

ARTICLE 75-04 DEVELOPMENTAL DISABILITIES

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CHAPTER 75-04-01 LICENSING OF PROGRAMS AND SERVICES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES - DEVELOPMENTAL DISABILITIES

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SECTION 1. Section 75-04-01-01 is amended as follows:

75-04-01-01. Definitions.

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

1. "Accreditation" means accredited by a department-approved national organization of a licensee's compliance with a set of specified standards.
2. "Applicant" means an entity that has requested licensure from the North Dakota department of health and human services pursuant to North Dakota Century Code chapter 25-16 and this chapter.
3. "Application" means a request in the form and manner prescribed by the department signed by the applicant or principal officer on behalf of the applicant.
4. "Authorized representative" means a person who has legal authority, either designated or granted, to make decisions on behalf of the eligible individual.

5. "Day habilitation" means a day program of scheduled activities, formalized training, and staff supports to promote skill development for the acquisition, retention, or improvement in self-help, socialization, and adaptive skills. Activities should focus on improving ~~a~~an eligible individual's sensory, motor, cognitive, communication, and social interaction skills.
6. "Department" means the North Dakota department of health and human services.
7. "Developmental disability" means a severe, chronic disability of an individual which:
 - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments, including Down syndrome and fetal alcohol spectrum disorders, including fetal alcohol syndrome, partial fetal alcohol syndrome, and alcohol-related neurodevelopmental disorder;
 - b. Is manifested before the individual attains age twenty-two;
 - c. Is likely to continue indefinitely;
 - d. Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (1) Self-care;
 - (2) Receptive and expressive language;
 - (3) Learning;
 - (4) Mobility;
 - (5) Self-direction;
 - (6) Capacity for independent living; and
 - (7) Economic sufficiency; and
 - e. Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.
8. "Developmental disability services" means those services required to be provided by an entity in order to obtain and maintain a license.

9. "Eligible individual" means an individual found eligible as determined through the application of chapter 75-04-06 for services coordinated through intellectual disabilities - developmental disabilities program management, on whose behalf services are provided or purchased.
10. "Employment support" means ongoing supports to assist eligible individuals in obtaining and maintaining paid employment at or above minimum wage in an integrated setting. Services are designed for eligible individuals who need intensive ongoing support to perform in a work setting. Service includes on-the-job or off-the-job employment-related support for eligible individuals needing intervention to assist them in maintaining employment, including job development. Employment support includes individual employment support and small group employment support.
11. ~~"Family member"~~ "Facility-based" means ~~relatives of a an eligible individual to the second degree of kinship~~ a facility for individuals with developmental disabilities licensed by the department to provide day habilitation or prevocational services where routine programming is conducted. This definition does not include areas of the building determined by the department to exist primarily for non-training purposes.
12. "Family support services" means a family-centered support service contracted based on the eligible individual's or primary caregiver's need for support in meeting the health, developmental, and safety needs to remain in an appropriate home environment. Family support services includes parenting support, respite, extended home health care, in-home supports, and family care option.
13. "Governing body" means the individual or individuals designated in the articles of incorporation of a corporation, bylaws, or constitution of a legal entity as being authorized to act on behalf of the entity.
14. "Group home" means any community residential service facility, licensed by the department pursuant to North Dakota Century Code chapter 25-16 and this chapter, housing more than three individuals with developmental disabilities. "Group home" does not include a community complex with self-contained rental units.
15. "Infant development" means a systematic application of an individualized family service plan designed to alleviate or mediate developmental delay of the eligible individual from birth through age two.
16. "Intellectual disability" means a diagnosis of the condition of intellectual disability, based on an individually administered standardized intelligence test and standardized measure of adaptive behavior as accepted by the

American psychiatric association, and made by an appropriately licensed professional.

17. "Intermediate care facility for individuals with intellectual disabilities" means a residential health facility operated pursuant to title 42, Code of Federal Regulations, parts 442 and 483, et seq.
18. "License" means authorization by the department to provide a service to eligible individuals, pursuant to North Dakota Century Code chapter 25-16 and this chapter.
19. "Licensee" means that entity which has received authorization by the department, pursuant to North Dakota Century Code chapter 25-16 and this chapter and who has executed a Medicaid agreement with the department, to provide a service or services to eligible individuals.
20. "Non-facility-based" means the provision of day habilitation or prevocational services in community settings rather than at a licensed facility. A non-facility-based program may use a building or other location for limited purposes, but may not routinely provide day habilitation or prevocational programming at the location.
21. "Prevocational services" means formalized training, experiences, and staff supports designed to prepare eligible individuals for paid employment in integrated community settings. Services are structured to develop general abilities and skills that support employability in a work setting. Services are not directed at teaching job-specific skills, but at specific habilitative goals outlined in the eligible individual's person-centered service plan.
- ~~21-22.~~ "Primary caregiver" means a responsible person providing continuous care and supervision to an eligible individual that prevents institutionalization in meeting the needs of the eligible individual and who is not employed by or working under contract of a licensee pursuant to this chapter.
- ~~22-23.~~ "Principal officer" means the presiding member of a governing body, a chairperson, or president of a board of directors.
- ~~23-24.~~ "Program management" means a process of interconnected steps which will assist an eligible individual in gaining access to needed services, including medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.
- ~~24-25.~~ "Resident" means an individual receiving services provided through any licensed residential facility or service.
- ~~25-26.~~ "Residential services" means formalized training and supports provided to

eligible individuals to assist with and develop self-help, socialization, and adaptive skills that improve the eligible individual's ability to independently reside and participate in an integrated community. Residential services include residential rehabilitation and independent habilitation.

~~26-27.~~ "Standards" means requirements which result in accreditation and, if applicable, certification as an intermediate care facility for individuals with intellectual disabilities.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; July 1, 2001; July 1, 2012; April 1, 2018; April 1, 2020; January 1, 2025; January 1, 2027.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

SECTION 2. Section 75-04-01-02 is amended as follows:

75-04-01-02. License required and renewal.

1. No individual, association of individuals, partnership, limited liability company, or corporation shall offer or provide a service or own, manage, or operate a facility offering or providing a service to more than two individuals with developmental disabilities without first having obtained a license from the department unless the facility is:
 - a. Exempted by North Dakota Century Code section 15.1-34-02; or
 - b. Operated by a nonprofit corporation that receives no payments from the state or any political subdivision and provides only day supports for six or fewer individuals with developmental disabilities. "Payment" does not include donations of goods and services or discounts on goods and services.
2. Licensure does not create an obligation for the state to purchase services from the licensee.
3. At the discretion of the department, the department may issue a single license for a discrete service or issue multiple licenses by service location.
4. A license is nontransferable, expires not more than one year from the effective date of the license, and is valid for the services or locations identified therein.
5. A license issued by the department must include the legal name of the licensee, the address or location where services are provided, the occupancy or service limitations, the unique services authorized, the region and counties where services are provided, and the expiration date of the license.

6. A licensee shall submit to the department an application for a license no later than sixty days prior to the expiration date of a valid license. If the licensee is not able to provide the application within this time frame, a request to waive the sixty days submission timeline must be submitted to the department prior to the license expiration date. If the licensee continues to meet all standards established by North Dakota Century Code chapters 25-01.2 and 25-16 and the rules of the department, the department shall issue a license renewal.
7. ~~The~~A licensee shall place the license in an area accessible to the public where it may be readily seen, except in residences or residential areas of a facility where a license must be available to the public or the department upon request.
8. ~~Licensees~~A licensee shall sign a Medicaid provider agreement, provider assurances, a provider declaration, and any other agreements required ~~addendums with~~by the department to provide services to eligible individuals.
9. A licensee who voluntarily terminates a license shall submit a new application to reapply for licensure.
10. A licensee shall notify the department of any organizational changes, including changes in ownership, mergers, or other agency modifications, in a manner prescribed by the department.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 2001; July 1, 2012; April 1, 2018; January 1, 2025; January 1, 2027.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-02, 25-16-03

SECTION 3. Section 75-04-01-03 is amended as follows:

75-04-01-03. Application.

1. An applicant shall submit an application for a license to provide services or operate a facility to the department in the form and manner prescribed by the department. The department shall review submitted applications. Submission of an application does not guarantee a license will be issued.
2. An applicant must have the ability to read, write, and verbally communicate in the English language to the extent necessary to provide services and comply with applicable requirements.
3. An application is not complete until all required information and verifications are submitted to the department. The department may declare an

application withdrawn if an applicant fails to submit all required information and verifications within thirty days of the department's notification to the applicant the application is incomplete. If the application is withdrawn, the applicant may not reapply for a license for a period of six months from the date the application was withdrawn or appeal. After the six-month period has elapsed, the applicant may submit a new application to the department.

~~3.4.~~ Within sixty days from the date of the receipt of the completed application, the department shall notify the applicant of the department's intent to grant or deny a license. The sixty-day limit does not apply if the applicant is the subject of a pending denial, suspension, or revocation of a license or certification issued by the department. The department has sixty days from the final disposition of the denial, suspension, or revocation to grant or deny a license.

5. The department may not approve an application for an applicant until final disposition of the criminal case against the applicant if the applicant has been charged with an offense:

a. Identified in subdivision a of subsection 1 of section 75-04-01-06.1;
or

b. Classified as a felony and in which the alleged victim is an individual who was under the care of the applicant.

History: Effective April 1, 1982; amended effective January 1, 2025; January 1, 2027.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

SECTION 4. Section 75-04-01-03.1 is amended as follows:

75-04-01-03.1. Types of licenses.

A license issued pursuant to North Dakota Century Code chapter 25-16 and this chapter must be identified as a provisional, unrestricted, or restricted license.

1. A "provisional license" may be issued to an applicant who complies or is in the process of complying with the rules of the department, and North Dakota Century Code chapters 25-01.2 and 25-16, and who has obtained accreditation or is engaged in obtaining accreditation. ~~The~~ If not accredited, the licensee shall obtain accreditation by the expiration of the provisional license.

a. A provisional license may be issued for no more than one year. During this period, the licensee shall demonstrate compliance with the rules of the department and North Dakota Century Code chapters 25-01.2 and 25-16.

- b. A provisional license may be extended for an additional six months only upon the department's determination the licensee has made significant progress toward complying with the rules of the department and North Dakota Century Code chapters 25-01.2 and 25-16 and obtaining accreditation.
 - c. During the provisional licensure period, the department may implement restrictions, including limiting referrals, services, or facilities, based on compliance with the rules of the department and North Dakota Century Code chapters 25-01.2 and 25-16.
 - d. The department may revoke a provisional license through a notice of revocation of a provisional license in accordance with this chapter.
- 2. An "unrestricted license" may be issued to an applicant who complies with the rules of the department and North Dakota Century Code chapters 25-01.2 and 25-16, and who is accredited.
- 3. A "restricted license" may be issued to a licensee upon a finding of noncompliance with the rules of the department and North Dakota Century Code chapters 25-01.2 and 25-16.
 - a. The department may not issue a restricted license to a licensee whose practices or facilities pose a clear and present danger to the health and safety of eligible individuals.
 - b. The department may issue a restricted license for any or all services provided, or facilities operated by the licensee.
 - c. During the restricted license period, the department may limit a licensee's referrals.
 - d. Upon a finding that the licensee is not in compliance, the department shall notify the licensee, in writing, of its intent to issue a restricted license. The notice must provide the reasons for the action, the specific services that are affected by the restricted license, and describe the corrective actions required of the licensee.
 - ~~d.e.~~ The licensee shall, within ten days of the receipt of notice under subdivision ed, submit to the department, on a form provided, a plan of correction. The plan of correction must include the elements of noncompliance, a description of the corrective action to be undertaken, and a date certain of compliance. The department may accept, modify, or reject the licensee's plan of correction and shall notify the licensees of its decision within thirty days. If the plan of

correction is not submitted or it is rejected, the department shall notify the licensee the license has been revoked. The department may conduct periodic inspection of the facilities and operations of the licensee to evaluate the implementation of the plan of correction.

- e.f. The department shall terminate a restricted license and issue an unrestricted license to the licensee upon successful completion of an accepted plan of correction.
- f.g. A restricted license may be extended for an additional six months only upon the department's determination the licensee has made significant progress toward meeting the standards identified in the plan of correction or the licensee has shown good cause for failure to implement the plan of correction.

History: Effective January 1, 2025; amended effective January 1, 2027.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-02, 25-16-03

SECTION 5. Section 75-04-01-03.2 is created as follows:

75-04-01-03.2. Office requirements.

An applicant or licensee shall maintain a physical office within the state, including an in-state mailing address and in-state telephone number. An applicant or licensee shall ensure that, at a minimum, a program director shall maintain an onsite in-state presence, unless otherwise approved by the department.

History: Effective January 1, 2027.

General Authority: 25-16-06, 50-06-16

Law Implemented: 25-16-03

SECTION 6. Section 75-04-01-04 is amended as follows:

75-04-01-04. License denial or revocation.

1. The department may deny a license to an applicant or licensee or revoke an existing license upon a finding of noncompliance if:
 - a. The applicant or licensee is not in compliance with North Dakota Century Code chapter 25-01.2 or 25-16 or the rules of the department;
 - b. The applicant or licensee previously found not in compliance with the standards of the department has not demonstrated correction of the areas of noncompliance;

- c. The applicant or licensee has been debarred or has had a professional license, certification, or authorization to conduct business suspended, revoked, or terminated by another entity;
 - d. The applicant or licensee has delivered services that are of an inferior quality or are harmful to individuals;
 - e. The applicant or licensee has been found guilty of, pled guilty to, or pled no contest to:
 - (1) An offense identified in subdivision a of subsection 1 of section 75-04-01-06.1, unless the offense is identified in subsection 4 of section 75-04-01-06.1 and the department determines the applicant or licensee has been sufficiently rehabilitated; or
 - (2) Any other offense and the department determines the applicant or licensee is not sufficiently rehabilitated;
 - f. The applicant or licensee, if previously licensed or enrolled, owes the department money for payments incorrectly made to the applicant or licensee;
 - g. The applicant or licensee is currently excluded from participation in Medicare, Medicaid, or any other federal health program;
 - h. There has been no billing activity or services provided within the twelve months since the licensee's most recent license effective date;
 - i. The licensee has demonstrated a pattern of submitting inaccurate billing or cost reports; or
 - j. The licensee refuses to repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments.
2. The department may deny a request for capacity increases, service additions, or facility changes based on the licensee's performance and compliance with the standards of the department.
- 4.3. If the department denies a license, the applicant or licensee may not reapply for a license for a period of six months from the date of denial. After the six-month period has elapsed, the applicant or licensee may submit a new application to the department.

- 2.4. If the department revokes a license, the licensee may not reapply for a license for a period of one year from the date of the revocation. After the one-year period has elapsed, the licensee may submit a new application to the department.
- 3.5. A license denial or revocation may affect all or some of the services and facilities operated by a licensee.
- 4.6. Notification is made upon mailing or upon electronic transmission. The notice must identify any law, rule, or standard alleged to have been violated, the factual basis for the allegation, the specific service or facility responsible for the violation, the date after which the denial or revocation is final, and the procedure for appealing the action.
- 5.7. If an action to revoke a license is appealed, the licensee may ~~continue to not~~ provide services until the final appeal decision is rendered ~~unless continued operations would jeopardize the health and safety of eligible individuals.~~
- 6.8. The licensee, upon final revocation notification, shall destroy the license.

History: Effective April 1, 1982; amended effective June 1, 1986; April 1, 2018; January 1, 2025; January 1, 2027.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-03, 25-16-08

SECTION 7. Section 75-04-01-06 is amended as follows:

75-04-01-06. Disclosure of criminal record.

- 1. ~~Each~~During licensing and throughout the period of licensure, each member of the governing body of the applicant or licensee, the chief executive officer, and any ~~employees, volunteers, or agents~~individual who ~~receive~~receives and ~~disburse~~disburses funds on behalf of the governing body, ~~or who provide any direct service to eligible individuals,~~ shall disclose to the department if they have been found guilty of, pled guilty to, or pled no contest to a criminal offense or been placed on the Medicaid exclusion list.
- 2. The applicant or licensee shall ensure that department-approved federal and state criminal background checks are completed for all individuals employed~~employees and volunteers~~ who work with eligible individuals; ~~including volunteers.~~ If the applicant or licensee is contracting or subcontracting with other entities, there must be an agreement ensuring federal and state criminal background checks have been completed ~~on~~for all ~~individuals employed who work with eligible individuals, including volunteers~~employees and volunteers of the contractor or subcontractor.
- 3. ~~The applicant or licensee~~An employee or volunteer who works with eligible

~~individuals shall disclose to notify the department the names, type of offenses, dates of having~~applicant or licensee if the employee or volunteer has been found guilty of, pled guilty to, or pled no contest to a criminal offense, and position and duties within the applicant's organization of employees and volunteers with a criminal record or has been placed on the Medicaid exclusion list.

4. ~~Disclosure may not disqualify the applicant from licensure or an individual from employment or volunteering, unless the~~An applicant or individual has may not be employed or volunteer if they have been found guilty of, pled guilty to, or pled no contest to, a crime having direct bearing on the capacity of the applicant, employee, or volunteer individual's ability to provide a services~~services under the provision of this chapter or the convicted applicant, employee, or volunteer individual is not sufficiently rehabilitated.~~
5. The department shall determine the effect of an applicant, employee, or volunteer having been found guilty of, pled guilty to, or pled no contest to, a criminal offense.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; April 1, 2018; January 1, 2025; January 1, 2027.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03.1

SECTION 8. Section 75-04-01-17 is amended as follows:

75-04-01-17. Identification of developmental disability services subject to licensure.

1. Developmental disability services provided to eligible individuals must be identified and licensed by the following titles:
 - a. Residential services:
 - (1) Residential habilitation; or
 - (2) Independent habilitation;
 - b. Day habilitation:
 - (1) Facility-based;
 - (2) Non-facility-based;
 - c. Intermediate care facility for individuals with intellectual disabilities;
 - d. Employment supports:

- (1) Individual employment supports; or
 - (2) Small group employment supports;
 - e. Prevocational services:
 - (1) Facility-based;
 - (2) Non-facility-based;
 - f. Family support services:
 - (1) Parenting supports;
 - (2) In-home supports;
 - (3) Respite;
 - (4) Extended home health care; or
 - (5) Family care option; or
 - g. Infant development services.
- 2. For services that allow a virtual service delivery option, the licensee shall identify that option on the license application.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 1996; July 1, 2001; July 1, 2012; April 1, 2018; April 1, 2020; January 1, 2025; January 1, 2027.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06

SECTION 9. Section 75-04-01-20 is amended as follows:

75-04-01-20. Applicant and licensee guarantees and assurances.

- 1. Applicants shall submit, and licensees shall maintain, in a manner prescribed by the department, evidence that policies and procedures approved by the governing body are written and implemented in a manner which:
 - a. Guarantees each eligible individual a person-centered service plan pursuant to the provisions of North Dakota Century Code section 25-01.2-14;
 - b. Guarantees each eligible individual, authorized representative, or

advocate receives written notice of the eligible individual's rights in the manner provided by North Dakota Century Code section 25-01.2-16;

- c. Guarantees each eligible individual has a right to appropriate treatment, services, and habilitation and these are provided in the least restrictive appropriate setting pursuant to North Dakota Century Code section 25-01.2-02;
- d. Guarantees the eligible individual the right to receive authorized services and supports included in his or her person-centered service plan in a timely manner and the opportunity to fully participate in the benefits of community living, vote, worship, socialize, freely communicate, have visitors, own and use personal property, and unrestricted access to legal counsel, and guarantees that all rules regarding such conduct are posted or made available pursuant to North Dakota Century Code sections 25-01.2-03, 25-01.2-04, and 25-01.2-05;
- e. Guarantees any restrictions implemented are based upon an eligible individual's assessed need and are imposed pursuant to the provisions of due process and a person-centered service plan;
- f. Guarantees the confidentiality of all eligible individual records;
- g. Guarantees the eligible individual receives adequate remuneration for compensable labor, that subminimum wages are paid only pursuant to title 29, Code of Federal Regulations, part 525, et seq., that the eligible individual has the right to seek meaningful employment in integrated settings, that restrictions upon eligible individual access to money are subject to the provisions of a person-centered service plan, that assets managed by the applicant on behalf of the eligible individual inure solely to the benefit of that eligible individual, that each eligible individual is assessed on the individual's ability to manage the individual's finances, and that, in the event the applicant or licensee is a representative payee of an eligible individual, the informed consent of the eligible individual is obtained and documented;
- h. Guarantees the eligible individual timely access to preferred and qualified medical and dental services, adequate protection from infectious and communicable diseases, and receives safe and effective administration of medications, as well as prevention of drug use as a substitute for programming;
- i. Guarantees the eligible individual freedom from corporal

punishment, imposition of isolation, seclusion, chemical, physical, or mechanical restraint, except as prescribed by North Dakota Century Code section 25-01.2-10 or this chapter, and guarantees the eligible individual freedom from psychosurgery, sterilization, medical behavioral research, pharmacological research, and electroconvulsive therapy, except as prescribed by North Dakota Century Code sections 25-01.2-09 and 25-01.2-11;

- j. Guarantees, where applicable, a nutritious diet, approved by a qualified dietitian, will be provided in sufficient quantities to meet the eligible individual's dietary needs and preferences;
- k. Guarantees the eligible individual the right to choose and refuse services, who provides the services, the right of the eligible individual and the eligible individual's representatives to be informed of the possible consequences of the refusal, alternative services available, and specifically, the extent to which such refusal may impact the eligible individual or others;
- l. Assures the eligible individual safe and sanitary living and working arrangements, maintains a system for monitoring, reporting, and responding to safety and sanitary hazards, and provides for emergencies or disasters and first-aid training for staff;
- m. Assures the existence and operation of both behavior management and human rights committees;
- n. Assures the residential provider agency will coordinate with services outside the residential setting in which an eligible individual lives;
- o. Assures adaptive equipment, where appropriate for mobility, activities of daily living, or communication is provided consistent with the person-centered service plan;
- p. Assures all staff demonstrate basic professional competencies as required by their job descriptions and complies with all required trainings, credentialing, and professional development activities;
- q. Assures at least annually, outcomes are evaluated to determine whether an eligible individual is achieving the individual's goals and objectives;
- r. Assures all vehicles owned by the licensee providing transportation to eligible individuals are routinely inspected and maintained, are licensed by the department of transportation, transport no more individuals than the manufacturer's recommended maximum

capacity, are handicapped accessible, ~~where~~when appropriate, and are driven by individuals who hold a valid state driver's license. Additionally, all vehicles owned by the licensee must be equipped with a first-aid kit and a fire extinguisher. All vehicles not owned by the licensee used by licensee staff to transport eligible individuals must be licensed by the department of transportation, driven by individuals who hold a valid state driver's license, and insured as required by law;

- s. Assures an annual inspection is conducted to ensure environments are sanitary and hazard free. Safety and sanitary concerns must be corrected in a timely manner;
- t. Guarantees incidents of alleged abuse, neglect, and exploitation are thoroughly investigated and reported to the governing body, chief executive officer, authorized representative, or advocate, the protection and advocacy project, and the department with written records of these proceedings being retained for three years; guarantees that all incidents of restraint utilized to control or modify an eligible individual's behavior are recorded and reported to the governing body; guarantees any incident resulting in injury to the eligible individual or staff that requires medical attention or hospitalization must be recorded and reported to the governing body immediately, and as soon thereafter as possible to the authorized representative or advocate; and guarantees incidents resulting in injury to the eligible individual or staff that requires extended hospitalization, endangers life, or results in permanent disability must also be reported to the department immediately; and guarantees corrective action plans are implemented;
- u. Guarantees a grievance procedure, reviewed and approved by the department, affords the eligible individual or the authorized representative or advocate the right to have any grievance addressed; and guarantees that grievance records are maintained and must note the nature of the grievance, individuals submitting the grievance, and the resolution of the grievance;
- v. Assures policies and procedures are established and maintained for the management and maintenance of property and equipment purchased or depreciated with state funds. The applicant shall make the records, and items identified in them, available for inspection by the department, or designee, upon request to facilitate a determination of the adequacy with which the applicant is managing property and equipment;
- w. Assures policies and procedures regarding admission to their

services and termination of services are in conformance with the rules of the department;

- x. Assures all documentation, data reporting requirements, rules, regulations, and policies are conducted as required by the department; and
 - y. Assures all applicable federal and state laws and regulations are being abided by.
- 2. Licensees shall submit evidence, satisfactory to the department, of accreditation.
 - 3. The department shall determine the degree to which the unaccredited applicant's policies and procedures are in compliance with the standards.
 - 4. Licensees shall submit any updated policies and procedures in subsection 1 upon license renewal, during an audit, when a relevant complaint or grievance is filed, when there is a critical incident, for a compliance review, or when requested by the department.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2018; January 1, 2025; January 1, 2027.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-02, 25-01.2-03, 25-01.2-04, 25-01.2-05, 25-01.2-06, 25-01.2-07, 25-01.2-09, 25-01.2-10, 25-01.2-11, 25-01.2-14, 25-01.2-16, 25-01.2-18, 25-16-06

SECTION 10. Section 75-04-01-38 is amended as follows:

75-04-01-38. Insurance ~~and bond~~ requirements.

- 1. ~~Licensees shall secure and maintain insurance and bonds appropriate for the size of the programs, including:~~
 - a. ~~A blanket fidelity bond equal to not less than ten percent of the total operating costs of the program;~~
 - b.1. Property insurance covering all risks at replacement costs and costs of extra expense for loss of use;
 - c.2. Liability insurance covering bodily injury, property damage, personal injury, teacher liability, professional liability, and umbrella liability as applicable; and
 - d.3. Automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no fault for licensee owned vehicles.

- ~~2. The department shall determine the adequacy of the insurance coverages maintained by the applicant.~~

History: Effective June 1, 1986; amended effective December 1, 1995; January 1, 2027.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

SECTION 11. Section 75-04-01-39 is amended as follows:

75-04-01-39. Variance.

Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance, to an institutional intermediate care facility for individuals with intellectual disabilities, or group homes, from ~~subsection 4 of section 75-04-01-27, subsections 1, 2, and 3 of section 75-04-01-29, and subdivision c of subsection 31 of section 75-04-01-31,~~ except no variance may permit or authorize a danger to the health or safety of an individual served by the facility.

History: Effective July 1, 1996; amended effective July 1, 2012; April 1, 2018; January 1, 2027.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06

SECTION 12. Subsection 5 of section 75-04-01-40 is amended as follows:

5. A licensee shall retain a copy of the records required for ~~six~~seven years from the date of the bill unless an audit in process requires a longer retention.

History: Effective April 1, 2018; amended effective January 1, 2025; January 1, 2027.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03