

**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 that is 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.
- ~~7.8.~~ "Facility" means a foster care home for adults.
- ~~8.9.~~ "Home- and community-based setting experience interview" means an instrument used to record information about a resident's experiences in the facility.
- ~~9.10.~~ "License" means a document issued by the department authorizing an applicant to operate a facility.
- ~~10.11.~~ "Mental anguish" means psychological or emotional damage that requires medical treatment or medical care, or is characterized by behavioral changes or physical symptoms.
- ~~11.12.~~ "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.
- ~~12.13.~~ "Neglect" means the failure of the provider to provide the goods or services necessary to avoid physical harm, mental anguish, or mental illness.
- ~~13.14.~~ "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.

~~44-15.~~ "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.

~~45-16.~~ "Qualified service provider" means an individual who has met all standards and requirements for that status established under chapter 75-03-23.

~~46-17.~~ "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.

~~47-18.~~ "Respite care" means care provided by a respite care provider in an adult foster care 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.

~~48-19.~~ "Respite care provider in an adult foster care" means an individual enrolled as a qualified service provider who provides respite care to residents, whose care is funded by the state, in the absence of the provider.

~~49-20.~~ "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.

~~20-21.~~ "Substitute caregiver" means an individual who meets qualified service provider standards and provides respite care to private pay 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.

General Authority: NDCC 50-06-16, ~~50-11-03~~ 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 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.
- 5. The department has sixty days from receipt of all required 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.
- 6. An applicant may not hold themselves out as a facility before they have 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.

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

Law Implemented: NDCC ~~50-01-09(6)~~, ~~50-11-02~~, 50-11-03, 50-11-06.7

SECTION 3. 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 ~~must~~shall have a telecommunication device on the main floor available for use by residents.
11. The facility's use of video surveillance equipment and an electronic monitoring device in the resident's bedroom and bathroom is prohibited when the resident's care is funded by the state in whole or in part.
12. The facility's 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, when approved in writing by the resident or a family member or legal representative of the resident, if the resident is incapacitated.
13. 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.

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

Law Implemented: NDCC 50-11-02, 50-11-03, 50-11-03.7

SECTION 4. Section 75-03-21-07 is amended as follows:

75-03-21-07. Insurance.

The provider shall maintain ~~adequate~~ liability insurance, uninsured motorist coverage, and underinsured motorist coverage, according to the terms and conditions of North Dakota Century Code sections 39-16.1-11, 26.1-40-15.2, and 26.1-40-15.3, on all vehicles operated by the provider or members of the provider's household in which residents may be a passenger. The provider shall submit proof of insurance coverage to the department, upon request.

History: Effective May 1, 1992; amended effective May 1, 1995; October 1, 2012; April 1, 2026.

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

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

SECTION 5. Section 75-03-21-09 is amended as follows:

75-03-21-09. General practices.

The provider:

1. Shall permit a representative of the department, human service zone, or other individual or organization serving a resident entry into the facility without prior notice;
2. Shall provide information about the residents to the department, human service zone, or other individual or organization serving a resident with reasonable promptness;
3. Shall report illness, hospitalization, or unusual behavior of a resident to the individual or organization serving the resident, or to the resident's representative, whichever is appropriate;

4. Shall assure that information related to the resident is kept confidential, except as may be necessary in the planning or provision of care or medical treatment, as related to an investigation or license review under this chapter, or as authorized by the resident;
5. May not practice, condone, facilitate, or collaborate with any form of illegal discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical handicap;
6. Shall accept direction, advice, and suggestions concerning the care of residents from the department, human service zone, or other individual or organization serving a resident;
7. Shall assure that residents receiving care are not subjected to abuse, sexual abuse, neglect, or exploitation;
8. Shall undergo a medical examination, psychological evaluation, or drug and alcohol evaluation when requested by the department when there is reason to believe that such an examination or evaluation is reasonably necessary;
9. Shall authorize the release of a report of any examination or evaluation, required under subsection 8, to the department;
10. Shall immediately report changes in the identity or number of individuals living in the facility to the department;
11. Shall immediately report an inability to provide care to the resident to the department;
12. Shall allow a representative of the department to enter the premises, examine the facility and records maintained with respect to the residents, and interview the residents, provider, and caregivers in order to evaluate compliance with this chapter;
13. Shall cooperate with the department or human service zone in inspections, complaint investigations, planning for the care of a resident, application procedures, and other necessary activities, and allow access of the department, human service zone, ombudsman, or other authorized individuals to the facility and its residents;
14. May not retaliate against any resident, who has filed a complaint with the department or human service zone, by taking away rights or privileges; threatening to take away rights or privileges; or by abusing or threatening to abuse a resident in any manner;

15. Shall meet criteria established by the department for employment outside of the facility;
16. Must be free of influence, control, and direction in the operation of the facility by the landlord if the private residence is being rented;
17. May not use a transfer of ownership of a resident's possessions or property as payments;
18. May not purchase property or possessions from a resident without providing documented proof to the department that the item or property was purchased at fair market value;
19. May not accept or solicit personal property or a purchased item with a fair market value of at least twenty-five dollars that the resident, resident's family, or both, choose to give to the licensed provider;
20. May not accept or solicit personal property or a purchased item with a fair market value of twenty-five dollars or less that the resident, resident's family, or both, chose to give to the licensed provider exceeding more than two times in a calendar year;
21. For the purpose of this section, fair market value means:
 - a. In the case of a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, one hundred percent of apparent fair market value;
 - b. In the case of real or personal property that is subject to reasonable dispute concerning its value:
 - (1) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or anyone acting on the individual's behalf, seventy-five percent of estimated fair market value; or
 - (2) If conveyed to someone in a confidential relationship with the individual or anyone acting on the individual's behalf, one hundred percent of estimated fair market value; and
 - c. In the case of income, one hundred percent of apparent fair market value;

22. Shall notify the department if the provider holds, or will be accepting, appointment as a power of attorney agent for a resident. The department may revoke the license of a provider who holds, or will be accepting, appointment as a power of attorney agent for a resident if the department considers it to be a conflict of interest or a result of undue influence;
23. Shall notify the resident or the resident's legal representative of their right to manage the resident's finances. The provider shall notify the department in writing if the resident, or the resident's legal representative, requests the provider to act as representative payee;
24. Shall provide the department, upon request, an accounting of the resident's expenses, including receipts, for all deposits and expenditures if the provider is assisting a resident with management of personal funds;
25. Shall provide twenty-four-hour care and supervision of all residents residing in the facility, unless otherwise documented and justified in the person-centered service plan or service and rental agreement; and
26. Use of a respite care provider in an adult foster care or a substitute caregiver is required in the absence of the provider if the resident cannot safely be left alone as documented and justified in the person-centered service plan or service and rental agreement. Resident or the resident's legal representative shall be allowed to choose their provider of respite care ~~provider~~.

History: Effective May 1, 1992; amended effective May 1, 1995; March 1, 1997; April 1, 1999; September 1, 2004; October 1, 2012; October 1, 2016; April 1, 2026.

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

Law Implemented: NDCC 50-11-02, 50-11-03, 50-11-04

SECTION 6. Section 75-03-21-10 is amended as follows:

75-03-21-10. Substitute caregiver and ~~respite care~~ provider qualifications.

1. A substitute caregiver ~~or respite care~~ provider:
 - a. Must be eighteen years of age or older;
 - b. ~~Must~~May not be a resident;
 - c. Must possess qualifications of a provider specified in subsections 1 and 2 of section 75-03-21-08 excluding subdivision b of subsection 1 of section 75-03-21-08; and
 - d. ~~Successfully shall~~Shall successfully complete criminal background check requirements specified in North Dakota Century Code

~~sections 50-11-02.4, 50-11-06.8, and 50-11-06.9. If the substitute caregiver's or respite care provider's enrollment as a qualified service provider lapses for more than thirty days, the criminal background check must be repeated if the individual reapplies for enrollment as a qualified service provider subsequent to the lapse.~~

2. The provider is responsible for the care of residents at all times, even though the duties or tasks of furnishing care have been delegated to a substitute caregiver ~~or respite care provider.~~
3. ~~Respite care providers are limited to the respite care service funding cap. Residents whose care is being paid by the state can only receive respite care from a respite care provider. Respite care providers shall bill the department for time spent caring for residents in their care.~~
4. ~~Substitute caregivers who are providing care to private pay residents may not provide resident care on behalf of a facility for more than ~~one~~two hundred ~~ninety-two~~twenty calendar days during the twenty-four-month period immediately following the renewal date of the initial license or for more than ~~ninety-six~~one hundred ten days during the twelve-month period immediately following the date of the issuance of the initial license.~~
5. ~~4.~~ For purposes of this section, whenever a substitute caregiver ~~or respite care provider~~ provides resident care on behalf of a facility for more than ~~eight~~twelve hours during a calendar day, the calendar day ~~will~~must be counted toward the ~~one~~two hundred ~~ninety-two~~twenty calendar day or ~~ninety-six~~one hundred ten calendar day limit a substitute caregiver may provide resident care on behalf of a facility ~~or toward the respite care service funding cap to which a respite care provider established by the department for each qualifying resident.~~
6. ~~Employing individuals other than those who meet the definition of substitute caregiver or respite care provider to provide services to a resident is prohibited.~~

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

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

Law Implemented: NDCC 50-11-03, 50-11-03.6

SECTION 7. Section 75-03-21-10.1 is created as follows:

75-03-21-10.1. Qualifications of a respite care provider in an adult foster care.

1. A respite care provider in an adult foster care:

- a. Must be eighteen years of age or older;
 - b. May not be a resident;
 - c. Must possess qualifications of a provider specified in subsections 1 and 2 of section 75-03-21-08 excluding subdivision b of subsection 1 of section 75-03-21-08; and
 - d. Shall successfully complete criminal background check requirements specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9. If the respite care provider in an adult foster care's enrollment as a qualified service provider lapses for more than thirty days, the criminal background check must be repeated if the individual reapplies for enrollment as a qualified service provider after the lapse.
2. The provider is responsible for the care of residents at all times, even though the duties or tasks of furnishing care have been delegated to a respite care provider in an adult foster care.
 3. Respite care providers in an adult foster care are limited to the respite care service funding cap. Residents whose care is being paid by the state, in whole or in part, can only receive respite care from a respite care provider in an adult foster care. Respite care providers in an adult foster care shall bill the department for time spent caring for residents in their care.
 4. Respite care providers in an adult foster care may not provide resident care on behalf of a facility for more than one hundred ninety-two calendar days during the twenty-four-month period immediately following the renewal date of the initial license or for more than ninety-six days during the twelve-month period immediately following the date of the issuance of the initial license.
 5. For purposes of this section, whenever a respite care provider in an adult foster care provides resident care on behalf of a facility for more than twelve hours during a calendar day, the calendar day must be counted toward the one hundred ninety-two calendar day or ninety-six calendar day limit a respite care provider in an adult foster care may provide resident care on behalf of a facility or toward the respite care service funding cap to which a respite care provider in an adult foster care established by the department may provide resident care for each qualifying resident.
 6. Employing individuals other than those who meet the definition of respite care provider in an adult foster care to provide services to a resident is

prohibited.

History: Effective April 1, 2026.

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

Law Implemented: NDCC 50-11-03, 50-11-03.6

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

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

An adult foster care provider:

1. May employ a temporary assistant who meets the standards of a substitute caregiver or a respite care provider in an adult foster care as needed to assist with private pay residents that 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.

History: Effective April 1, 2026.

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

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