

**CHAPTER 75-03-21**  
**LICENSING OF FOSTER HOMES FOR ADULTS**

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**SECTION 1.** Section 75-03-21-01 is amended as follows:

**75-03-21-01. Definitions.**

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

1. "Abuse" means any willful act or omission of a caregiver or any other individual which results in physical injury, mental anguish, unreasonable confinement, sexual abuse, or exploitation to or of a resident.
2. "Agency" means an organization which monitors the facility.

3. "Applicant" means the individual or individuals completing and submitting to the department an application to be licensed to provide care.
4. "Care" means foster care for adults as defined by North Dakota Century Code section 50-11-00.1 and includes the provision of personal, nonmedical services provided to assist a resident with tasks of a personal nature that are performed daily and which involve such activities as bathing, dressing, toileting, transferring from bed or chair, continence, eating or feeding, and mobility inside the facility.
5. "Department" means the North Dakota department of health and human services.
6. "Electronic monitoring device" means a device installed in the room of a resident which is intended to live action monitor, record, or record and transmit video, communications, or other sounds occurring in the room.
7. "Exploitation" means the act or process of a provider using the income, assets, or person of a resident for monetary or personal benefit, profit, gain, entertainment, or gratification.
8. "Facility" means a foster care home for adults.
9. "Home and community-based setting experience interview" means an instrument used to record information about a resident's experiences in the facility.
10. "License" means a document issued by the department authorizing an applicant to operate a facility.
11. "Mental anguish" means psychological or emotional damage that requires medical treatment or medical care, or is characterized by behavioral changes or physical symptoms.
12. "Monitoring" means overseeing the care provided to a resident by a provider and verifying compliance with laws, rules, and standards pertaining to care and the resident's rights related to the facility.
13. "Neglect" means the failure of the provider to provide the goods or services necessary to avoid physical harm, mental anguish, or mental illness.
14. "Person-centered service plan" means a plan that describes the Medicaid waiver recipient resident's assessed needs, outcomes, and goals and how the services and natural supports provided will assist the resident in achieving their outcomes and live safely and successfully in the community.

15. "Provider" means a primary caregiver in active charge of a facility who has documented qualifications in providing care and is enrolled as a qualified service provider.
16. "Qualified service provider" means an individual who has met all standards and requirements for that status established under chapter 75-03-23.
17. "Resident" means any adult who is receiving care in a facility for compensation on a twenty-four-hour basis, but does not mean any other individual who lives or stays in the facility.
18. "Respite care" means care provided by a respite care provider in a facility or substitute caregiver to a resident for the purpose of providing temporary relief to the provider from the stresses and demands associated with daily care or emergencies.
19. "Respite care provider in a facility" means an individual enrolled as a qualified service provider who provides respite care to residents, ~~whose care is funded by the state,~~ in a facility with a public pay license or a private pay license in the absence of the provider.
20. "Sexual abuse" means conduct directed against a resident which constitutes any of those sex offenses defined in North Dakota Century Code sections 12.1-20-02, 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-06.1, 12.1-20-07, 12.1-20-11, 12.1-20-12.1, and 12.1-20-12.2 and North Dakota Century Code chapter 12.1-41.
21. "Substitute caregiver" means an individual who meets qualified service provider standards and provides respite care to residents in a facility with a private pay license ~~residents~~ in the absence of the provider.

**History:** Effective May 1, 1992; amended effective May 1, 1995; April 1, 1999; September 1, 2004; October 1, 2012; October 1, 2016; April 1, 2026; January 1, 2027.

**General Authority:** NDCC 50-06-16, 50-11-03

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

**SECTION 2.** Section 75-03-21-02 is amended as follows:

**75-03-21-02. Application.**

1. An application for a license to operate a facility must be made to the department.
2. An application must be made in the form and manner prescribed by the department.
3. An application for a license must be filed immediately upon change of

provider or location.

4. An application is not complete until all required information and verifications are submitted to the department, including:
  - a. Fire inspections by the state fire marshal or local fire inspector, if required under subsection 7 of section 75-03-21-06;
  - b. A self-declaration of medical history and, when requested by the department, a report of a physician's examination;
  - c. A report of psychological examinations, when requested by the department;
  - d. Proof of age and relationship, when requested by the department;
  - e. Sanitation and safety inspection reports, when requested by the department;
  - f. Completed application form;
  - g. Drug and alcohol evaluation report, when requested by the department;
  - h. Licensing study report assessing the applicant's compliance with this chapter and North Dakota Century Code chapter 50-11;
  - i. Documentation of completion of a course related to fire prevention and safety;
  - j. Fire safety self-declaration form;
  - k. Evidence that all caregivers are properly qualified to provide care as provided in section 75-03-21-08;
  - l. A successfully completed criminal background check as specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9;
  - m. Examples of daily service logs to be used to account for service time and tasks performed for each resident;
  - n. An evacuation disaster plan;~~and~~
  - o. A sample menu plan compliant with dietary guidelines outlined in subsection 4 of section 75-03-21-11; and

p. Proof of certification in first aid and cardiopulmonary resuscitation.

5. The department has sixty days from receipt of all application requirements to issue or deny a license. The department has an additional forty-five days to grant or deny a license required by this chapter if the department notifies the applicant that additional time is necessary. 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.
6. An applicant may not hold itself out as a facility before the applicant has been issued a license by the department.

**History:** Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; January 1, 2009; October 1, 2012; October 1, 2016; July 1, 2020; April 1, 2026; January 1, 2027.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-11-02, 50-11-03, 50-11-06.7

**SECTION 3.** Section 75-03-21-03 is amended as follows:

**75-03-21-03. License.**

1. Issuance of a license to operate a facility indicates compliance with the required standards, rules, and laws at the time of issuance.
2. A license is nontransferable.
3. A license is valid only for the individual or individuals named and the premises described on the license.
4. A license is valid only for the maximum number of residents and gender makeup for which the facility is licensed.
5. An initial license is valid for no longer than twelve months from the date of issuance.
6. A license that is issued after the initial licensing period has expired is valid for no longer than twenty-four months from the date of issuance or the date of expiration of the provider's status as a qualified service provider, whichever occurs first.
7. A provider may obtain both a license to operate a facility and a license as a family foster care home for children, but may not provide services to both adults and children simultaneously ~~without prior written approval from the department.~~

8. If the private residence of a native American family, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized Indian reservation in North Dakota, an affidavit from an agent of the tribal agency or an appropriate tribal officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:
  - a. That an investigation of the facility was completed by the tribe's agency or tribal council.
  - b. That the prospective facility is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter.
9. If the private residence of an active duty military family, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized military base in North Dakota, an affidavit from an agent of the base agency or other appropriate military officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:
  - a. That an investigation of the prospective facility was completed by the military base's agency.
  - b. That the prospective facility is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter.
10. If the private residence has completed a veterans' affairs medical foster home program home inspection, the completed report may be accepted in lieu of a licensing procedure if:
  - a. The inspection report confirms:
    - (1) The inspection of the prospective facility was completed and approved by the veterans' affairs medical foster home program; and
    - (2) The prospective facility is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter; and
  - b. The applicant has completed the application and met the requirements to enroll as a qualified service provider and adult foster care provider; and
  - c. There is a successfully completed criminal background check as

specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9.

**History:** Effective May 1, 1992; amended effective May 1, 1995; March 1, 1997; April 1, 1999; September 1, 2004; October 1, 2012; January 1, 2027.

**General Authority:** NDCC 50-06-16, ~~50-11-03~~ 50-11-03

**Law Implemented:** NDCC 50-11-02, 50-11-03

**SECTION 4.** Section 75-03-21-03.1 is created as follows:

**75-03-21-03.1. Types of licenses.**

A license issued pursuant to North Dakota Century Code chapter 50-11 and this chapter must be identified as a public pay license or private pay license.

1. A public pay license may be issued to an adult foster care provider that is licensed to accept residents who are public pay and private pay.
2. A private pay license may be issued to an adult foster care provider that is only licensed to accept residents who are private pay.

**History:** Effective January 1, 2027.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-11-02

**SECTION 5.** Section 75-03-21-04 is amended as follows:

**75-03-21-04. Facility.**

1. The facility must be:
  - a. Free of warped or damaged floors, loose or unsecured floor coverings, loose tiles, broken or damaged windows, loose or broken handrails, broken light bulbs, and other hazards that would affect the safety of an adult residing in the facility;
  - b. Maintained free of offensive odors, vermin, and dampness;
  - c. Maintained by a central heating system at a temperature of at least sixty-eight degrees Fahrenheit [20 degrees Celsius];
  - d. Maintained so as to prevent crawling and flying pests from entering the facility through windows;
  - e. Equipped with handrails in all stairways;
  - f. Equipped with nonporous surfaces for shower enclosures;

- g. Equipped with safety mats or slip-preventing materials on the bottom of tubs and floors of showers; and
  - h. Physically accessible for the resident.
- 2. Bedrooms for all residents must be constructed as a bedroom with walls or partitions of standard construction which extend from floor to ceiling and which provide privacy for the resident.
- 3. Bedrooms occupied by one resident must have no less than seventy square feet [6.50 square meters] of usable floor space.
- 4. Bedrooms occupied by two residents must have no less than one hundred twenty square feet [11.15 square meters] of usable floor space and provide for privacy in the sleeping area.
- 5. Bedroom ceilings must be at least six feet and eight inches [203.20 centimeters] above the finished floor surface at the ceiling's lowest point.
- 6. No more than two residents may be assigned to one bedroom and residents sharing a bedroom must have a choice of roommates in that facility.
- 7. Bedroom and bathroom doors must be lockable by the resident for privacy, with only the resident and appropriate staff having keys to the bedroom doors. Any restrictions on having a lockable bedroom or bathroom door must be documented and justified in the person-centered service plan or service and rental agreement.
- 8. Bedrooms occupied by residents may not be located in a level of the facility below grade level unless there are two means of egress, one of which leads to the outside of the facility.
- 9. At least one full bathroom must be available on the same floor as any bedroom occupied by a resident.
- 10. The facility shall have a telecommunication device on the main floor available for use by residents.
- 11. ~~The facility's~~ A facility with a public pay license may not use of an electronic monitoring device in the resident's bedroom and bathroom is prohibited if the resident's care is funded by the state in whole or in part unless in compliance with the federal home and community-based services settings rule, 42 CFR 441.530. If the resident is public pay, the allowable modification must be documented in the resident's person-centered service plan by the department or the department's designee.



12. ~~The facility's~~A facility with a private pay license may use ~~of an~~ electronic monitoring device ~~is allowable~~ for monitoring an otherwise unattended private pay resident within a limited range, which allows the provider to remain nearby while ensuring the safety of the resident, if the use is approved in writing by the resident or, if the resident is incapacitated, a family member or legal representative of the resident.
13. The facility shall limit access to ~~the an~~ electronic monitoring device and to any information on or obtained by it to individuals with a need to have the information. Information on or obtained by ~~the an~~ electronic monitoring device must be obtained, transmitted, and stored securely.
14. Mobile home units used as a facility must:
  - a. Have been constructed since 1976;
  - b. Have been designed for use as a dwelling, rather than as a travel trailer;
  - c. Meet the flame spread rate requirements; and
  - d. Have a manufacturer's label permanently affixed stating the mobile home meets the requirements of the department of housing and urban development or the American national standards institute.

**History:** Effective May 1, 1992; amended effective May 1, 1995; January 1, 2009; October 1, 2012; October 1, 2016; April 1, 2026; January 1, 2027.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-11-02, 50-11-03, 50-11-03.7; 42 CFR 441.530

**SECTION 6.** Section 75-03-21-08 is amended as follows:

**75-03-21-08. Provider qualifications.**

1. The provider shall:
  - a. Be twenty-one years of age or older;
  - b. Live continuously in the facility;
  - c. Possess the physical health necessary to provide care;
  - d. Be literate and capable of understanding instructions and communicating in the English language;
  - e. Be free of communicable diseases;

- f. Be in good physical health, emotionally and functionally stable, and not abusing drugs or alcohol;
  - g. Be a qualified service provider; and
  - h. Successfully complete criminal background check requirements as specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9.
2. ~~In addition to the requirements of subsection 1, the~~ The provider shall also:
- a. ~~Provide~~ provide evidence of competence in:
    - a. Person-centered practices, including community inclusion and cultural humility, intimacy, and respect; and
    - b. Activities of daily living and instrumental activities of daily living, including:
      - (1) The generally accepted procedure for infection control and proper handwashing methods;
      - (2) The generally accepted procedure for handling and disposing of body fluids;
      - (3) The generally accepted procedure for tub, shower, and bed bathing techniques;
      - (4) The generally accepted procedure for hair care techniques, bed and sink shampoo, and shaving;
      - (5) The generally accepted procedure for oral hygiene techniques of brushing teeth and cleaning dentures;
      - (6) The generally accepted procedure for caring for an incontinent resident;
      - (7) The generally accepted procedure for feeding or assisting a resident with eating;
      - (8) The generally accepted procedure for basic meal planning and preparation;
      - (9) The generally accepted procedure for assisting a resident with the self-administration of medications;

- (10) The generally accepted procedures and techniques, which include dusting, vacuuming, sweeping, floor care, garbage removal, changing linens, and other similar tasks, for maintaining a kitchen, bathroom, and other rooms used by residents in a clean and safe condition;
- (11) The generally accepted procedures in laundry techniques, which include mending, washing, drying, folding, putting away, ironing, and related work;
- (12) The generally accepted procedure for assisting a resident with bill paying and balancing a check book;
- (13) The generally accepted procedure for dressing and undressing a resident;
- (14) The generally accepted procedure for assisting with toileting;
- (15) The generally accepted procedure for routine eye care;
- (16) The generally accepted procedure for proper care of fingernails;
- (17) The generally accepted procedure for caring for skin, including giving a back rub;
- (18) The generally accepted procedure for turning and positioning a resident in bed;
- (19) The generally accepted procedure for transfer using a belt, standard sit, bed to wheelchair;
- (20) The generally accepted procedure for assisting a resident with ambulation; and
- (21) The generally accepted procedure for making beds; ~~or~~

c. Proactive support strategies;

d. Health and safety;

e. Health and wellness;

f. Evaluation and observation;

- g. Healthy caregiving;
- h. Professionalism; and
- i. Recognizing abuse, neglect, and exploitation.

- b-3. In lieu of meeting the requirements of subsection 2, the provider may ~~Meet~~meet developmental disability competency standards for homes in which the responsible service provider is licensed according to chapter 75-04-01 and services are provided according to chapter 75-04-07.
- 4. The provider shall provide evidence of current certification in first aid and cardiopulmonary resuscitation.
- 5. The department may approve global and eligible individual-specific endorsements to provide particular procedures for a provider based on written verification of completion of department-approved training.

**History:** Effective May 1, 1992; amended effective May 1, 1995; April 1, 1999; September 1, 2004; October 1, 2012; January 1, 2027.

**General Authority:** NDCC 50-06-16, 50-11-03

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

**SECTION 7.** Section 75-03-21-08.1 is repealed:

**75-03-21-08.1. Verification and demonstration of competence.**

[Repealed effective January 1, 2027.]

- 1. ~~A physician, registered nurse, occupational therapist, physical therapist, or other individual with a professional degree in specialized areas of care shall verify in writing, on forms furnished by the department, that a provider is competent to perform each procedure specified in subsection 9 of section 75-03-21-08. Verification that a provider is competent to perform a procedure is evidence of competence with respect to that procedure.~~
- 2. ~~Competence may be demonstrated in the following ways:~~
  - a. ~~A demonstration of the procedure being performed;~~
  - b. ~~A detailed verbal explanation of the procedure; or~~
  - c. ~~A detailed written explanation of the procedure.~~

**History:** Effective April 1, 1999; amended effective ~~September 1, 2004; October 1, 2012.~~

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

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

**SECTION 8.** Section 75-03-21-10.2 is amended as follows:

**75-03-21-10.2. Adult foster care facility temporary assistants.**

A provider:

1. May employ a temporary assistant who meets the standards of a substitute caregiver or a respite care provider in a facility as needed to assist with private pay residents who have physical limitations that require more than one provider to properly assist.
2. May not employ a temporary assistant to assist with public pay residents.
3. When authorized by the department, may receive help from a qualified service provider to assist with public pay residents who have physical limitations that require more than one provider to properly assist.

**History:** Effective April 1, 2026; amended effective January 1, 2027.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-11-03, 50-11-03.7

**SECTION 9.** Section 75-03-21-19 is amended as follows:

**75-03-21-19. Provisional license.**

The department may issue a provisional license to an applicant who has previously held an unrestricted license.

1. Any provisional license issued must be accompanied by a written statement identifying in what respect the applicant or the facility does not comply with North Dakota Century Code chapter 50-11 and rules governing the provision of care, signed by the department or its designee, and, in writing, be acknowledged by the provider.
2. The applicant shall comply with North Dakota Century Code chapter 50-11 and the rules of the department within the period of time the provisional license is in effect.
3. A provisional license must:
  - a. Prominently state that the facility has failed to comply with all applicable laws and rules of the department;
  - b. State that the items of noncompliance are set forth in a written statement available upon request made to the licensed provider;

- c. Expire on a set date, not to exceed six months from the date of issuance; and
  - d. Be replaced by an unrestricted license, if the applicant demonstrates compliance satisfactory to the department with all applicable laws and rules within the period of time the provisional license is in effect.
- 4. A provisional license must be issued only to an applicant who has, in writing, waived:
  - a. The right of a written statement of changes as to the reasons for the denial of an unrestricted license; and
  - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the denial of an unrestricted license either at the time of application or during the period of operation under a provisional license.
- 5. Subject to the exceptions contained in this section, a provisional license is equivalent to an unrestricted license.
- 6. A provisional license may be issued when a private pay licensed provider provides a written request to the department to transfer the license to a public pay license. The department may grant a provisional license for a period up to ninety days. The department may grant a forty-five-day extension upon receipt of a written request from the provider, if the department determines the delay of change of license is from circumstances that are out of the provider's control.

**History:** Effective May 1, 1995; amended effective October 1, 2012; October 1, 2016; January 1, 2027.

**General Authority:** NDCC 50-06-16, ~~50-11~~50-11-03

**Law Implemented:** NDCC 50-11-02.2, 50-11-03

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

|                        |                                                                       |
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**SECTION 10.** Section 75-03-21.1-01 is amended as follows:

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

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

1. "Abuse" means any willful act or omission by an individual which results in physical injury, mental anguish, unreasonable confinement, sexual abuse, or exploitation to or of a resident.
2. "Accreditation" means accredited by a department-approved national organization of a provider's compliance with a set of specified standards.
3. "Agency" means an organization which operates the facility.
- ~~3.4.~~ "Agency foster home for adults" means a residential home in which foster care for adults is regularly provided exclusively to Medicaid waiver recipients by professional staff trained to provide services to older adults or adults with a disability, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.
- ~~4.5.~~ "Applicant" means the agency completing and submitting to the department an application to be licensed to provide agency foster care for adults.
- ~~5.6.~~ "Care" means the provision of residential habilitation or community support services, as defined by chapter 75-03-23, in an agency foster care for adults.
- ~~6.7.~~ "Department" means the North Dakota department of health and human services.
- ~~7.8.~~ "Facility" means a licensed agency foster care home for adults providing residential habilitation or community support services.
- ~~8.9.~~ "Financial exploitation" means use or receipt of services provided by the vulnerable adult without just compensation, the taking, acceptance,



misappropriation, or misuse of property or resources of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means.

- ~~9-10.~~ "Home and community-based setting experience interview" means an instrument used to record information about a resident's experiences in the facility.
- ~~40-11.~~ "License" means a document issued by the department authorizing an applicant to operate a facility.
- ~~44-12.~~ "Mental anguish" means psychological or emotional damage that requires medical treatment or medical care or is characterized by behavioral changes or physical symptoms.
- ~~42-13.~~ "Monitoring" means overseeing the care provided to a resident by a provider and verifying compliance with laws, rules, and standards pertaining to care and the resident's rights related to the facility.
- ~~43-14.~~ "Neglect" means the failure of the provider to provide the goods or services necessary to avoid subjecting a resident to physical harm, mental anguish, or mental illness.
- ~~44-15.~~ "Person-centered service plan" means a plan that describes the Medicaid waiver recipient resident's assessed needs, outcomes, and goals and how the services and natural supports provided will assist the resident in achieving their outcomes and live safely and successfully in the community.
- ~~45-16.~~ "Provider" means an agency enrolled to operate the facility whose employees have documented qualifications in providing care and is enrolled as a qualified service provider agency.
- ~~46-17.~~ "Qualified service provider agency" means an organization that has met all standards and requirements for that status established under chapter 75-03-23.
- ~~47-18.~~ "Resident" means any adult who is receiving care in a facility for compensation up to twenty-four hours per day.
- ~~48-19.~~ "Sexual abuse" means conduct directed against a resident which constitutes any of those sex offenses defined in North Dakota Century Code sections 12.1-20-02, 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-06.1, 12.1-20-07, 12.1-20-11, 12.1-20-12.1, and 12.1-20-12.2, and North Dakota Century Code chapter 12.1-41.

**History:** Effective January 1, 2020; amended effective January 1, 2027.

**General Authority:** NDCC 50-06-16, ~~50-44~~50-11-03

**Law Implemented:** NDCC 50-11-02, 50-11-03

**SECTION 11.** Section 75-03-21.1-06 is amended as follows:

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

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

**History:** Effective January 1, 2020; amended effective January 1, 2027.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-11-02.2, 50-11-03

**SECTION 12.** Subsection 1 of section 75-03-21.1-07 is amended as follows:

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

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

- d. The department shall issue a notice of denial or revocation of a provisional license in accordance with North Dakota Century Code section 50-11-08.
- e. Notice of a denial or revocation of a provisional license may be appealed in the same manner as a notice of denial or revocation of a license.

**History:** Effective January 1, 2020; amended effective January 1, 2027.

**General Authority:** NDCC 50-06-16, ~~50-11-03~~ 50-11-03

**Law Implemented:** NDCC ~~50-11-02.2~~, 50-11-03

**SECTION 13.** Section 75-03-21.1-11 is repealed:

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

[Repealed effective January 1, 2027.]

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

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

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

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

**SECTION 14.** Section 75-03-21.1-12.1 is created as follows:

**75-03-21.1-12.1 Temporary Loss of Medicaid Benefits.**

A provider may continue to provide services to an individual residing in an agency foster home for adults who was eligible for residential habilitation or community support services for up to two months following the termination of Medicaid eligibility. The individual residing in an agency foster home for adults is responsible for the cost of services for any time during which Medicaid coverage is not in effect.

**History:** Effective January 1, 2027.

**General Authority:** NDCC 50-06-16, 50-11-03

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

**SECTION 15.** Section 75-03-21.1-29 is amended as follows:

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

1. The direct service provider employee must:
  - a. Be eighteen years of age or older;
  - b. Possess the physical health necessary to provide care;
  - c. Be literate and capable of understanding instructions and communicating in the English language;
  - d. Be in good physical health, emotionally, and functionally stable, and not abusing drugs or alcohol;
  - e. Successfully complete criminal background check requirements as specified in North Dakota Century Code sections 50-11-02.4 and 50-11-06.8; and
  - f. Complete department-approved training on the administration of routine medications, traumatic brain injury, and dementia.
2. In addition to the requirements of subsection 1, the direct service provider employee shall:
  - a. ~~Provide~~ provide evidence of competence in the generally accepted:
    - a. Person-centered practices, including community inclusion and cultural humility, intimacy, and respect;
    - b. Activities of daily living and instrumental activities of daily living, including:
      - (1) Procedure for infection control and proper handwashing methods;
      - (2) Procedure for handling and disposing of body fluids;
      - (3) Procedure for tub, shower, and bed bathing techniques;
      - (4) Procedure for hair care techniques, bed and sink shampoo, and shaving;
      - (5) Procedure for oral hygiene techniques of brushing teeth and cleaning dentures;

- (6) Procedure for caring for an incontinent resident;
- (7) Procedure for feeding or assisting a resident with eating;
- (8) Procedure for basic meal planning and preparation;
- (9) Procedure for assisting a resident with the self-administration of medications;
- (10) Procedures and techniques, which include dusting, vacuuming, sweeping, floor care, garbage removal, changing linens, and other similar tasks, for maintaining a kitchen, bathroom, and other rooms used by residents in a clean and safe condition;
- (11) Procedures in laundry techniques, which include mending, washing, drying, folding, putting away, ironing, and related work;
- (12) Procedure for assisting a resident with bill paying and balancing a check book;
- (13) Procedure for dressing and undressing a resident;
- (14) Procedure for assisting with toileting;
- (15) Procedure for routine eye care;
- (16) Procedure for proper care of fingernails;
- (17) Procedure for caring for skin;
- (18) Procedure for turning and positioning a resident in bed;
- (19) Procedure for transfer using a belt, standard sit, bed to wheelchair;
- (20) Procedure for assisting a resident with ambulation; and
- (21) Procedure for making beds; ~~or~~

c. Proactive support strategies;

d. Health and safety;

- e. Health and wellness;
- f. Evaluation and observation;
- g. Healthy caregiving;
- h. Professionalism; and
- i. Recognizing abuse, neglect, and exploitation.

- 3. ~~Meet~~In lieu of meeting the requirements of subsection 2, the direct service provider employee may meet developmental disability competency standards for facilities in which the responsible direct service provider employee is employed by a licensed provider in accordance with chapter 75-04-01 and North Dakota Century Code chapter 25-16, and services are provided according to chapter 75-04-01.
- 4. The direct service provider employee shall provide evidence of current certification in first aid and cardiopulmonary resuscitation.
- 5. The department may approve global and eligible individual-specific endorsements to provide particular procedures for a direct service provider employee based on written verification of completion of department-approved training.
- 3.6. Direct service provider employees shall undergo a medical examination, psychological evaluation, or substance abuse evaluation when requested by the department or human service zone when there is reason to believe that such an examination or evaluation is reasonably necessary.

**History:** Effective January 1, 2020; amended effective January 1, 2027.

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

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

**SECTION 16.** Section 75-03-21.1-30 is repealed:

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

[Repealed effective January 1, 2027.]

- 1. ~~A physician, registered nurse, occupational therapist, physical therapist, or other individual with a professional degree in specialized areas of care shall verify in writing, on forms furnished by the department, that a direct service provider employee is competent to perform each procedure specified in subsection 2 of section 75-03-21.1-29. Verification that a direct service provider employee is competent to perform a procedure is evidence of competence with respect to that procedure.~~

~~2. Competence may be demonstrated in the following ways:~~

~~a. A demonstration of the procedure being performed;~~

~~b. A detailed verbal explanation of the procedure; or~~

~~c. A detailed written explanation of the procedure.~~

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

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

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

**SECTION 17.** Subdivision g of subsection 1 of section 75-03-21.1-40 is amended as follows:

- g. Assures the resident safe and sanitary living and working arrangements and provides for emergencies or disasters and first-aid and cardiopulmonary resuscitation training for staff;

**History:** Effective January 1, 2020; amended effective January 1, 2027.

**General Authority:** NDCC 50-06-16, ~~50-11-~~50-11-03

**Law Implemented:** NDCC 50-11-02, 50-11-03