear that Mandated Reporting is required annually by all.

Page 62 under f. 5 is Department - approved training the same as Growing Futures approved training. Clarification is needed.

Page 63 #2 I would recommend you indicate the number of days of orientation very specifically. Ex. What if a new employee starts on a Wednesday, there first week orientation would be Wed, Thurs., and Friday. Indicate 5 days if that is what you mean. Also, are you creating a new Employee Orientation Certificate form?

Also, on page 33 #1. There is much confusion in the field on the Calendar year definition. Is it the program's licensing calendar year or January-December? Our program has run into problem with the acceptance of Growing Futures approved trainings because ND licensing has said trainings had to be in the Licensing year. Clarification needed.

Thanks for the opportunity to provide feedback! I hope these comments are helpful and will be considered. If you have questions or need clarification, please call me.

Sincerely,

Deb Habedank-Director  
NDSU Center for Child Development  
701-231-8281

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## Volkman, Reagan

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**From:** Fordahl, Liz <lfordahl@ndlegis.gov>  
**Sent:** Thursday, November 9, 2023 10:53 AM  
**To:** Volkman, Reagan  
**Subject:** Administrative Rulemaking Comments - N.D.A.C. 75-03-07 - 75-03-11.1

\*\*\*\*\* CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe. \*\*\*\*\*

Ms. Volkman,

I am submitting the following comments related to the proposed rule changes to N.D.A.C. chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1, for consideration by the Department of Health and Human Services on behalf of Representative Pyle.

Representative Pyle shares the following concerns as expressed to Mayor Peterson, of Horace, by a Horace resident:

I hope all is well with you and that things at the City are going smoothly! I'm reaching out this afternoon because my Horace) just posted on their Facebook page the attached letter from the ND. Dept. of Health & Human Services and s close down due to new rules being considered for in-home daycares in North Dakota which would require 4ft fences. Unfortunately, our daycare provider rents her home and is not allowed under her lease to make changes to the back a fence. I know from my past experience as a city planner for the City of West Fargo that there's many in-home dayca than likely be in a similar situation in the metro area if these new rules are passed.

The relationship between access to childcare and workforce attraction/retention has been a matter of public discussi state and this rule would negatively impact both those topics.

Representative Pyle has a few additional questions for the department to consider:

- What problem is the four-foot fence requirement solving?
- How will this benefit the state considering the shortage of daycare providers?
- Why are we creating barriers for this essential business?

Thank you,



**Liz Fordahl**

Counsel

State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0160

701-328-2946  
[lfordahl@ndlegis.gov](mailto:lfordahl@ndlegis.gov)



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DEC 18 2023

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TO: Rules Administrator, ND Dept of Health and Human Services  
FROM: Robin Nelson, Boys & Girls Clubs of the Red River Valley, CEO, Fargo  
RE: Fence/enclosure Amendment to Administrative Rules  
CC: Kay Larson

Thank you for your continued work to ensure children and their families have access to safe, productive and affordable child care operations across North Dakota. I am writing to share my observations about the proposed amendments to Administrative Rules, specifically 75-03-11.1 18 (4).

*The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced within a fence, wall, or have solid natural barriers to restrict children from those unsafe areas barrier that is at least four feet high. There shall be no gap five by five inches [12.7 by 12.7 centimeters] or greater in or under the fence or barrier. Outdoor play areas must be inspected daily for hazards and necessary maintenance.*

The Boys & Girls Clubs of the Red River Valley have been offering licensed child care in school sites since 1986. We operate 13 center/group licensed child care sites, **11 of those in elementary schools**, in which we serve approximately 850 school-age youth every day.

I had a pleasant phone visit with Kay Larson about this topic. She told me the intent was to remove the ambiguity of what is determined to be “busy streets and other unsafe areas.” We also discussed natural barriers such as tree lines, and possible grandfathering of rules.

While we respect to the well intentions of the proposed language change, we remain opposed for a number of reasons affecting our business model, as well also other licensing types.

- **We are unable to install perimeter fences or natural barriers on school properties that are not ours.** The same could be true for child cares that operate in churches or apartment complexes, and those sites that are rented or leased. Those providing care that must adhere to homeowner association rules could be limited as well.
- This could potentially prohibit field trips in spaces not contained by fences.
- We currently serve 850 youth daily. If this were enacted, we would only be able to serve 230, potentially leaving **620 youth without care**.
- We are opposed to a grandfathering option since new elementary schools are continuing to be built across the state; therefore, prohibiting licensed child care from being offered there and forgoing necessary community partnerships that ultimately limits costs to families.

Our methods of mitigating safety concerns are numerous and include playground zones that are monitored by assigned staff members to ensure full coverage. Please keep in mind that we serve **school-age students who already utilize the same outside space during the school day**, and in fact typically with larger youth-to-staff ratios.

I respectfully request you consider the reasons shared above that would end the business model of utilizing school sites and prohibiting us from adding more school-based sites; consequently, ending a long-standing, effective and popular child care option for parents, communities, and school districts.

Shanna Dockter Brady  
1000 Schick Dr  
Bismarck, ND 58501  
701-471-0563

To Whom It May Concern:

I am writing this letter in opposition of the proposed ND Admin Code regarding the fencing requirements. I am a group licensed provider in Bismarck. I have been a childcare provider for almost 17 years. I live on a 1.5 acre rural property. We built this house in 2018 and we designed it starting with my childcare space. We purchased this piece of land knowing that per the regulations I did not need to have a fence. Our covenants do not allow for a fence nor does my budget. I live in a quiet development and the only traffic is residents and visitors. Our children can safely ride bikes on the streets as well as walk. Why change a regulation when it has been working just fine for all these years? If the issue is a safety issue, I would like to see the data on how many kids have escaped from a non-fenced facility vs a fenced facility. All of the ones I know of happened in a fenced facility and the child(ren) escaped out of the gate that was left open. When I lived in town on a busy street I had a fence so I am not against fencing when appropriate. I can tell you that when I had a fence in town, I never did teach the children safety about not going through the gate. Since I do not have a fence now, I am more aware of our surroundings, where each child is at all times and we always discuss boundaries while inside and outside. I can let all 11 of my currently enrolled children outside in my backyard and not a single one would dart for the street. This brings me to my next question. How do you advise we fence in a driveway? Part of my program is that I teach the kids to ride a bike without training wheels before heading off to kindergarten. This means we often play in the driveway riding bikes, coloring with chalk, playing with sand, participating in aquatic play including washing our bikes. Again, not a single one of my kids would dart into the street. However, if they did, it would not be a problem because I live on a quiet rural street where we have over 50 children living here in 32 homes and residents are aware of the constant flow of kids on the streets.

Does the state have any funds set aside for providers to pay for a fence? This will be an incredible hardship for many of us. I would imagine a fence around a rural property would be nearly \$50,000 if not more. What about those providers like myself that have a covenant that doesn't allow a fence? Are we just supposed to up and move if we want to continue daycare? Natural barriers take years and years to grow. I also happen to live in a place with alkali. It has killed many of our evergreens we had planted for a natural windbreak. What are my options?

What about when we want to take the kids to a local park without a fence? Will we not be allowed to anymore since fencing will be required where the children are playing? Many programs take children to local parks during the nice months for a change of scenery.

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If this amendment passes, I will have no choice but to give up my license and move to unlicensed care. That would create an even greater hardship for parents who depend on me for care as well as any future parents needing care. I recently had a fire inspection and the assistant chief said it so well, "if there is no fence there is nothing for the kids to escape from."

I am open for any discussion you all may have.

Thanks,

A handwritten signature in black ink, appearing to read "Shanna Dockter Brady".

Shanna Dockter Brady

Shanna Dockter Brady  
1000 Schick Dr  
Bismarck, ND 58501  
701-471-0563

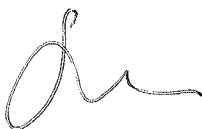
To Whom It May Concern:

I am writing this letter in opposition of the proposed ND Admin Code regarding the business liability insurance requirements. I am a group licensed provider in Bismarck. I have been a childcare provider for almost 17 years. Didn't we just fight this same fight in the legislative session and it failed? I, personally, carry business liability insurance by choice. Trying to obtain my current policy was not easy though. I fear other providers may face the same issues I did.

The first company I contacted denied me because I had no fence even though per regulations I am not required to have a fence. The second company denied me because I am licensed for 12 children by myself. They required 1 adult per 6 children and again I am perfectly within regulations. The third company denied me because I take special needs children. At the time I had a child with celiac disease. This fourth company finally did approve my policy. When the time comes that they no longer insure me, then what? Not every provider can afford liability insurance, could you? Why is the state so pressed for us to have liability insurance? If something happens in our facility right now without liability insurance, does the state have any stake in it? Would you stand behind providers if we got sued by a parent if we had liability insurance or would you simply step back?

I am open for any discussion you all may have.

Thanks,



Shanna Dockter Brady

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STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL  
[www.attorneygeneral.nd.gov](http://www.attorneygeneral.nd.gov)  
(701) 328-2210

Drew H. Wrigley  
ATTORNEY GENERAL

OPINION

January 25, 2024

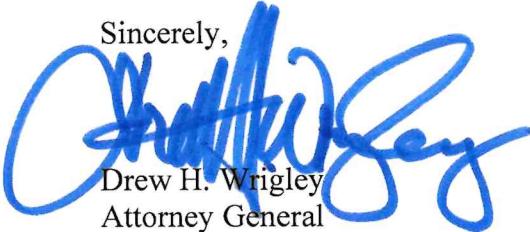
Ms. Sara Stolt, Interim Commissioner  
North Dakota Department of Health and Human Services  
600 E Boulevard Ave Dept 325  
Bismarck, ND 58505-0250

Dear Interim Commissioner Stolt,

The Office of Attorney General has examined the proposed amendments to N.D. Admin. Code chs. 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1 concerning In-Home Child Care Early Childhood Services, Self-Declaration Providers Early Childhood Services, Family Child Care Early Childhood Services, Group Child Care Early Childhood Services, Child Care Center Early Childhood Services, Preschool Early Childhood Services, and School-Age Child Care Program Early Childhood Services, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and an economic impact statement were prepared, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in substantial compliance<sup>1</sup> with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,



Drew H. Wrigley  
Attorney General

copy Liz Fordahl, Legislative Council  
Reagan Volkman – [rvolkman@nd.gov](mailto:rvolkman@nd.gov)

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<sup>1</sup> The North Dakota Department of Health and Human Services requested publication of an abbreviated Notice of Intent to Adopt Administrative Rules and Notice of Public Hearing (Notice) in each official county newspaper in a timely manner. However, publication of the hearing notice in the McClusky Gazette did not allow 20 days between the date of publication and the hearing. All other hearing notices allowed at least 20 days between the publication date and the hearing date.

## MEMO

**TO:** Jonathan Alm, Director, Legal Division

**FROM:** Carmen Traeholt, Early Childhood Licensing Administrator

**RE:** Regulatory Analysis of Proposed North Dakota Administrative Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1, Early Childhood Services

**DATE:** September 23, 2023

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to proposed amendments to North Dakota Administrative Code Chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

### Purpose

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This impact statement pertains to proposed amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1, which incorporate updates pursuant to 2023 House Bill 1144 and Senate Bill Nos. 2082 and 2104. Federal law does not mandate the proposed rules.

### Classes of Persons Who Will be Affected

The classes of person who will most likely be affected by these rules are in-home and self-declaration child care providers, and licensed family, group, center, preschool, and school age early childhood service programs.

### Probable Impact

The proposed amendments may impact the regulated community as follows:

In-home and self-declaration child care providers and licensed family, group, center, preschool, and school age early childhood service programs will see more consistent interpretation of child care regulations and rules and alignment with state law.

### Probable Cost of Implementation

There is no anticipated cost for the implementation. It is estimated that there will be no effect on state revenues.

#### Consideration of Alternative Methods

A review of Administrative Codes, which lead to the proposed amendments, was undertaken to determine the best approach to required changes. The review included a discussion of current policy, possible alternatives, and recommendations to the Department. The amendments provide the least impact to in-home and self-declaration child care providers and licensed family, group, center, preschool, and school age early childhood service programs.

## MEMORANDUM

**TO:** Jonathan Alm, Director, Legal Division

**FROM:** Carmen Traeholt, Early Childhood Licensing Administrator

**DATE:** September 23, 2023

**SUBJECT:** Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1.

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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 amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11.1. Federal law does not mandate the proposed rules. The proposed amendments are a result of 2023 House Bill No. 1144 and 2023 Senate Bill Nos. 2082 and 2104.

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**

State regulated child care providers are responsible to meet health and safety standards as well as operational standards imposed by state and federal law. The proposed amendments will create more consistent interpretation of child care regulations and alignment with state law. For this reason, establishment of less stringent compliance or reporting requirements for these small entities was not considered.

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

The proposed amendments do not affect schedules or deadlines for compliance or reporting requirements; they will create more consistent interpretation of child care regulations and alignment with state law. For this reason, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities was not considered.

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

State regulated child care providers are responsible to meet health and safety standards as well as operational standards imposed by state and federal law. The proposed amendments will create more consistent interpretation of child care regulations and alignment with federal law. For this reason, the consolidation or simplification of compliance or reporting requirements for these small entities was not considered.

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

State regulated child care providers are responsible to meet health and safety standards as well as operational standards imposed by state and federal law. The proposed amendments do not impose any additional operational standards for small entities but will create more consistent interpretation of child care regulations and alignment with state law. For this reason, the establishment of performance standards for small entities to replace design or operational standards required in the proposed rules for these small entities was not considered.

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

State regulated child care providers are responsible to meet health and safety standards as well as operational standards imposed by state and federal law. The proposed amendments will create more consistent interpretation of child care regulations and alignment with state law. For this reason, no proposed rule changes will include exemptions from all or any part of rule.

## MEMORANDUM

**TO:** Jonathan Alm, Director, Legal Division

**FROM:** Carmen Traeholt, Early Childhood Licensing Administrator

**DATE:** September 23, 2023

**SUBJECT:** Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1.

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 amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1. The proposed rules are a result of 2023 House Bill No. 1144 and 2023 Senate Bill Nos. 2082 and 2104. The proposed amendments will create more consistent interpretation of child care regulations and rules, enhance health and safety for the children in care, and align with new state laws. The proposed rules are anticipated to have minimal economic impact on small entities.

### 1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the proposed amended rules are in-home providers, self-declaration providers, and licensed family, group, center, preschool, and school-age program operators.

### 2. Costs For Compliance

With the addition of health and safety standards to chapters 75-03-07.1, 75-03-08, and 75-03-09 to not only enhance safety measures for children in care, but also to maintain consistency among all provider types, the Department expects providers may incur cost associated with the proposed rules. The Department also expects some providers may incur a cost for insurance.

### 3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rules are unknown. The Department does not anticipate the cost to private persons or consumers to be significant. The Department is taking this into

consideration and will assess the possibility of grants to offset the cost incurred by providers.

Child care providers and families will benefit from consistent administration of child care regulations in addition to enhanced health and safety measures for the children in care.

#### 4. Probable Effect on State Revenue

No probable effect on state revenue is projected at this time.

#### 5. Alternative Methods

The Department took into consideration all options as they pertain to the proposed rule change and based on the recommendation of the Early Childhood Advisory Board will move forward with the proposed rule change.

## FISCAL IMPACT

The anticipated fiscal impact resulting from the implementation of the proposed amendments is minimal.

## TAKINGS ASSESSMENT

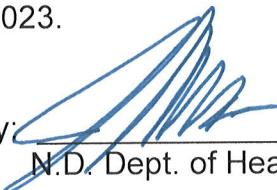
concerning proposed amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1.

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 23<sup>rd</sup> day of September, 2023.

by:

  
N.D. Dept. of Health and Human Services

## LEGAL