

NORTH DAKOTA ADMINISTRATIVE CODE

VOLUME 2 OF 2
(Pages 137 - 417)

Supplement 338

October 2010

**Prepared by the Legislative Council staff
for the
Administrative Rules Committee**

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TITLE 75
DEPARTMENT OF HUMAN SERVICES

OCTOBER 2010

CHAPTER 75-02-02.1

75-02-02.1-04. Screening of recipients of certain services. All applicants or recipients who seek nursing care services in nursing facilities, swing-bed facilities, institutions for mental disease, or intermediate care facilities for the mentally retarded, or who seek home and community-based services, must demonstrate a medical necessity for the service sought on or prior to admission to a facility, upon application for medicaid while in a facility, or upon request for home and community-based services. That demonstration must be based on a screening-provided level of care determination that is completed in a manner prescribed by the department.

History: Effective December 1, 1991; amended effective July 1, 2003; April 1, 2008; October 1, 2010.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01

CHAPTER 75-02-06

75-02-06-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.
3. "Adjustment factor" means the inflation rate for nursing home services used to develop the legislative appropriation for the department for the applicable rate year.
4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.
5. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by medical assistance regulations.
6. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's-length transaction. It does not include:
 - a. A purchase of shares in a corporation that owns, operates, or controls a facility except as provided under subsection 3 of section 75-02-06-07;
 - b. A sale and leaseback to the same licensee;
 - c. A transfer of an interest to a trust;
 - d. Gifts or other transfers for nominal or no consideration;
 - e. A merger of two or more related organizations;
 - f. A change in the legal form of doing business;
 - g. The addition or deletion of a partner, owner, or shareholder; or
 - h. A sale, merger, reorganization, or any other transfer of interest between related organizations.
7. "Building" means the physical plant, including building components and building services equipment, licensed as a facility, and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings located on the site used directly for resident care.

8. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.
9. "Certified nurse aide" means:
 - a. An individual who has satisfactorily completed a nurse aide training and competency evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154 and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or who has been deemed or determined competent as provided in 42 CFR 483.151(a) and (b) and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or
 - b. An individual who has worked less than four months as a nurse aide and is enrolled in a training and evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154.
10. "Chain organization" means a group of two or more health care facilities owned, leased, or, through any other device, controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to health care.
11. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.
12. "Community contribution" means a contribution to a civic organization or sponsorship of community activities. It does not include a donation to a charity.
13. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, the determination of cost limitations, and determination of rates.
14. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a facility are divided for purposes of cost assignment and allocations.
15. "Cost report" means the department approved form for reporting costs, statistical data, and other relevant information of the facility.

16. "Department" means the department of human services.
17. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.
18. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
19. "Depreciation guidelines" means the American hospital association's guidelines as published by American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised ~~2003~~ 2008 edition.
20. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.
21. "Direct care costs" means the cost category for allowable nursing and therapy costs.
22. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
23. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the nursing facility premises.
24. "Employment benefits" means fringe benefits, other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, employee child care benefits, and payroll taxes.
25. "Established rate" means the rate paid for services.
26. "Facility" means a nursing facility not owned or administered by state government or a nursing facility, owned or administered by state government, which agrees to accept a rate established under this chapter. It does not mean an intermediate care facility for the mentally retarded.
27. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
28. "Final decision rate" means the amount, if any, determined on a per day basis, by which a rate otherwise set under this chapter is increased as a result of a request for reconsideration, a request for an administrative appeal, or a request for judicial appeal taken from a decision on an administrative appeal.

29. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
30. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.
31. "Freestanding facility" means a nursing facility which does not share basic services with a hospital-based provider.
32. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, uniform allowances, and medical services furnished at nursing facility expense.
33. "Highest market-driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.
34. "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.
35. "Hospice general inpatient care" means short-term inpatient care necessary for pain control or acute or chronic symptom management that cannot feasibly be provided in other settings. It does not mean care provided to an individual residing in a nursing facility.
36. "Hospice inpatient respite care" means short-term inpatient care provided to an individual when necessary to relieve family members or other persons caring for the individual at home. Care may be provided for no more than five consecutive days. For purposes of the definition, home does not include nursing facility.
37. "Hospital leave day" means any day that a resident is not in the facility, but is in an acute care setting as an inpatient or has been identified in a resident assessment instrument as "discharged anticipated to return".
38. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
39. "In-house resident day" for nursing facilities means a day that a resident was actually residing in the facility and was not on therapeutic leave or in the hospital. "In-house resident day" for hospitals means an inpatient day.

40. "Institutional leave day" means any day that a resident is not in the facility, but is in another nursing facility, swing-bed facility, transitional care unit, subacute care unit, intermediate care facility for the mentally retarded, or basic care facility.
41. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
42. "Limit rate" means the rate established as the maximum allowable rate for a cost category.
43. "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence decisions made by the legislative council, and is required to register as a lobbyist.
44. "Managed care organization" means a medicaid managed care organization as that term is defined in section 1903(m) of the Social Security Act [42 U.S.C. 1396b(m)].
45. "Medical assistance program" means the program which pays the cost of health care provided to eligible recipients pursuant to North Dakota Century Code chapter 50-24.1.
46. "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been discharged from the facility. It does not include maintenance of medical records for in-house residents.
47. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.
48. "Noncovered day" means a resident day that is not payable by medical assistance but is counted as a resident day.
49. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.
- ~~49:~~ 50. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act (FICA) taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
- ~~50:~~ 51. "Pending decision rate" means the amount, determined on a per day basis, by which a rate otherwise set under this chapter would increase if a facility prevails on a request for reconsideration, on a request for an administrative appeal, or on a request for a judicial appeal taken from

a decision on an administrative appeal; however, the amount may not cause any component of the rate to exceed rate limits established under this chapter.

- ~~51.~~ 52. "Private-pay resident" means a nursing facility resident on whose behalf the facility is not receiving medical assistance payments and whose payment rate is not established by any governmental entity with ratesetting authority, including veterans' administration or medicare, or whose payment rate is not negotiated by any managed care organization contracting with a facility to provide services to the resident.
- ~~52.~~ 53. "Private room" means a room equipped for use by only one resident.
- ~~53.~~ 54. "Property costs" means the cost category for allowable real property costs and other costs which are passed through.
- ~~54.~~ 55. "Provider" means the organization or individual who has executed a provider agreement with the department.
- ~~55.~~ 56. "Rate year" means the calendar year from January first through December thirty-first.
- ~~56.~~ 57. "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.
- ~~57.~~ 58. "Related organization" means a close relative or person or an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or provider.
- ~~58.~~ 59. "Report year" means the fiscal year from July first through June thirtieth of the year immediately preceding the rate year.
- ~~59.~~ 60. "Resident" means a person who has been admitted to the facility, but not discharged.
- ~~60.~~ 61. "Resident day" in a nursing facility means all days for which service is provided or for which payment is ordinarily sought, including hospital leave days and therapeutic leave days. The day of admission and the day of death are resident days. The day of discharge is not a resident

day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought.

- ~~61.~~ 62. "Respite care" means short-term care provided to an individual when necessary to relieve family members or other persons caring for the individual at home.
- ~~62.~~ 63. "Routine hair care" means hair hygiene which includes grooming, shampooing, cutting, and setting.
- ~~63.~~ 64. "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater; but does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds, and does not mean an increase in a nursing facility's licensed capacity resulting from converting beds formerly licensed as basic care beds.
- ~~64.~~ 65. "Standardized resident day" means a resident day times the classification weight for the resident.
- ~~65.~~ 66. "Therapeutic leave day" means any day that a resident is not in the facility, another nursing facility, swing-bed facility, transitional care unit, subacute unit, an intermediate care facility for the mentally retarded, a basic care facility, or an acute care setting, or, if not in an institutional setting, is not receiving home and community-based waived services.
- ~~66.~~ 67. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
- ~~67.~~ 68. "Working capital debt" means debt incurred to finance nursing facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

History: Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; July 2, 2002; July 2, 2003; December 1, 2005; October 1, 2010.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-17. Classifications.

1. A facility shall complete a resident assessment for any resident occupying a licensed facility bed, except a respite care, hospice inpatient respite care, or hospice general care resident.
2. A resident must be classified in one of thirty-four classifications based on the resident assessment. If a resident assessment is not performed in accordance with subsection 3, except for a respite care, hospice inpatient respite care, or hospice general inpatient care resident, the resident must be included in group BC1, not classified, until the next required resident assessment is performed in accordance with subsection 3. For purposes of determining standardized resident days, any resident day classified as group BC1 must be assigned the relative weight of one. A resident, except for a respite care, hospice inpatient respite care, or hospice general inpatient care resident, who has not been classified, must be billed at the group BC1 established rate. The case-mix weight for establishing the rate for group BC1 is .62. Days for a respite care, hospice inpatient respite care, or hospice general inpatient care resident who is not classified must be given a weight of one when determining standardized resident days. Therapeutic, hospital, or institutional leave days that are resident days must be given a weight of .62 when determining standardized resident days.
3. Resident assessments must be completed as follows:
 - a. The facility shall assess the resident within the first fourteen days after any admission or return from an acute hospital stay.
 - b. The facility shall assess the resident quarterly after any admission or return from an acute hospital stay. The quarterly assessment reference period ends on the day of the third subsequent month corresponding to the day of admission or return from an acute hospital stay, except if that month does not have a corresponding date, the quarterly assessment reference period ends on the first day of the next month. The assessment reference period begins seven days prior to the ending date of a quarterly assessment period. The assessment reference date used for the resident assessment instrument must be within the assessment reference period.
 - c. An assessment must be submitted upon initiation of rehabilitation therapy if initiation of rehabilitation therapy occurs outside of the quarterly assessment reference period established in subdivision b.
 - d. An assessment must be submitted upon discontinuation of rehabilitation therapy if discontinuation of rehabilitation therapy

occurs outside of the quarterly assessment reference period established in subdivision b.

4. The resident classification is based on resident characteristics and health status recorded on the resident assessment instrument, including the ability to perform activities of daily living, diagnoses, and treatment received. The resident is first classified in one of seven major categories. The resident is then classified into subdivisions of each major category based on the resident's activities of daily living score and whether nursing rehabilitation services are needed or the resident has signs of depression.
5. For purposes of this section:
 - a. A resident's activities of daily living score used in determining the resident's classification is based on the amount of assistance, as described in the resident assessment instrument, the resident needs to complete the activities of bed mobility, transferring, toileting, and eating;
 - b. A resident has a need for nursing rehabilitation services if the resident receives two or more of the following for at least fifteen minutes per day for at least six of the seven days preceding the assessment:
 - (1) Passive or active range of motion;
 - (2) Amputation or prosthesis care;
 - (3) Splint or brace assistance;
 - (4) Dressing or grooming training;
 - (5) Eating or swallowing training;
 - (6) Bed mobility or walking training;
 - (7) Transfer training;
 - (8) Communication training; or
 - (9) Any scheduled toileting or bladder retraining program; and
 - c. A resident has signs of depression if the resident exhibits at least three of the following:
 - (1) Negative statements;
 - (2) Repetitive questions;

- (3) Repetitive verbalization;
- (4) Persistent anger with self and others;
- (5) Self deprecation;
- (6) Expressions of unrealistic fears;
- (7) Recurrent statements that something terrible is to happen;
- (8) Repetitive health complaints;
- (9) Repetitive anxious complaints or concerns of nonhealth-related issues;
- (10) Unpleasant mood in morning;
- (11) Insomnia or changes in usual sleep patterns;
- (12) Sad, pained, or worried facial expression;
- (13) Crying or tearfulness;
- (14) Repetitive physical movements;
- (15) Withdrawal from activities of interest; or
- (16) Reduced social interaction.

6. The major categories in hierarchical order are:

- a. Rehabilitation category. To qualify for the rehabilitation category, a resident must receive rehabilitation therapy. A resident who qualifies for the rehabilitation category is assigned a subcategory based on the resident's activities of daily living score. The rehabilitation category may be assigned within a classification period based on initiation or discontinuation dates if therapies are begun or discontinued on any date not within an assessment reference period.
- b. Extensive services category.
 - (1) To qualify for the extensive services category, a resident must have an activities of daily living score of at least seven and have:
 - (a) Within the fourteen days preceding the assessment, received tracheostomy care or required a ventilator, respirator, or suctioning; or

- (b) Within the seven days preceding the assessment, received intravenous medications or intravenous feeding provided and administered by staff within the facility; and
- (2) A resident who qualifies for the extensive services category must have assigned a qualifier score of zero to five based on:
 - (a) The presence of a clinical criteria that qualifies the resident for the special care category, clinically complex category, or impaired cognition category;
 - (b) Whether the resident received intravenous medications or intravenous feeding provided and administered by staff within the facility;
 - (c) Whether the resident received tracheostomy care and suctioning; or
 - (d) Whether the resident required a ventilator or respirator.
- c. Special care category.
 - (1) To qualify for the special care category, a resident must have one or more of the conditions for the extensive care category with an activities of daily living score of less than seven or have at least one of the following conditions or treatments with an activities of daily living score of at least seven:
 - (a) Multiple sclerosis, cerebral palsy, or quadriplegia with an activities of daily living score of at least ten;
 - (b) Respiratory therapy seven days a week;
 - (c) Treatment for pressure or stasis ulcers on two or more body sites;
 - (d) Surgical wound or open lesion with treatment;
 - (e) Tube feedings that comprise at least twenty-six percent of daily caloric requirements and at least five hundred and one milliliters of fluid through the tube per day, and be aphasic;
 - (f) Radiation therapy; or
 - (g) A fever in combination with dehydration, pneumonia, vomiting, weight loss, or tube feeding.

- (2) A resident who qualifies for the special care category is assigned a subcategory based on the resident's activities of daily living score.

d. Clinically complex category.

- (1) To qualify for the clinically complex category, a resident must have one or more of the conditions for the special care category with an activities of daily living score of less than seven or have at least one of the following conditions, treatments, or circumstances:

- (a) Comatose;
- (b) Burns;
- (c) Septicemia;
- (d) Pneumonia;
- (e) Internal bleeding;
- (f) Dehydration;
- (g) Dialysis;
- (h) Hemiplegia with an activities of daily living score of at least ten;
- (i) Chemotherapy;
- (j) Tube feedings that comprise at least twenty-six percent of daily caloric requirements and at least five hundred and one milliliters of fluid through the tube per day;
- (k) Transfusions;
- (l) Foot wound with treatment;
- (m) Diabetes mellitus, with injections seven days per week and two or more physician order changes in the fourteen days preceding the assessment;
- (n) Oxygen therapy administered continuously for at least two hours or intermittently with at least two applications of at least thirty minutes each within the facility in the fourteen days preceding the assessment; or

- (o) Within the fourteen days preceding the assessment, at least one physician visit with at least four order changes or at least two physician visits with at least two order changes.
 - (2) A resident who qualifies for the clinically complex category is assigned a subcategory based on the resident's activities of daily living score and whether the resident has signs of depression.
 - e. Impaired cognition category. To qualify for the impaired cognition category, a resident must have a cognition performance scale score of three, four, or five and an activities of daily living score of less than eleven. A resident who qualifies for the impaired cognition category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.
 - f. Behavior only category.
 - (1) To qualify for the behavior only category, a resident must have exhibited, in four of the seven days preceding the assessment, one or more of the following behaviors:
 - (a) Resisting care;
 - (b) Combativeness;
 - (c) Physical abuse;
 - (d) Verbal abuse;
 - (e) Wandering; or
 - (f) Hallucinating or having delusions.
 - (2) A resident who qualifies for the behavior only category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.
 - g. Reduced physical functioning category. To qualify for the reduced physical functioning category, a resident may not qualify for any other group. A resident who qualifies for the reduced physical functioning category is assigned a subcategory based on the resident's activities of daily living score and the resident's need for nursing rehabilitation services.

7. Except as provided in subsection 2, each resident must be classified into a case-mix class with the corresponding group label, activities of daily living score, other criteria, and case-mix weight as follows:
 - a. Rehabilitation with an activities of daily living score of seventeen or eighteen (group RAD); case-mix weight: 1.79.
 - b. Rehabilitation with an activities of daily living score between fourteen and sixteen, inclusive (group RAC); case-mix weight: 1.54.
 - c. Rehabilitation with an activities of daily living score between nine and thirteen, inclusive (group RAB); case-mix weight: 1.26.
 - d. Rehabilitation with an activities of daily living score between four and eight, inclusive (group RAA); case-mix weight: 1.07.
 - e. Extensive services with an activities of daily living score of at least seven and a qualifier score of four or five (group SE3); case-mix weight: 2.62.
 - f. Extensive services with an activities of daily living score of at least seven and a qualifier score of two or three (group SE2); case-mix weight: 1.72.
 - g. Extensive services with an activities of daily living score of at least seven and a qualifier score of zero or one (group SE1); case-mix weight: 1.56.
 - h. Special care with an activities of daily living score of seventeen or eighteen (group SSC); case-mix weight: 1.50.
 - i. Special care with an activities of daily living score of fifteen or sixteen (group SSB); case-mix weight: 1.39.
 - j. Special care with an activities of daily living score between seven and fourteen, inclusive, or extensive services with an activities of daily living score of less than seven (group SSA); case-mix weight: 1.33.
 - k. Clinically complex with depression and an activities of daily living score of seventeen or eighteen (group CC2); case-mix weight: 1.46.
 - l. Clinically complex with an activities of daily living score of seventeen or eighteen (group CC1); case-mix weight: 1.27.

- m. Clinically complex with depression and an activities of daily living score between twelve and sixteen, inclusive (group CB2); case-mix weight: 1.18.
- n. Clinically complex with an activities of daily living score between twelve and sixteen, inclusive (group CB1); case-mix weight: 1.17.
- o. Clinically complex with depression and an activities of daily living score between four and eleven, inclusive (group CA2); case-mix weight: 1.08.
- p. Clinically complex with an activities of daily living score between four and eleven, inclusive, or special care with an activities of daily living score of less than seven (group CA1); case-mix weight: 1.02.
- q. Impaired cognition with nursing rehabilitation and an activities of daily living score between six and ten, inclusive (group IB2); case-mix weight: .98.
- r. Impaired cognition with an activities of daily living score between six and ten, inclusive (group IB1); case-mix weight: .88.
- s. Impaired cognition with nursing rehabilitation and an activities of daily living score of four or five (group IA2); case-mix weight: .80.
- t. Impaired cognition with an activities of daily living score of four or five (group IA1); case-mix weight: .67.
- u. Behavior only with nursing rehabilitation and an activities of daily living score between six and ten, inclusive (group BB2); case-mix weight: .97.
- v. Behavior only with an activities of daily living score between six and ten, inclusive (group BB1); case-mix weight: .85.
- w. Behavior only with nursing rehabilitation and an activities of daily living score of four or five (group BA2); case-mix weight: .69.
- x. Behavior only with an activities of daily living score of four or five (group BA1); case-mix weight: .63.
- y. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between sixteen and eighteen, inclusive (group PE2); case-mix weight: 1.04.

- z. Reduced physical functioning with an activities of daily living score between sixteen and eighteen, inclusive (group PE1); case-mix weight: .96.
 - aa. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between eleven and fifteen, inclusive (group PD2); case-mix weight: .95.
 - bb. Reduced physical functioning with an activities of daily living score between eleven and fifteen, inclusive (group PD1); case-mix weight: .87.
 - cc. Reduced physical functioning with nursing rehabilitation and an activities of daily living score of nine or ten (group PC2); case-mix weight: .86.
 - dd. Reduced physical functioning with an activities of daily living score of nine or ten (group PC1); case-mix weight: .84.
 - ee. Reduced physical functioning with nursing rehabilitation and an activities of daily living score between six and eight, inclusive (group PB2); case-mix weight: .75.
 - ff. Reduced physical functioning with an activities of daily living score between six and eight, inclusive (group PB1); case-mix weight: .68.
 - gg. Reduced physical functioning with nursing rehabilitation and an activities of daily living score of four or five (group PA2); case-mix weight: .66.
 - hh. Reduced physical functioning with an activities of daily living score of four or five (group PA1); case-mix weight: .62.
8. The classification is effective the date the resident assessment must be completed in all cases except an admission or for a return from an acute hospital stay. The classification for an admission or for a return is effective the date of the admission or return.
 9. A facility complying with any provision of this section that requires a resident assessment must use the minimum data set in a resident assessment instrument that conforms to standards for a resident classification system described in 42 CFR 413.333.

History: Effective September 1, 1987; amended effective January 1, 1990; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; July 2, 2002; October 1, 2010.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

CHAPTER 75-03-07

75-03-07-01. Purpose. ~~The purpose of this chapter is to establish minimum standards of in-home care and to assure that those standards are maintained. Repealed effective October 1, 2010.~~

History: ~~Effective December 1, 1981.~~

General Authority: ~~NDCC 50-11.1-08~~

Law Implemented: ~~NDCC 50-11.1-01~~

75-03-07-02. Objective of rules. ~~Under the authority vested in the department pursuant to North Dakota Century Code section 50-11.1-08, the department is empowered to prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1. Repealed effective October 1, 2010.~~

History: ~~Effective December 1, 1981; amended effective January 1, 1987.~~

General Authority: ~~NDCC 50-11.1-08~~

Law Implemented: ~~NDCC 50-11.1-08~~

75-03-07-03. Definitions. ~~Definitions The terms used in this chapter are as defined have the same meanings as in North Dakota Century Code chapter 50-11.1 section 50-11.1-02.~~

History: ~~Effective December 1, 1981; amended effective October 1, 2010.~~

General Authority: ~~NDCC 50-11.1-08~~

Law Implemented: ~~NDCC 50-11.1-02, 50-11.1-06, 50-11.1-08~~

75-03-07-04. In-home registration and standards.

1. ~~An application for a registration document shall~~ must be submitted to the ~~county social service board~~ authorized agent in the county wherein the applicant proposes to provide in-home services. Application ~~shall~~ must be made in the form and manner prescribed by the department.
2. ~~Applicants~~ An applicant for an in-home registration document shall be directly responsible for the care, supervision, and guidance of the child or children in the child or children's home and shall comply with the following standards, certifying in the application that the ~~applicants shall~~ applicant:
 - a. ~~Be~~ is at least fourteen ~~eighteen~~ years of age.
 - b. ~~Be mentally; Is~~ is physically, cognitively, socially, and emotionally ~~able to provide adequate care for the children in the applicant's charge~~ healthy and will use mature judgment when making decisions impacting the quality of child care.

- c. ~~Be able to~~ Shall devote adequate time and attention to the children in the applicant's ~~charge~~ care and provide an environment that is physically and socially adequate for children.
- d. ~~Participate~~ Shall participate in specialized training related to child care ~~as if~~ provided by or approved by the department.
- e. ~~Provide~~ Shall provide food of sufficient quantity and nutritious quality in accordance with the United States department of agriculture standards which satisfies the dietary needs of the children while in the applicant's ~~charge~~ care.
- f. ~~Provide~~ Shall provide proper health care, supervision, and protection for children in the applicant's ~~charge~~ care. Supervision means the provider being within sight or hearing range of an infant, toddler, or preschooler at all times so the provider is capable of intervening to protect the health and safety of the child. For the school-age child, it means a provider being available for assistance and care so that the child's health and safety are protected.
- g. ~~Not~~ Shall provide for a safe and sanitary environment while children are in care.
- h. ~~May not~~ use or be under the influence of any illegal drugs or alcoholic beverages ~~except for medical purposes~~ while children are in care.
- h: i. ~~Never~~ May not leave children without supervision.
- j. Shall ensure that discipline is constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint, such as holding. A child may not be subjected to physical harm, fear, or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, or neglect or abuse, to any child is grounds for denial or revocation of an in-home registration.
 - (1) Authority to discipline may not be delegated to children nor may discipline be administered by children.
 - (2) Separation, when used as discipline, must be appropriate to the child's development and circumstances. The child must be in a safe, lighted, well-ventilated room within sight or hearing range of the in-home provider. An in-home provider may not isolate a child in a locked room or closet.
 - (3) A child may not be punished for lapses in toilet training.

- (4) An in-home provider may not use verbal abuse or make derogatory remarks about a child, or a child's family, race, or religion when addressing the child or in the presence of a child.
 - (5) An in-home provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
 - (6) An in-home provider may not force-feed a child or coerce a child to eat, unless medically prescribed and administered under a medical provider's care.
 - (7) An in-home provider may not use deprivation of meals or snacks as a form of discipline or punishment.
 - (8) An in-home provider may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.
 - (9) An in-home provider may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
 - (10) An in-home provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.
- i. ~~Discuss~~ Shall discuss methods of discipline and child management with the parent or parents ~~and shall not engage in any method of punishment which humiliates or frightens a child or causes more than minor transient physical or emotional discomfort, or both.~~
 - j. ~~Provide care on a continuing basis for less than a twenty-four-hour period.~~
3. If the physical or mental, cognitive, social, or emotional health capabilities of an in-home applicant or provider appear to be questionable, the department may ~~request that~~ require the provider individual to present evidence of capability the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
 4. In-home providers shall ensure safe care for the children receiving services in their care. ~~If there exists a probable cause determination a services-required decision made under North Dakota Century Code chapter 50-25.1 exists,~~ indicating that any a child has been abused or neglected by the applicant or in-home provider, the person that decision has a direct bearing on the applicant's or in-home provider's

ability to serve the public in a capacity involving the provision of child care and the application or in-home registration may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the applicant or in-home provider, the applicant or in-home provider shall furnish information, satisfactory to the department, from which the department can determine the applicant's or in-home provider's current ability to provide care that is free of abuse or neglect. The department shall furnish the determination of current ability will be furnished to the operator applicant or in-home provider and to the regional director of the regional human service center or his the director's designee for consideration and action on the in-home registration document. Each applicant shall complete a department-approved authorization for background check form no later than the first day of employment.

History: Effective December 1, 1981; amended effective January 1, 1987; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-02, 50-11.1-06, 50-11.1-07, 50-11.1-08

75-03-07-05. Minimum requirements for care of children with special needs. An in-home provider shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of children with special needs. The in-home provider must receive documentation of the child's special needs by the parent upon the child's enrollment.

1. When a child with special needs is being cared for, the in-home provider shall consult with the child's parents, and, with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The in-home provider shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.
2. In-home providers shall receive proper instructions as to the nature of the child's special needs and potential for growth and development.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-06, 50-11.1-08

75-03-07-06. Denial or revocation of in-home registration.

1. The right to provide early childhood services is dependent upon the applicant's or provider's continuing compliance with the terms of the registration as listed in section 75-03-07-04.
2. A fraudulent or untrue representation is grounds for revocation or denial.
3. a. The applicant or in-home provider may not have been found guilty of, pled guilty to, or pled no contest to:
 - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; or 12.1-27.2 sexual performances by children; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;
 - (2) An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in paragraph 1; or
 - (3) An offense, other than an offense identified in paragraph 1 or 2, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
- b. The department has determined that the offenses enumerated in paragraphs 1 and 2 of subdivision a have a direct bearing on the applicant's or provider's ability to serve the public in a capacity as a provider.
- c. In the case of misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of

probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.

4. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-06, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-07-07. Appeals. An applicant for an in-home registration or in-home provider may appeal a decision to deny or revoke a registration document by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of the in-home registration or in-home provider's receipt of written notice of the decision to deny or revoke the registration document. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-06, 50-11.1-08, 50-11.1-10

CHAPTER 75-03-07.1

75-03-07.1-00. Definitions. The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter:

1. "Attendance" means the total number of children present at any one time.
2. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
3. "Emergency designee" means an individual designated by a holder of a self-declaration to be a backup staff member for emergency assistance or to provide substitute care.
4. "Infant" means a child who is less than twelve months of age.
5. "Provider" means the holder of a self-declaration document.
6. "Supervision" means a provider or staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so that the provider or staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a provider or staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety is protected.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02, 50-11.1-08, 50-11.1-17

75-03-07.1-01. Fees. ~~A fee of fifteen dollars must accompany the affidavit for a standard compliance certification document. The fee will go to the county social service board for training and education of the county social service board for training and education of the county staff who administers the standard compliance certification program.~~ Repealed effective October 1, 2010.

History: Effective June 1, 1995.

General Authority: NDCC 50-11.1-08, 42 GFR Part 98

Law Implemented: NDCC 50-11.1-08

75-03-07.1-02. ~~Standard compliance certification~~ Self-declaration standards - Application.

1. ~~An affidavit for a standard compliance certification document must be submitted~~ applicant for a self-declaration document shall submit the application to the county social service board authorized agent in

the county in which the applicant proposes to provide early childhood services. An affidavit application, including a department-approved authorization for background check for household members age twelve and older, an emergency designee, and an applicant, must be made in the form and manner prescribed by the department. The affidavit application must include the following sworn statement:

I am not required by North Dakota state law (Chapter 50-11.1) to be licensed to provide early childhood services.

- ~~a. A license is required if care is provided for six or more children or for four or more infants.~~
- ~~b. An "infant" means a child who is less than twenty-four months of age.~~

2. A provisional self-declaration document may be issued:

a. The director of a regional human service center, or the director's designee, in consultation with the department, may issue a provisional self-declaration document although the applicant or self-declaration holder fails to, or is unable to, comply with all applicable standards and rules of the department.

b. A provisional self-declaration document must:

- (1) State that the self-declaration holder has failed to comply with all applicable standards and rules of the department;
- (2) State the items of noncompliance;
- (3) Expire at a set date, not to exceed six months from the date of issuance; and
- (4) Be exchanged for an unrestricted self-declaration document, which bears an expiration date of one year from the date of issuance of the provisional self-declaration document, after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.

c. The department may issue a provisional self-declaration document only to an applicant or provider who has waived, in writing:

- (1) The right to a written statement of charges as to the reasons for the denial of an unrestricted self-declaration document; and

- (2) The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted self-declaration document, either at the time of application or during the period of operation under a provisional self-declaration document.
- d. Any provisional self-declaration document issued must be accompanied by a written statement of violations signed by the director of the regional human service center or the director's designee and must be acknowledged in writing by the provider.
- e. Subject to the exceptions contained in this section, a provisional self-declaration document entitles the holder to all rights and privileges afforded the holder of an unrestricted self-declaration document.
- f. The provider shall display prominently the provisional self-declaration document and agreement.
- g. The provider shall provide parents written notice that the provider is operating on a provisional self-declaration document and the basis for the provisional self-declaration document.
3. Applicants ~~An applicant for standard compliance certification a self-declaration document shall be directly responsible for the care, supervision, and guidance of the child or children and; shall comply with the following standards, certifying, and shall certify:~~
- a. That the applicant:
- (1) Is at least eighteen years of age;
 - (2) ~~Is mentally, physically, and emotionally able to provide adequate care for the children in the applicant's charge~~ Shall provide an environment that is physically and socially adequate for the children; and that the applicant is an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
 - (3) ~~Is able to~~ Shall devote adequate time and attention to the children in the applicant's ~~charge~~ care;
 - (4) ~~Will~~ Shall provide food of sufficient quantity and nutritious quality in accordance with the United States department of agriculture standards which satisfies the dietary needs of the children while in the applicant's ~~charge~~ care;

- (5) ~~Will~~ Shall provide proper health care and protection for children in the applicant's ~~charge~~ care;
- (6) ~~Will~~ May not use or be under the influence of, and will not allow any household member or staff member to use or be under the influence of any illegal drugs or alcoholic beverages except for medical purposes while caring for children are in care;
- (7) ~~Will~~ May not leave children without supervision;
- (8) ~~Will provide care on a continuing basis for less than a~~ twenty-four-hour period;
- (9) ~~Will annually check the immunization records of the children in the applicant's care; and~~ Shall verify that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-age child;
- (10) (9) ~~Will be certified in cardiopulmonary resuscitation and first aid. If the provider is not certified at the time of initial standard compliance certification, the provider shall be certified in cardiopulmonary resuscitation and first aid at the time of subsequent standard compliance certification renewal. Shall report immediately, as a mandated reporter, suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;~~
- (10) Shall provide a variety of games, toys, books, crafts, and other activities and materials to enhance the child's intellectual and social development and to broaden the child's life experience. Each provider shall have enough play materials and equipment so that at any one time each child in attendance may be involved individually or as a group;
- (11) Shall ensure a current health assessment or a health assessment statement completed by the parent is obtained at the time of initial enrollment of the child, which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually; and
- (12) Shall ensure a child information form completed by the parent is obtained at the time of initial enrollment of the child and annually thereafter.

- b. That discipline will be constructive or educational in nature and may include diversion, separation from the problem situation, ~~talk~~ talking with the child about the situation, ~~praise for~~ praising appropriate behavior, ~~and~~ or gentle physical restraint such as holding. ~~Children~~ A child may not be subjected to physical harm or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury or neglect or abuse to any child is grounds for denial or revocation of a ~~standard compliance certification~~ self-declaration document.
- (1) ~~No~~ A child may not be kicked, punched, spanked, shaken, pinched, bitten, roughly handled, ~~or struck~~, mechanically restrained, or physically maltreated by the ~~caretaker provider, staff member, household member,~~ or any other adult in the facility residence.
 - (2) Authority to discipline may not be delegated to or be ~~accomplished~~ administered by children.
 - (3) Separation, when used as discipline, must be ~~brief~~ and appropriate to the child's age development and circumstances, and the child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult. ~~No~~ A child may not be isolated in a locked room or closet.
 - (4) ~~No~~ A child may not be physically punished for lapses in toilet training.
 - (5) ~~Verbal~~ A provider may not use verbal abuse or make derogatory remarks about the child, or the child's family, race, or religion, ~~or profane, threatening, unduly loud, or abusive language is not to be used when addressing children~~ a child or in the presence of children a child.
 - (6) A provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
 - (7) ~~No child~~ A provider may be force-fed not force-feed a child or coerce a child to eat unless medically prescribed and administered under a ~~physician's~~ medical provider's care.
 - (7) (8) ~~Deprivation~~ A provider may not use deprivation of snacks or meals ~~may not be used~~ as a form of discipline or punishment.
 - (9) A provider may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.

- (10) A provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.
- c. That a working smoke detector ~~will be~~ is properly installed and in good working order on each floor used by children.
- d. That a fire extinguisher that is inspected annually ~~will be~~ is properly installed in locations, is in good working order, and is located in the area used for child care.
- e. That a working telephone ~~will be available~~ is located in the location used for child care. Emergency numbers for parents and first responders must be posted.
- f. ~~That the child care location have a means of transporting children who are in care at the facility. When transportation is provided by a provider, children must be protected by adequate supervision and safety precautions.~~
- (1) Drivers must be eighteen years of age or older and must comply with all relevant federal, state, and local laws, including child restraint laws.
- (2) A child must not be left unattended in a vehicle.
4. Potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, poisonous plants, and open stairways must not be accessible to children. Guns and ammunition must be kept in separate locked storage, or trigger locks must be used. Other weapons and dangerous sporting equipment, such as bows and arrows, must not be accessible to children.
3. ~~5.~~ If the physical ~~or mental~~, cognitive, social, or emotional health capabilities of a an applicant or provider appear to be questionable, the department may request require that the provider individual present evidence of capability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
4. ~~6.~~ A ~~standard compliance certification~~ self-declaration document is only effective for one year.

History: Effective June 1, 1995; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08, ~~42 CFR Part 98~~

Law Implemented: NDCC ~~50-11.1-06~~ 50-11.1-07, 50-11.1-08, 50-11.1-16, 50-11.1-17

75-03-07.1-03. Smoke-free environment. ~~Smoking is not permitted at any time in an early childhood care facility while a child receives care. Repealed effective October 1, 2010.~~

History: Effective June 1, 1995.

General Authority: NDCC 23-12-10, 50-11.1-02.2; 42 CFR Part 98

Law Implemented: NDCC 50-11.1-02.2

75-03-07.1-04. ~~Standard compliance certification Self-declaration restricted to one per household or address residence - Nontransferability of early childhood services standard compliance certification self-declaration and emergency designee.~~

1. ~~Only The department may not authorize more than one standard compliance certification self-declaration per address shall be authorized by the department. Only one person residing in or representing an address will be allowed to self-certify as a provider of early child care services at any one time residence. A residence means real property that is typically used as a single family dwelling. This applies to new self-declarations issued on or after October 1, 2010. Existing providers will be exempt from this provision until October 1, 2015, after which time all providers will be subject to the requirements of this subsection.~~
2. ~~The applicant shall identify one emergency designee for the self-declaration at the time of the application.~~
3. ~~The standard compliance certification provider shall be on the premises at all times while children are present supervising the children at all times when children are present, except in situations during which the emergency designee is providing care.~~
3. 4. ~~The standard compliance certification granted to a provider is nontransferable self-declaration is nontransferable to another residence.~~

History: Effective June 1, 1995; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08; 42 CFR Part 98

Law Implemented: NDCC 50-11.1-04 50-11.1-16, 50-11.1-17

75-03-07.1-05. Appeals. ~~Applicants An applicant for, or a holder of, a standard compliance certification or holders of a standard compliance certification have self-declaration document has the right to appeal a decision to deny or revoke a standard compliance certification self-declaration document. The A written appeal must be filed in writing with postmarked or received by the department within ten calendar days of the applicant's or holder's receipt of written notice of such a the decision to deny or revoke the document. Upon receipt of a~~

timely appeal, an administrative hearing shall must be conducted in the manner prescribed by chapter 75-01-03.

History: Effective June 1, 1995; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08; 42 CFR Part 98

Law Implemented: NDCC 50-11.1-09; 50-11.1-10

75-03-07.1-06. Revocation Denial or revocation of standard compliance certification self-declaration document.

1. The right to provide early childhood services is dependent upon the applicant's or provider's continuing compliance with the terms of the application affidavit as listed in section 75-03-07.1-02.
2. A fraudulent application or untrue representation is grounds for revocation or denial.
3. a. The applicant, ~~standard compliance certification self-declaration provider, or members of the emergency designee, staff members, and household shall members may~~ not have been found guilty or of, pled guilty of offenses which, in the view of the department, directly impact the ability of the registrant to serve the public as a child care provider. Conviction may be grounds for denial or revocation of the standard compliance certification. The applicant for standard compliance certification shall not have been found guilty of or pled guilty to an offense contained in North Dakota Century Code chapters 12.1-11, perjury - falsification - breach of duty; 12.1-12, bribery - unlawful influence of public servants; 12.1-16, homicide; 12.1-17, assaults - threats - coercion; 12.1-18, kidnapping; 12.1-20, sex offenses; 12.1-21, damaging property or public services; 12.1-22, robbery - breaking and entering offenses; 12.1-23, theft and related offenses; 12.1-24, forgery and counterfeiting; 12.1-27.1, obscenity control; 12.1-27.2, sexual performances by children; 12.1-28, gambling and related offenses; 12.1-28, prostitution; and 12.1-31, disorderly conduct - usury - tobacco to minors: to, or pled no contest to:

- (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02,

facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;

(2) An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in paragraph 1; or

(3) An offense, other than an offense identified in paragraph 1 or 2, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

b. The department has determined that the offenses enumerated in paragraphs 1 and 2 of subdivision a have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public in a capacity as a provider, emergency designee, or staff member.

c. In the case of misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.

4. ~~The applicant shall be issued a standard compliance certification, even if the applicant has pled or been found guilty of an offense under subsection 2, if the applicant has been determined by the department to be sufficiently rehabilitated. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.~~

5. ~~Standard compliance certification providers~~ A provider shall ensure safe care for the children receiving services in their facility the provider's residence. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists indicating that a child has been abused or neglected by an applicant, provider, emergency

designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care, and the application or self-declaration document may be denied or revoked. If there exists a probable cause services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the standard compliance certification applicant, provider, emergency designee, staff member, or members of the household member, the person applicant or provider shall furnish information to the department, from which the department can determine the applicant's, provider's current, or staff member's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of ability to the operator applicant or provider and to the regional director of the regional human service center or his the director's designee for consideration and action on the standard compliance certification document application or self-declaration document. Appeal of departmental determinations are under chapters 75-01-03 and 75-03-18. Each applicant, provider, emergency designee, and staff member shall complete a department-approved authorization for background check form no later than the first day of employment. Household members over the age of twelve must complete a department-approved authorization for background check form at the time of application or upon obtaining residence at the location of the child care.

History: Effective June 1, 1995; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08, 50-11.1-09; 42 GFR Part 98

Law Implemented: NDCC 50-11.1-06.2, 50-11.1-08, 50-11.1-09, 50-11.1-16, 50-11.1-17

75-03-07.1-07. Minimum sanitation requirements.

1. The provider shall operate according to the recommendations by the federal centers for disease control and prevention, including washing hands, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and individually designated cloth towels or paper towels must be available at each sink. Clean towels must be provided at least daily.
2. The provider shall ensure that the residence, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The provider shall establish routine cleaning procedures to protect the health of the children.
3. Pets and animals.
 - a. The provider shall ensure that only cats, dogs, and small pets that are contained in an aquarium or other approved enclosed

container are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children.

- b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
- c. The provider shall ensure parents are aware of the presence of pets and animals in the family child care.
- d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
- e. The provider shall ensure that all contact between pets and children is closely supervised. The provider shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
- f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
- g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.
- h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-16, 50-11.1-17

75-03-07.1-08. Infant care.

1. Environment and interactions.

- a. A provider serving children from birth to twelve months shall provide an environment which protects the children from physical harm.
- b. The provider shall ensure that each infant receives positive stimulation and verbal interaction such as being held, rocked, talked with, or sung to.

- c. The provider shall respond promptly to comfort an infant's or toddler's physical and emotional distress:
 - (1) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and
 - (2) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.
- d. The provider shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.
- e. The provider shall take children outdoors or to other areas within the child care for a part of each day to provide some change of physical surroundings and to be with other children.
- f. When a child is awake, the provider may not confine the child to a crib, portable crib, or other equipment for longer than twenty minutes, taking into consideration the child's emotional state.
- g. The provider shall ensure that infants are not shaken or jostled.
- h. The provider shall ensure that low chairs and tables or high chairs with trays must be provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.
- i. The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

2. Feeding.

- a. The provider shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed in writing by the infant's parent or medical provider.
- b. The provider shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. The provider shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider.

- c. The provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.
- d. The provider shall ensure that frozen breast milk is thawed under cool running tap water or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent at the end of each day.
- e. The provider shall ensure that an infant is not fed by propping a bottle.
- f. The provider shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.
- g. The provider shall be within sight and hearing range of an infant during the infant's feeding or eating process.

3. Diapering.

- a. The provider shall ensure that there is a designated cleanable diapering station, located separately from food preparation and serving areas in the child care if children requiring diapering are in care.
- b. The provider shall ensure that diapers are changed promptly when soiled or wet and in a sanitary manner.
- c. Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
- d. The provider shall ensure that soiled or wet diapers are stored in a sanitary, covered container separate from other garbage and waste until removed from the child care.

4. Sleeping.

- a. The provider shall ensure that infants are placed on their back when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
- b. The provider shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.

- c. The provider shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib.
- d. Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- e. The provider shall ensure that all items are removed from the crib or portable crib, except for one infant blanket and security item that does not pose a risk of suffocation to the infant.
- f. The provider shall ensure that mattresses and sheets are tightly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when cribs are used by different infants, or at least weekly.
- g. The provider shall ensure that each infant has an individual infant blanket.
- h. The provider shall ensure that toys or objects hung over an infant crib or portable crib must be held securely and be of size and weight that would not injure an infant if the toy or object accidentally falls or if the infant pulls on the object.
- i. The provider shall check on sleeping infants every fifteen minutes or have a monitor in the room with sleeping infants.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-16, 50-11.1-17

75-03-07.1-09. Minimum requirements for the care of children with special needs. A provider shall make appropriate provisions, as required by the Americans with Disabilities Act, to meet the needs of children with special needs. The provider shall receive documentation of the child's special needs by the parent upon the child's enrollment.

1. When a child with special needs is admitted, the provider shall consult with the child's parents, and with the parent's permission, the child's source of professional health care or, when appropriate, other health and professional consultants, to gain an understanding of the child's individual needs. The provider shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.
2. The provider shall ensure that staff members responsible for caring for or teaching children and the emergency designee receive proper

instructions as to the nature of the child's disability and potential for growth and development.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-16, 50-11.1-17

75-03-07.1-10. Correction of violations.

1. A provider shall correct violations noted in a correction order within the following times:
 - a. For a violation of paragraphs 5 and 7 of subdivision a of subsection 3 of section 75-03-07.1-02, subdivision b of subsection 3 of section 75-03-07.1-02, and subsection 4 of section 75-03-07.1-02, within twenty-four hours.
 - b. For all other deficiencies of chapter 75-03-07.1, within twenty days.
2. All periods of correction begin on the date of the receipt of the correction order by the provider.
3. The regional supervisor of early childhood services may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
4. The provider shall furnish a written notice to the authorized agent upon completion of the required corrective action. The correction order remains in effect until the authorized agent confirms the corrections have been made.
5. The provider shall notify the parent of each child receiving care at the residence and each staff member of the process for reporting a complaint or suspected rule violation.
6. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care by this provider that a correction order has been issued. In addition to providing notice to the parent of each child, the provider also must post the correction order in a conspicuous location within the residence until the violation has been corrected or five days, whichever is longer.
7. A provider who has been issued a correction order must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the provider has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order

must be mailed by certified mail to the provider. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-08

75-03-07.1-11. Fiscal sanctions.

1. The department shall assess a fiscal sanction of twenty-five dollars per day for each violation of subdivisions b, c, d, and e of subsection 3 of section 75-03-07.1-02 or subsection 4 of section 75-03-07.1-02 for each day that the provider has not verified correction, after the allowable time for correction of violations ends.
2. The department shall assess fiscal sanction of five dollars per day for each violation of any other provision of this chapter for each day that the provider has not verified correction, after the allowable time for correction of violations ends.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.4, 50-11.1-07.5, 50-11.1-08

CHAPTER 75-03-08

75-03-08-01. Purpose. ~~The purpose of this chapter is to establish minimum standards of family child care and to assure that those standards are maintained. Repealed effective October 1, 2010.~~

~~History: Effective December 1, 1981; amended effective January 1, 1999.~~

~~General Authority: NDCC 50-11.1-08~~

~~Law Implemented: NDCC 50-11.1-01~~

75-03-08-02. Authority and objective. ~~Pursuant to North Dakota Century Code section 50-11.1-08, the department may prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1. Repealed effective October 1, 2010.~~

~~History: Effective December 1, 1981; amended effective January 1, 1987; January 1, 1999.~~

~~General Authority: NDCC 50-11.1-08~~

~~Law Implemented: NDCC 50-11.1-08~~

75-03-08-03. Definitions. As The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Attendance" means the total number of children present at any one time at the home family child care.
2. "Caregiver" means any individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in a child care home under the guidance and supervision of the family child care provider.
3. "County agency" means the county social service board in the county where the family child care home is located.
4. "Department" means the department of human services. "Child with special needs" means a child determined by a medical provider to have or to be at risk for chronic physical, developmental, behavioral, or emotional conditions.
5. 3. "Emergency designee" means an individual designated by the family child care provider to be a backup caregiver staff member for emergency assistance or to provide substitute care.
6. "Family child care home" means an occupied private residence in which early childhood services are provided for no more than seven children at any one time, except that the term includes a residence providing early childhood services to two additional school-aged children during the two hours immediately before and after the school day and all day,

except Saturday and Sunday, when school is not in session during the official school year.

4. "Infant" means a child who is younger than twelve months of age.
5. "Medication" is defined as any drug or remedy which is taken internally or orally, inhaled, or applied topically.
7. ~~6.~~ "Family child care provider" means the individual who has the legal responsibility and the administrative authority for the operation "Provider" means owner or operator of a family child care home. The family child care provider is the applicant for license or the licensee under this chapter.
8. "Provider" means the family child care provider.
9. ~~"Staff member" means provider, substitute staff, volunteer, caregiver, or any other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the family child care home.~~
10. ~~7.~~ "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
11. ~~8.~~ "Volunteer" means an individual who visits or provides an unpaid service or visit, including a fire person firefighter for fire safety week, McGruff, or Santa Claus person a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-08-04. Effect of licensing and display of license.

1. The issuance of a license to operate a family child care home is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed prominently in the premises to which it applies.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, ~~50-11.1-06~~

75-03-08-05. Denial or revocation of license.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the ~~licenseholder~~ provider may continue the operation of the ~~facility~~ family child care pending the final administrative determination or until the license expires, whichever occurs first; ~~provided, however, that this, unless continued operation would jeopardize the health and safety of the children attending the family child care.~~ This subsection does not limit the actions the department may take pursuant to North Dakota Century Code section sections 50-11.1-07.8 and 50-11.1-12.
3. The department may revoke a license to operate a family child care home without first issuing a correction order, or simultaneously with a suspension if continued operation would jeopardize the health and safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

75-03-08-05.1. Family child care home license. The right to operate a licensed family child care home is dependent upon continuing compliance with the applicable provisions of North Dakota Century Code chapter 50-11.1 and the applicable standards contained in this chapter.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07

75-03-08-06. Provisional license.

1. The director of a regional human service center, ~~in the director's discretion,~~ or the director's designee, in consultation with the department, may issue a provisional license for the operation of a ~~newly opened family child care home or for a previously licensed family child care home~~ although the ~~family child care home~~ applicant or provider fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:

- a. ~~Prominently state~~ State that the ~~family child care home provider~~ has failed to comply with all applicable standards and rules of the department;
 - b. ~~State that the items of noncompliance are set forth on a document available, upon request to the family child care provider;~~
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the same date of issuance as the provisional license, upon demonstrating after the applicant or provider demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. ~~A~~ The department may issue a provisional license may be issued only to an applicant or provider who has waived, in writing:
 - a. The right to a written statement of charges 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 nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
 4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~regional~~ director of the regional human service center or the regional director's designee and must be acknowledged in writing by the provider.
 5. Subject to the exceptions contained in this section, a provisional license entitles the holder to all rights and privileges afforded to the holder of an unrestricted license.
 6. The department ~~shall~~ may not issue a provisional license if the ~~facility~~ family child care is not in compliance with section 75-03-08-14.
 7. The provider shall prominently display the provisional license and agreement.
 8. The provider shall provide parents written notice that the ~~facility~~ family child care is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; January 1, 1989; July 1, 1996; July 1, 1996, amendments voided by the

Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~55-11.1-03, 55-11.1-04~~ 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-08-06.1. Restricted license. The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;
2. To restrict a pet or animal from areas accessible to children; or
3. When necessary to inform the parents that the provider is licensed, but is restricted to operating in certain rooms or floors of the residence or restricted from using specified outdoor space of the residence.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-08-07. Application for and nontransferability of family child care home license.

1. An application for a license must be submitted to the ~~county~~ agency authorized agent in the county in which the ~~facility~~ family child care is located. Application must be made in the form and manner prescribed by the department.
2. The license is nontransferable and valid only ~~on~~ for the premises indicated on the license. A new application for a license must be filed ~~by a licensed home~~ upon change of provider or location.
3. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This applies to licenses issued on or after October 1, 2010. Existing operators will be exempt from this provision until October 1, 2015, after which time all operators will be subject to the requirements of this subsection.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-08-08.1. ~~Provider responsibilities~~ Duties of the provider.

1. ~~Except as provided in subsections 2 and 3, a~~ A provider shall maintain, whenever services are provided, at least one staff member who:
 - a. Is certified in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department; and
 - b. Is certified or trained in a department-approved program to provide first aid.
2. Substitute staff are exempted from the requirements of subsection 1. If a provider utilizes a substitute or emergency designee who is not certified in cardiopulmonary resuscitation or first aid when no other staff member who is certified is on duty, the provider shall notify the parents of the date and time that the substitute or emergency designee will be caring for the children.
3. ~~A provider who uses an emergency designee and has no staff member present who is trained or certified to provide first aid and cardiopulmonary resuscitation may not be found in violation of subsection 1.~~
4. The provider shall have an adult staff member responsible for caring for or teaching children present in the ~~home~~ family child care at all times to supervise staff members under the age of eighteen and children in care.
5. ~~4.~~ A staff member may not at any time place ~~children~~ a child in an environment that would be harmful or dangerous to ~~their~~ the child's physical, cognitive, social, or emotional health.
6. ~~5.~~ The provider shall report ~~within twenty-four hours to the county director or the county director's designee~~ a to the authorized agent within twenty-four hours:
 - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the facility family child care or attributable to care received in the facility: family child care;
 - b. An injury to any child which occurs while the child is in the care of the family child care and which requires medical treatment;
 - c. Poisonings or errors in the administration of medication;
 - d. Closures or relocations of child care programs due to emergencies; and

- e. Fire that occurs or explosions that occur in or on the premises of the family child care.
- 7. 6. The provider shall develop and ensure compliance with a written policy and follow a procedure for accountability when a normally unaccompanied child fails to arrive for the program.
- 7. The provider shall be present in the family child care no less than sixty percent of the time when children are in care.
- 8. The provider, as a mandatory reporter, shall report any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03.
- 9. The provider shall select an emergency designee.
- 10. The provider shall maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the family child care.
- 11. The provider must be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care.
- 12. The provider shall ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so that the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so the child's health and safety is protected.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08, ~~50-11.1-09~~

75-03-08-09. Staffing requirements. Staffing requirements are established by the number of children physically in care at the family child care home at a any given time, rather than total enrollment.

1. A provider may provide care to no more than a total of four children if all are under age twenty-four months.
2. A provider providing care to five or more children may provide care to no more than three children under age twenty-four months.
3. If a child ~~in care has a disabling condition which requires more than usual care~~ with special needs is admitted to the program, the child's

developmental age level must be used in determining the number of children for which care may be provided.

4. Children using the ~~licensed facility~~ family child care for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-10. Minimum qualifications of ~~family child care~~ providers. A provider shall:

1. Be at least eighteen years of age;
2. Complete a department-approved basic child care course during the first three months of licensure; and
3. ~~Certify attendance at completion of~~ a minimum of nine hours of ~~county-approved~~ department-approved training related to child care every licensing year ~~and the nine hours of training in the first year following initial licensure must include a department-approved six-hour basic child care course;~~
3. Be physically present in the home no less than sixty percent of the time when children are in care;
4. ~~Report any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1;~~
5. ~~Select an emergency designee for the home as backup for emergency assistance;~~
6. ~~Ensure safe care for the children under supervision; and~~
7. ~~Be mentally, physically, and emotionally able to provide adequate care for the children in the provider's charge.~~

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-08-12. Minimum qualifications for all caregivers staff members responsible for caring for or teaching children. Each staff member who provides care shall:

1. Be at least fourteen years of age, provided that each ~~such individual~~ staff member under age sixteen provides written parental consent for ~~such~~

employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07. A member of the immediate family of the ~~family child care~~ provider may provide care if ~~such~~ the family member is at least twelve years of age;

2. ~~Be mentally, physically, and emotionally able to provide adequate care for the children under supervision; and an individual of good physical, cognitive, social, and emotional health and use mature judgment when making decisions impacting the quality of child care;~~
3. ~~Ensure safe care for the children under supervision. Complete a department-approved basic child care course during the first three months of employment; and~~
4. Receive orientation related to child care policies, emergency procedures, special needs of children in care, and child care activities during the first week of employment.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08, ~~50-11.1-09~~

75-03-08-12.1. Minimum qualifications of volunteers. If a volunteer is providing child care, the volunteer shall meet the qualifications of a staff member responsible for caring for or teaching children and shall receive orientation for all assigned tasks.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-13. Provider and caregiver Minimum health requirements for all applicants, providers, and staff members responsible for caring for or teaching children.

1. ~~Each provider or caregiver shall complete a health self-certification form certifying that the provider or caregiver does not have health problems that would interfere with the person's functioning as a caregiver or that would be detrimental to the health of the children or other staff. If the provider adds or replaces a caregiver after the licensure process is complete, the provider must submit a self-certification form completed by the new caregiver to the county within five working days of the caregiver's first workday.~~
2. ~~Each provider or caregiver shall furnish documentation of a negative mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter. If the provider adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative mantoux tuberculosis test before~~

~~the first day of employment. Substitute staff are exempted from this requirement. A family child care provider who uses an untested emergency designee may not be found in violation of this provision.~~

- ~~3.~~ If the physical, cognitive, social, or mental emotional health capabilities of a an applicant, provider, or caregiver staff member appears questionable, the department may require the individual to be evaluated by appropriate professionals, with the results provided to the department present evidence of the individual's capability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.
- ~~4.~~ 2. ~~While children are in care, a provider or caregiver shall~~ A staff member or household member may not use or be under the influence of any alcohol or judgment-altering drugs illegal drugs or alcoholic beverages while caring for children.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-08-14. Physical facilities Minimum requirements of the facility.

1. The family child care home ~~shall provide~~ must contain adequate space, indoors and out, for the daily activities of the children. This Adequate space must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy.
2. The home family child care must be clean and maintained to protect the health and safety of children. The home family child care and outdoor play area must be free of clutter, accumulation of refuse, standing water, unprotected wells, debris, and other health and safety hazards. ~~Rubbish and garbage~~ Garbage must be regularly removed.
3. ~~There must be~~ The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children.
4. The home ~~must be~~ provider shall ensure that the family child care is equipped with one working properly installed smoke detector located in each sleeping area used by the children, and one working properly installed smoke detector and one fire extinguisher per level. Properly

installed means installed according to manufacturer's or fire inspector's directions.

5. Elevated ~~The provider shall ensure that elevated areas, including stairs or and porches, must have railings and safety gates where necessary to prevent falls.~~
6. ~~The home must have~~ provider shall ensure that the family child care has a drinking water supply from an approved community water system or from a source tested and approved by the state department of health.
7. ~~Each~~ The provider shall ensure that each child shall have has a comfortable and clean place to sleep or rest and an individual blanket. The provider may allow a child to sleep or rest on the floor may be used only when the floor is carpeted or padded, warm, and free from drafts. A provider caring for a child who is in care between the hours of eight p.m. and six a.m. shall have ensure that the child has an individual sleeping place. Any child under twelve months of age or unable to walk unassisted must be provided sleeping space in a crib with a firm mattress, or a playpen with adequate padding. A staff member may not place a child on a waterbed unless the child has attained both a developmental and chronological age of thirty-six months.
8. Exterior ~~The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas must be are contained, or fenced, or have natural barriers, to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.~~
9. ~~Potential~~ The provider shall ensure that potential hazards, including such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, and poisonous plants, and open stairways, may are not be accessible to young children. Guns must be kept The provider shall keep guns and ammunition in locked storage, each separate from ammunition the other, or shall use trigger locks must be used. Ammunition must be kept in locked storage separate from all firearms. The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
10. ~~Indoor~~ The provider shall ensure indoor and outdoor equipment, toys, and supplies must be are safe, strong, nontoxic, and in good repair. All The provider shall ensure that all toys must be easily cleanable and must be cleaned and sanitized on a routine basis and equipment are kept clean and sanitary. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.

11. ~~Exit~~ The provider shall ensure that exit doorways and pathways may are not be blocked.
12. ~~The home must have~~ provider shall ensure that the family child care has a working telephone in the location used for child care. The provider shall post emergency numbers of parents and first responders.
13. ~~The home~~ family child care must have an indoor bathroom with a minimum of one lavatory sink and one flush toilet.
14. ~~The home~~ family child care must have hot and cold running water. Hot water heaters must be turned down or there must be a tempering valve or an antiscalding device on The water in the faucets used by children so that the temperature of hot water supplied to lavatories does must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
15. The family child care must meet the local minimum fire and safety standards. If the fire, safety, health, or sanitation environment of the ~~home~~ family child care appears questionable, the department or ~~county agency~~ authorized agent may require the provider to obtain an appropriate inspection from the appropriate fire authority or state department of health, and to submit the results of the inspection to the ~~county licensing agency~~ authorized agent. ~~Fire~~ The provider shall obtain fire and safety inspections must be obtained for all initially licensed prior to licensure if the family child care homes is located in a manufactured homes home, a mobile homes home, an apartment buildings building, homes a home in which care is provided to children in basements the basement, or homes a home having alternate heating devices, such as wood burning stoves, propane heaters, or fireplaces. Any inspection fees are the family child care home provider's responsibility. Any The provider shall ensure that any problems found must be are corrected.
16. ~~Steps~~ The provider shall ensure that steps and walkways must be are kept free from accumulations of water, ice, snow, or debris.
17. ~~Combustible~~ The provider shall ensure that combustible materials must be are kept away from light bulbs and other heat sources.
18. ~~Soiled or wet diapers must be stored in a sanitary, airtight container until laundered or removed from the home.~~

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-02.2 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-08-15. Minimum standards for provision of transportation.

1. ~~Within ninety days of the date of initial licensure or relicensure~~ Prior to licensure, the provider shall establish a written policy governing the transportation of children to and from the family child care home, if the family child care home provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the family child care home. If the family child care home provides transportation, the provider shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided by a family child care home, children must be protected by adequate staff supervision and safety precautions.
 - a. Staffing requirements must be ~~met~~ maintained to assure the safety of children while being transported.
 - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct appropriate to their age and stage of development.
4. The driver shall be eighteen years of age or older and shall comply with all relevant federal, state, and local laws, including child restraint system laws.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-08-16. ~~[Reserved]~~ Minimum emergency evacuation and disaster plan.

1. Each provider shall establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with local emergency management agencies. The plan must include:
 - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
 - b. What will be done if parents are unable to pick up their child as a result of the emergency; and
 - c. What will be done if the family child care has to be relocated or must close as a result of the emergency.

2. Fire and emergency evacuation drills must be performed monthly.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-08-19. Admission procedures.

1. The provider shall request a preadmission visit with the child and the child's parents to acquaint the child and the parent with the home family child care and its surroundings, the other children, and the family-child care provider.
2. The provider shall inform parents about the child care program, places and times of special activities outside the home family child care, policies, and emergency procedures, and shall discuss information concerning the child to identify and accommodate the child's needs. An explanation of how accidents and illnesses may be dealt with must be provided, as well as methods of discipline and developmentally appropriate techniques to be used.
3. ~~Parents must be notified~~ The provider shall notify parents of the payment rates and the time of payment.
4. The provider shall provide parents with unlimited access and opportunities to observe their children at any time their children are in care. This does not prohibit a family-child care home provider from locking its the doors of the family child care while children are in care.
5. ~~A health assessment statement completed by the parent must be obtained at the time of initial enrollment of the child and annually thereafter. This statement must indicate any special precautions for diet, medication, or activity. This statement must serve as evidence that a child is physically able to take part in the child care program. The provider shall verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.~~
6. The provider shall inform parents that they may request daily reports for their child, including details regarding eating, napping, and diapering.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-08-20. Program requirements.

1. ~~The family child care provider shall have a program of daily individual and small group activities appropriate to the ages and needs of the children in the family child care home. The program must include activities that foster sound social, intellectual cognitive, emotional, and physical growth, developed with discussion and in consultation with parents as to their children's needs. A written daily routine, including mealtimes, rest times, planned developmentally appropriate activities, free play, and outside time shall be available to parents. The daily routine must be flexible enough to allow for spontaneous activity as appropriate.~~
2. The program must be designed with intervals of stimulation and relaxation and a balance between periods of active play and quiet play or rest. The daily routine must foster the development of good health habits and self-discipline, adequate indoor and outdoor play, rest, and sleep, with sufficient time and opportunities for various experiences.
3. The program must provide a variety of educational experiences for all ages of children served with an adequate supply of safe play equipment, toys, and materials for indoor and outdoor activity. Each family child care home shall have enough play materials and equipment so ~~that at any one time,~~ each child in attendance may be ~~individually~~ individually or as a group.
4. Areas used for napping must provide an opportunity for undisturbed rest. ~~Napping The provider shall set napping schedules must be set for children according to the children's ages, and needs, and the parent's wishes.~~

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08, ~~50-11.1-09~~

75-03-08-21. Nutrition Minimum standards for food and nutrition.

~~Children must be served~~ A provider shall serve children nutritious meals or snacks according to the following requirements:

1. ~~Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of day. When the provider is responsible for providing food to children, the food supplied must meet United States department of agriculture standards and must be properly prepared, sufficient in amount, nutritious, varied according to the diets of the children enrolled, and served at appropriate hours in a sanitary manner.~~
2. When parents bring sack lunches for their children, the provider shall supplement lunches, as necessary, to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.

3. When a child is in care for more than three hours, that child shall receive either a snack or a meal, whichever is appropriate to that time of day.
4. Children in care during any normal mealtime hour must be served nutritious food appropriate to that time of day.
3. 5. Children in care after school ~~who have not had any food since lunch shall be provided with a snack.~~
 4. ~~a. Infants must be provided age-appropriate nutritious foods. Only breast milk or iron-fortified artificial milk, meeting the requirements of the Infant Formula Act of 1980 [Pub. L. 96-359; 94 Stat. 1190; 21 U.S.C. note et seq.], may be fed to infants less than six months of age, unless otherwise instructed by the infant's parent.~~
 - b. ~~Infants must be fed only the specific brand of artificial baby milk requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions, based upon directions of a child's physician, are provided.~~
 - c. ~~Mixed formula, in single bottles or batches, that has been unrefrigerated more than one hour, must be discarded.~~
 - d. ~~Frozen breast milk must be thawed under cool running tap water, in amounts needed. Unused, thawed breast milk must be discarded at the end of each day.~~
 5. ~~a. An infant may not be fed by propping a bottle.~~
 - b. ~~Cereal and other nonliquids or suspensions may only be fed to an infant through a bottle on the written orders of the child's physician.~~
 - c. ~~Staff members may not leave an infant unattended during the infant's feeding or eating process.~~
6. Information provided by the children's parents regarding special diets, allergies, or other dietary conditions shall be adhered to in the feeding schedule and planning of menus.
7. The provider shall serve snacks and meals to children in a manner commensurate with their development, using appropriate foods, portions, dishes, and eating utensils.
8. The provider or staff member may encourage children to eat the food served, but the provider or staff member may not coerce or force-feed children.

9. The provider shall post a daily or weekly menu for meals and snacks.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08, ~~50-11.1-09~~

75-03-08-21.1. ~~Health protection~~ Minimum sanitation and safety requirements.

1. Children shall have received all immunizations appropriate for the child's age, as prescribed by the state department of health, unless the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs.
2. ~~At least one staff member shall meet the current basic cardiopulmonary resuscitation certification requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department.~~
3. ~~Garegivers~~ Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, ~~after nosewiping,~~ after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, individually designated cloth towels, or paper towels must be available at each ~~lavatory sink~~. ~~Clean towels must be provided daily.~~
4. ~~3.~~ The ~~family child-care~~ provider shall have a statement on file, signed by the child's parents, authorizing emergency medical care for each child.
5. ~~4.~~ Sufficient ~~The provider shall ensure at least one department-approved first-aid supplies must be available for minor emergencies kit is maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times.~~
6. ~~5.~~ The ~~family child-care~~ provider shall have plans to respond to illness and emergencies, including evacuation in case of fire, serious injury, and ingestion of poison.
7. ~~The family child-care provider shall designate at least one individual who may be called upon for child care assistance in emergencies.~~
8. ~~The family child-care provider shall develop plans to respond to minor illnesses when children may be cared for in the provider's home.~~
9. ~~6.~~ If children in care require medication, the ~~caregiver~~ provider shall secure written permission and follow proper instructions as to the administration of medication. ~~Medications must be stored~~

- a. The provider shall store medications in an area inaccessible to children.
 - b. Medications stored in a refrigerator must be stored collectively in a spillproof spill proof container. A
 - c. The provider shall keep a written record of the administration of medication, including over-the-counter medication, ~~to~~ for each child must be kept. ~~For purposes of this paragraph, "medication" is defined as any drug or remedy which is taken or applied internally, orally, or topically.~~ Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records must be included in the child's record.
- 40: 7. Children The provider shall establish practices in accordance with guidance obtained through consultation with local or state health department authorities regarding the exclusion and return of children with infectious or communicable conditions shall be excluded from the family child care home until the condition may no longer be transmitted and guidance regarding exclusion and return to the family child care home is obtained through consultation with local or state health department authorities. Such. The provider may obtain this guidance may be obtained directly or through current published materials regarding exclusion and return to the family child care home.
- 41: 8. The family child care provider may release a child only to the child's parent, guardian, individual in loco parentis, or individual who provides a written authorization has been authorized by the child's parent, guardian, or individual in loco parentis.
- 42: 9. A staff member may not permit a child to play outdoors without clothing appropriate to the climatic conditions. The provider shall ensure that children playing outdoors are clothed appropriately for weather conditions.
- 43: 10. A staff member may not bathe a child, permit a child to use a wading pool, or permit a child to play outdoors, without adequate supervision. The provider shall ensure that a staff member responsible for caring for or teaching children is supervising directly any child who is bathing or using a pool.
11. The provider shall ensure that children receive proper supervision when playing outdoors.
- 44: 12. Children's personal items, including combs, brushes, pacifiers, and toothbrushes, must be individually identified and stored in a sanitary manner.

15. ~~There must be a designated cleanable diapering area in the home if children requiring diapering are in care. Diapers must be changed promptly when needed and in a sanitary manner. Infants must be changed on a cleanable surface area which must be thoroughly cleaned with detergent and sanitized after each diapering. The provider may apply to the department for permission to use cloth diapers. The department, in its discretion, may grant permission upon a satisfactory showing of adequate sanitary controls.~~
16. 13. ~~All pets present in the family child care home must be properly immunized. Nondomestic animals, such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the family child care home. Pets may not be allowed in the kitchen or eating area during meal preparation or meals. Pets and animals.~~
- a. The provider shall ensure that only cats, dogs, and small pets that are contained in an aquarium or other approved enclosed container are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children.
 - b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The provider shall ensure parents are aware of the presence of pets and animals in the family child care.
 - d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.

- h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
- ~~17.~~ 14. Wading Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the facility must be strictly supervised family child care and must be emptied and cleaned shall empty, clean, and sanitize wading pools daily.
- ~~18.~~ 15. All swimming pools used by the children must be approved annually by the local health unit.
- ~~19.~~ 16. Smoking is not permitted in any family child care home at any time during which a child who receives early childhood services from that family child care home is present and receiving services. The provider shall ensure that garbage stored outside is kept away from areas used by children and is kept in covered containers. Open burning is not permitted. The provider shall keep indoor garbage in containers with lids. The provider may allow paper waste to be kept in open waste containers.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC ~~50-11.1-02-2~~ 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-08-22. Records.

1. A copy of this chapter must be kept on the premises and available to staff members at all times.
2. The ~~family child care~~ provider shall maintain the following records:
 - a. The child's full name, ~~birthdate~~ birth date, current home address, legal names of the child's parents ~~or legal guardian~~, and the business and ~~home~~ personal telephone numbers where ~~these individuals may they can~~ be reached;
 - b. A written statement from the parents or legal guardian authorizing emergency medical care;
 - c. Names and telephone numbers of individuals authorized to take the child from the family child care ~~home~~;
 - d. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document citing that the child is medically exempt or exempt from immunizations based

~~on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-aged school-age child; and~~

- e. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, that must indicate any special precautions for diet, medication, or activity, ~~must serve as evidence that a child is physically able to take part in the child care program, and must.~~ This assessment shall be completed annually.
3. ~~All~~ The provider shall ensure that all records, photographs, and information maintained with respect to children receiving child care services must be are kept confidential, and ~~that access must be is~~ limited to staff members, the parents, ~~or legal guardian~~ of each child, and to the following, unless otherwise protected by law:
 - a. Authorized ~~county agency agent~~ agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent ~~or legal guardian~~. The family child care home shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-23. Discipline - Punishment prohibited. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, or neglect or abuse, to any child is grounds for denial or revocation of a provider's license.

1. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, ~~praise for~~ praising appropriate behavior, ~~and or~~ gentle physical restraint, such as holding. ~~Children~~ A child may not be subjected to physical harm, fear, or humiliation.
2. Authority to discipline may not be delegated to or be ~~accomplished~~ administered by children.
3. Separation, when used as discipline, must be ~~brief and~~ appropriate to the child's age development and circumstances. ~~Any~~ The child must be in a safe, lighted, well-ventilated room within sight or hearing range of

~~an adult~~ a staff member responsible for caring for or teaching children.
A child may not be isolated in a locked room or closet.

4. A child may not be physically punished for lapses in toilet training.
5. ~~When addressing a child, or while in the presence of a child, staff members~~ A staff member may not use verbal abuse or make derogatory remarks about the child, the child's family, race, or religion ~~nor when addressing a child or when in the presence of a child.~~ A staff member may not use profane, threatening, unduly loud, or otherwise abusive language in the presence of a child.
6. ~~A child may not be force-fed~~ A staff member may not force-feed a child or coerce a child to eat, unless medically prescribed and administered under a ~~physician's~~ medical provider's care.
7. ~~Deprivation~~ A staff member may not use deprivation of snacks or meals ~~may not be used~~ as a form of discipline or punishment.
8. A staff member, household member, or any other adult in the family child care may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child ~~may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the facility.~~
9. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in the mouth of a child to deter the child from biting other children.
10. A staff member may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-24. [Reserved] Specialized types of care and minimum requirements.

1. Infant care.

a. Environment and interactions.

- (1) A provider serving children from birth to twelve months shall provide an environment which protects the children from physical harm.
- (2) The provider shall ensure that each infant receives positive stimulation and verbal interaction with a staff member

responsible for caring for or teaching children, such as being held, rocked, talked with, or sung to.

(3) The staff members responsible for caring for or teaching children or emergency designee shall respond promptly to comfort an infant's or toddler's physical and emotional distress:

(a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and

(b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.

(4) The provider shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.

(5) Staff members responsible for caring for or teaching children must take children outdoors or to other areas within the family child care for a part of each day to provide some change of physical surroundings and to be with other children.

(6) When a child is awake, staff members may not confine the child to a crib, portable crib, or other equipment for longer than twenty minutes, taking into consideration the child's emotional state.

(7) The provider shall ensure that infants are not shaken or jostled.

(8) The provider shall ensure that low chairs and tables or high chairs with trays must be provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.

(9) The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

b. Feeding.

(1) The provider shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less

than six months of age, unless otherwise instructed in writing by the infant's parent or medical provider.

- (2) The provider shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider.
- (3) The provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.
- (4) The provider shall ensure that frozen breast milk is thawed under cool running tap water, or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent at the end of each day.
- (5) The provider shall ensure that an infant is not fed by propping a bottle.
- (6) The provider shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.
- (7) The provider shall ensure that a staff member responsible for caring for or teaching children is within sight and hearing range of an infant during the infant's feeding or eating process.

c. Diapering.

- (1) The provider shall ensure that there is a designated cleanable diapering station, located separately from food preparation and serving areas in the family child care, if children requiring diapering are in care.
- (2) The provider shall ensure that diapers are changed promptly when soiled or wet and in a sanitary manner.
- (3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
- (4) The provider shall ensure that soiled or wet diapers are stored in a sanitary, covered container separate from other garbage and waste until removed from the family child care.

d. Sleeping.

- (1) The provider shall ensure that infants are placed on their back when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
- (2) The provider shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.
- (3) The provider shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib.
- (4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- (5) The provider shall ensure that all items are removed from the crib or portable crib, except for one infant blanket and security item that do not pose a risk of suffocation to the infant.
- (6) The provider shall ensure that mattresses and sheets are tightly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when cribs are used by different infants, or at least weekly.
- (7) The provider shall ensure that each infant has an individual infant blanket.
- (8) The provider shall ensure that toys or objects hung over an infant crib or portable crib must be held securely and be of size and weight that would not injure an infant if the toy or object accidentally falls or if the infant pulls on the object.
- (9) The provider shall check on sleeping infants every fifteen minutes or have a monitor in the room with the sleeping infant.

2. Night care.

- a. Any family child care offering night care shall provide program modifications for the needs of children and their parents during the night.
- b. In consultation with parents, special attention must be given by the staff member responsible for caring for or teaching children to provide a transition into this type of care, appropriate to the child's needs.

- c. The provider shall encourage parents to leave their children in care or pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parents' work schedule.
- d. The provider shall ensure that children under the age of six are supervised directly when bathing.
- e. The provider shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available and the provider shall ensure:
 - (1) Pillows and mattresses have clean coverings.
 - (2) Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
 - (3) If beds are used by different children, sheets and pillowcases are laundered before use by other children.
 - (4) Each bed or cot has sufficient blankets available.
- f. The provider shall require each child in night care to have night clothing and a toothbrush marked for identification.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-08-25. [Reserved] Minimum requirements for care of children with special needs. A provider shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of children with special needs. The provider shall receive documentation of the child's special needs by the parent upon the child's enrollment.

1. When children with special needs are being cared for, the provider shall consult with the child's parents, and with the parent's permission, the child's source of professional health care or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The provider shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description of the special needs, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.

2. The provider shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's special needs and potential for growth and development.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-08-27. Effect of conviction on licensure and employment.

1. ~~A family child care home~~ An applicant or provider may not be, and a family child care home may not employ or allow, in any capacity that involves or permits contact between the employee emergency designee, staff member, or household member and any child cared for by the family child care home, an individual a provider, emergency designee, staff member, or household member who has been found guilty of, pled guilty to, or pled no contest to:
 - a. ~~An offense described in North Dakota Century Code chapters chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; or 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code sections section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an 14-09-22, abuse or neglect of a child; or~~
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes offenses identified in subdivision a; or
 - b- c. An offense, other than an offense identified in subdivision a or b, if the department in the case of a family child care an applicant, provider, or household member, or the family child care provider in the case of an employee a staff member or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

2. ~~Within ninety days of the date of initial licensure or relicensure, a family child care home~~ The department has determined that the offenses enumerated in subdivision a or b of subsection 1 have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public in a capacity as a provider, emergency designee, or staff member.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. The provider shall establish written policies and engage in practices that conform to those policies to effectively implement this section before the hiring of any staff members.
3. ~~For the purposes of subdivision b of subsection 1, the department in the case of a family child care provider, or the family child care provider in the case of an employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.~~
4. ~~The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's ability to serve the public as the owner or proprietor of a family child care home.~~
5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-08-28. Child abuse and neglect determinations decisions. If a probable cause determination or a decision that services are required A provider

shall ensure safe care for the children receiving services in the provider's family child care. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that any a child has been abused or neglected by a an applicant, provider, emergency designee, staff member, that individual or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care, and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists, indicating that any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department may can determine the applicant's, provider's, or staff member's eurrent ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability must be furnished to the family child care applicant or provider and to the regional director of the human service center or the regional director's designee for consideration and action on the family child care home application or license. Each applicant, provider, emergency designee, and staff member in the family child care shall complete a department-approved authorization for background check form no later than the first day of employment. Household members over the age of twelve must complete a department-approved authorization for background check form at the time of application, relicensure, or upon obtaining residence at the location of the family child care.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-08-29. Allowable time periods for correction Correction of deficiencies violations.

1. Deficiencies A provider shall correct violations noted in a correction order must be corrected within the following times:
 - a. For a violation of section 75-03-08-09, subsections 2 ~~and~~ 7, and 10 of section 75-03-08-14, or section 75-03-08-23, within twenty-four hours.
 - b. For a deficiency violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-08-14, within sixty days.
 - c. For a deficiency violation that requires substantial building remodeling, construction, or change, within sixty days.
 - d. For all other deficiencies violations, within twenty days.

2. All periods for correction begin on the date of receipt of the correction order by the licensee provider.
3. The regional supervisor of early childhood ~~program~~ licensing services may grant an extension of additional time to correct deficiencies violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the licensee provider and a showing that the need for the extension is created by unforeseeable circumstances and the licensee provider has diligently pursued the correction of the deficiency violation.
4. The provider shall furnish a written notice ~~of to the authorized agent upon completion of the correction order action to the county agency required corrective action~~. The correction order ~~is effective~~ remains in effect until the ~~county agency receives the notice~~ authorized agent confirms the corrections have been made.
5. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care at the family child care that a correction order has been issued. In addition to providing notice to the parent of each child, the provider also shall post the correction order in a conspicuous location within the family child care until the violation has been corrected or for five days, whichever is longer.
6. The provider shall notify the parent of each child receiving care at the family child care and each staff member of the process for reporting a complaint or suspected licensing violation.
7. A family child care program that has been issued a correction order must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the program has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order must be mailed by certified mail to the program. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
8. If a family child care program receives more than one correction order in a single year, the provider may be referred by the department for consulting services to assist the provider in maintaining compliance and to avoid future corrective action.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

75-03-08-30. Fiscal sanctions.

1. ~~A The department shall assess a~~ fiscal sanction of twenty-five dollars per day ~~must be assessed~~ for each violation of subsections 1, 2, and 9 of section 75-03-08-14; subsection 3 of section 75-03-08-21.1; or section 75-03-08-23 for each day ~~that the provider has not verified correction,~~ after the allowable time for correction of ~~deficiencies violations~~ ends; ~~that the family child care home has not verified correction.~~
2. ~~A The department shall assess a~~ fiscal sanction of fifteen dollars per day ~~must be assessed~~ for each violation of section 75-03-08-09; subsections 8 and 10 of section 75-03-08-14; or subsection 13 of section 75-03-08-21.1 for each day ~~that the provider has not verified correction,~~ after the allowable time for correction of ~~deficiencies violations~~ ends; ~~that the family child care home has not verified correction.~~
3. ~~A The department shall assess a~~ fiscal sanction of five dollars per day ~~must be assessed~~ for each violation of any other provision of this chapter for each day ~~that the provider has not verified correction,~~ after the allowable time for correction of ~~deficiencies violations~~ ends; ~~that the family child care home has not verified correction.~~

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-07.4, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.4, 50-11.1-08

75-03-08-31. Appeals. An applicant or provider may appeal a decision to deny or revoke a license ~~by filing a.~~ A written appeal with the department must be postmarked or received by the department within ten calendar days of the applicant's or provider's receipt of written notice of such a the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing ~~must will~~ be conducted in the manner ~~provided in~~ prescribed by chapter 75-01-03.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, ~~50-11.1-09~~ 50-11.1-10

CHAPTER 75-03-09

75-03-09-01. Purpose. ~~The purpose of this chapter is to establish minimum standards of group child care and to assure that those standards are maintained. Repealed effective October 1, 2010.~~

~~History: Effective December 1, 1981; amended effective January 1, 1999.~~

~~General Authority: NDCC 50-11.1-08~~

~~Law Implemented: NDCC 50-11.1-01~~

75-03-09-02. Authority and objective. ~~Pursuant to North Dakota Century Code section 50-11.1-08, the department may prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century code chapter 50-11.1. Repealed effective October 1, 2010.~~

~~History: Effective December 1, 1981; amended effective January 1, 1987; January 1, 1999.~~

~~General Authority: NDCC 50-11.1-08~~

~~Law Implemented: NDCC 50-11.1-01~~

75-03-09-03. Definitions. As The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Attendance" means the total number of children present at any one time at the group child care home or facility.
2. "Caregiver" means any individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in a group child care home or facility under the guidance and supervision of the group child care operator.
3. "County agency" means the county social service board in the county where the group child care home or facility is located.
4. "Department" means the department of human services. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
5. 3. "Emergency designee" means an individual designated by the group child care operator to be a backup caregiver for emergency assistance or to provide substitute care.
6. 4. "Group child care home or facility" means a child care facility where program licensed to provide early childhood services are provided for eight through eighteen children or a facility, other than an occupied private residence, which serves fewer than eight eighteen or fewer children.

7. ~~"Group child care operator" means the individual or group who has the legal responsibility and the administrative authority for the operation of a group child care home or facility. The group child care operator is the applicant for license or the licensee under this chapter.~~
- 8- 5. "Group child care supervisor" means an individual responsible for overseeing the day-to-day operation of a group child care program.
6. "Infant" means a child who is less than twelve months of age.
7. "Medications" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- 9- 8. "Operator" means group child care operator the individual or governing board who has the legal responsibility and the administrative authority for the operation of a group child care.
- 10- ~~"Staff member" means operator, substitute staff, volunteer, caregiver, or any other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the group child care home or facility.~~
9. "Provider" means the group child care owner or operator.
- 11- 10. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- 12- 11. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a ~~fireperson~~ firefighter for fire safety week, ~~McGruff,~~ or ~~Santa Claus person~~ a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-09-04. Effect of licensing and display of license.

1. The issuance of a license to operate a group child care ~~home or facility~~ is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed prominently in the premises to which it applies.

3. The license must specify the maximum number of children who may be cared for by the group child care. The group child care may not admit a greater number of children than the license allows.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-09-05. Denial or revocation of license.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the licenseholder provider may continue the operation of the group child care ~~home or facility~~ pending the final administrative determination or until the license expires, whichever occurs first; ~~provided, however, that this, unless continued operation would jeopardize the health and safety of the children attending the group child care.~~ This subsection does not limit the actions the department may take pursuant to North Dakota Century Code section sections 50-11.1-07.8 and 50-11.1-12.
3. The department may revoke a license to operate a group child care ~~home or facility~~ without first issuing a correction order or simultaneously with a suspension if continued operation would jeopardize the health and safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

75-03-09-06. Provisional license.

1. The director of a regional human service center, ~~in the director's discretion,~~ or the director's designee, in consultation with the department, may issue a provisional license for the operation of a ~~newly opened group child care home or facility or for a previously licensed group child care home or facility~~ although the ~~group child care home or facility~~ applicant or provider fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:

- a. ~~Prominently state~~ State that the ~~group child care home or facility provider~~ has failed to comply with all applicable standards and rules of the department;
 - b. ~~State that the items of noncompliance are set forth on a document available upon request made to the group child care operator;~~
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears ~~the same~~ an expiration date of one year from the date of issuance as of the provisional license, upon demonstrating after the applicant or provider demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. ~~A~~ The department may issue a provisional license ~~may be issued~~ only to an applicant or provider who has waived, in writing:
 - a. The right to a written statement of charges 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 nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
 4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~regional~~ director of the regional human service center or the ~~regional~~ director's designee and must be acknowledged in writing by the ~~operator~~ provider.
 5. Subject to the exceptions contained in this section, a provisional license entitles the ~~holder~~ operator to all rights and privileges afforded the ~~holder~~ operator of an unrestricted license.
 6. The department ~~shall~~ may not issue a provisional license if the ~~facility~~ group child care is not in compliance with section 75-03-09-17 or 75-03-09-18.
 7. The ~~operator~~ provider shall ~~prominently~~ display prominently the provisional license and agreement.

8. The ~~operator~~ provider shall provide parents written notice that the facility group child care is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-07, 50-11.1-07.2~~ 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-09-06.1. Restricted license. The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;
2. To restrict a pet or animal from areas accessible to children; or
3. When necessary to inform the parents that the provider is licensed, but is restricted to operating in certain rooms or floors of the residence or restricted from using specific outdoor space of the residence.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-09-07. Application for and nontransferability of group child care license.

1. An application for license must be submitted to the ~~county agency in the county in which the facility is located~~ authorized agent. Application must be made in the form and manner prescribed by the department.
2. The A license issued under this chapter is nontransferable and valid only ~~on~~ for the premises indicated on the license. ~~A new~~
3. An application for a new license must be filed ~~by a licensed group child care home or facility~~ upon change of group child care provider or location.
4. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This applies to new licenses issued on or after October 1, 2010. Existing operators will be exempt from this provision

until October 1, 2015, after which time all operators will be subject to the requirements of this subsection.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-09-08. Duties of group child care ~~operator~~ provider.

1. The ~~operator~~ provider of a group child care home ~~or facility~~ is responsible ~~to the department~~ for compliance with requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. ~~In meeting this responsibility, the operator~~ The provider shall ensure:
 - a. ~~Establishment of~~ Establish the child care program;
 - b. ~~An application is made~~ Apply for a license for each ~~the~~ group child care home ~~or facility~~ operated;
 - c. ~~Creation of an outline of a written plan and policies for the operation of each group child care home or facility~~ Possess knowledge or experience in management and interpersonal relationships;
 - d. Formulate written policies and procedures for the operation of the group child care;
 - d. e. ~~Notification is provided to the county agency~~ Notify the authorized agent of any major changes in the operation or in the ownership or governing body of the group child care home ~~or facility~~ and of any ~~staff or caregiver, including staff member~~ changes;
 - e. f. ~~Maintenance~~ Maintain records of required enrollment, attendance, health, and related other required records;
 - f. g. ~~Responsibility for all group child care home or facility staff, volunteers, or others who provide services in the home or facility and for having an emergency designee for backup emergency assistance~~ Select an emergency designee;
 - g. h. ~~Maintenance of~~ Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the group child care home ~~or facility~~;
 - h. i. That Ensure the group child care home ~~or facility~~ is sufficiently staffed at all times to meet the child and staff ratios for children

in attendance and that no more children than the licensed capacity are served at any one time;

- i. ~~j.~~ That Ensure preadmission visits for children and their parents are offered ~~in order that so~~ the facility's program, fees, operating policies, and procedures can be viewed and discussed, including:
 - (1) An explanation of how accidents and illnesses may be dealt ~~with~~ handled; and
 - (2) ~~Methods~~ The methods of developmentally appropriate discipline and ~~developmentally appropriate~~ guidance techniques that are to be used;
 - (3) The process for reporting a complaint, a suspected licensing violation, and suspected child abuse or neglect;
 - (4) Hiring practices and personnel policies for staff members; and
 - (5) Informing parents that they may request daily reports for their child, including details regarding eating, napping, and diapering;

- j. ~~k.~~ Within ninety days of the date of initial licensure or relicensure Ensure that there are ~~in place~~ signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;

- k. ~~l.~~ Parents are provided, upon request, any Provide parents, upon request, with progress reports on their children, and provide unlimited opportunities for parents to observe their children while in care, ~~however, providing.~~ Providing unlimited access does not prohibit a group child care home or facility from locking its doors while children are in care;

- l. ~~m.~~ Parents are provided Provide parents with the name of the group child care home or facility's operator provider, the group child care supervisor, staff members, and the emergency designee;

- m. ~~n.~~ The reporting of Report, as a mandatory reporter, any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and ~~within ninety days from the date of initial licensure or relicensure~~ the development of a written policy for staff to handle this reporting section 50-25.1-03;

- n. ~~o.~~ The development of and Develop and ensure compliance with a written policy and procedure for accountability when a normally

unaccompanied child fails to arrive for as expected at the program group child care; and

- ~~o. p.~~ There is, at all times when children are receiving care, a Ensure, whenever services are provided, that at least one staff member, on duty who meets current certification requirements in basic cardiopulmonary resuscitation by that meets the requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department, and is certified or trained in a first-aid program approved by the department department-approved program to provide first aid. Substitute staff are exempt from this requirement. If a provider utilizes a substitute or emergency designee who is not certified in cardiopulmonary resuscitation or first aid when no other staff member who is certified is on duty, the provider shall notify the parents of the date and time that the substitute or emergency designee will be caring for the children.
2. ~~If the operator of the group child care home or facility provider is also the group child care supervisor, the operator provider shall also meet the qualifications of the supervisor in section 75-03-09-10.~~
3. ~~The operator of a facility provider shall report within twenty-four hours to the county director or the county director's designee a authorized agent within twenty-four hours:~~
- ~~a. A death or serious accident or illness requiring hospitalization of a child while in the care of the facility group child care or attributable to care received in the facility: group child care;~~
 - ~~b. An injury to any child which occurs while the child is in the care of the group child care and which requires medical treatment;~~
 - ~~c. Poisonings or errors in the administering of medication;~~
 - ~~d. Closures or relocations of child care programs due to emergencies; and~~
 - ~~e. Fire that occurs and explosions that occur in or on the premises of the group child care.~~

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-09. Staffing requirements.

1. The number of staff members and their ~~use shall~~ responsibilities must reflect program requirements, individual differences in the needs of the children enrolled, and ~~shall may~~ permit flexible groupings, if necessary.
2. The minimum ratio of ~~caregivers or program staff~~ members responsible for caring for or teaching children to children in group child care must be:
 - a. If all children in care are children less than ~~twenty-four~~ eighteen months of age, one staff member may care for four children, a ratio of .25 in decimal form;
 - b. If all children in care are children ~~twenty-four~~ eighteen months of age to thirty-six months of age, one staff member may care for five children, a ratio of .20 in decimal form;
 - c. If all children in care are children thirty-six months of age to four years of age, one staff member may care for seven children, a ratio of ~~.142~~ .14 in decimal form;
 - d. If all children in care are children four years of age to five years of age, one staff member may care for ten children, a ratio of .10 in decimal form;
 - e. If all children in care are children five years of age to six years of age, one staff member may care for twelve children, a ratio of .08 in decimal form;
 - f. If all children in care are children six to twelve years of age, one staff member may care for eighteen children, a ratio of .05 in decimal form; and
 - g. If children in care are of mixed-age categories, the staff to child ratio is calculated in accordance with subsection 6.
3. The ~~operator~~ provider of a group child care ~~home or facility~~ shall ensure that the facility group child care is sufficiently staffed at all times to meet the child and staff ratios for children in attendance, and that no more children than the licensed capacity are served at one time.
4. If a child ~~in care has a disabling condition which requires more than usual~~ with special needs is admitted to the group child care, the child's developmental age level must be used in determining the number of children for which care can be provided.
5. ~~Children~~ The provider shall ensure that children with special conditions needs requiring more than usual care and supervision ~~shall~~ have adequate care and supervision provided to them without adversely

affecting care provided to the remaining children in the group child care home or facility.

6. The When there is a mixed-age group, the number of children in each age category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of caregivers staff members responsible for caring for or teaching children necessary at any given time, numbers of caregivers staff members for all age categories are added, and any fractional caregiver staff member count is then rounded to the next highest whole number whenever the fractional caregiver staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.
7. Children using the licensed facility group child care for a McGruff safe house, a block house, or a certified safe house program during an emergency shall are not be counted under this section.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; January 1, 1989; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02, 50-11.1-02.1, 50-11.1-04, 50-11.1-08

75-03-09-10. Minimum qualifications of group child care supervisor.

1. A group child care supervisor must be an adult of good ~~mental and physical, cognitive, social, and emotional~~ health, capable of and shall use mature judgment, ~~and shall possess knowledge and experience in management and interpersonal relationships~~ when making decisions impacting the quality of child care.
2. The group child care supervisor shall meet at least one of the following qualifications, in addition to those set out in subsection 1:
 - a. A bachelor's degree in the field of early childhood education;
 - b. A bachelor's degree with at least twelve semester hours or fifteen quarter hours in child development, child psychology, or directly related fields ~~directly related thereto~~;
 - c. An associate of arts degree in the field of early childhood development;
 - d. ~~Certification~~ Current certification as a child development associate or similar status ~~where such a local, state, or federal certification program exists~~;

- e. Certification from a Montessori teacher training program;
 - f. At least one year of exclusive experience as a registered self-declaration holder or licensed child care provider with positive references from at least two parents whose children were in the provider's care;
 - g. A high school degree or equivalency with certification of completion in a secondary occupational child care program and at least one year of exclusive experience working with young children, with references from at least two individuals who either had their children in the provider's group child care supervisor's care or instructed the provider group child care supervisor in child care programming; or
 - h. A minimum of one year of exclusive experience providing care to three or more preschool-age children, with positive references from at least two parents whose children were in the provider's group child care supervisor's care; or a center director or teacher who observed the group child care supervisor's care of children first hand.
 - i. ~~Qualification under regulations in force and effect for group child care supervisors prior to July 1, 1981.~~
3. The group child care supervisor shall:
- a. Have current certification in basic cardiopulmonary resuscitation by that meets the requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department; and
 - b. Be certified or trained in a department-approved program to provide first aid.
4. The group child care supervisor shall certify ~~attendance at completion of~~ a minimum of ten hours of ~~county-approved~~ department-approved training related to child care annually. The ten hours of training in the first year following initial licensure must include a ~~six-hour course in basic child care training~~ department-approved basic child care course taken during the first three months of employment.

5. The group child care supervisor must be physically present in the home or facility group child care no less than sixty percent of the time when children are in care.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-11. Duties of group child care supervisor. The group child care supervisor shall, ~~coextensive~~ in collaboration with the group child care operator provider, shall:

1. ~~Be responsible for planning, supervision, and activity Plan, supervise, and conduct daily activities in the group child care; and~~
2. Ensure that caregivers staff members and children under the age of eighteen shall have adult supervision in the group child care home or facility at all times;
3. Develop and deliver orientation for new staff members and keep a record of the items covered during orientation; and
4. Instruct each employee of the group child care of the process for reporting a complaint, a suspected licensing violation, or a suspected child abuse or neglect incident.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-12. Minimum qualifications for all caregivers staff members responsible for caring for or teaching children. ~~Caregivers~~ Staff members shall:

1. Be at least fourteen years of age, provided that each ~~such individual~~ staff member under age sixteen provides written parental consent for ~~such employment as a staff member,~~ and the employment arrangements comply with North Dakota Century Code chapter 34-07. A member of the immediate family of the group child care provider may provide care if ~~such~~ the family member is at least twelve years of age;
2. ~~Be mentally, physically, and emotionally able to provide adequate care for the children under supervision;~~ individuals of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;

3. Receive orientation related to child care policies, emergency procedures, special needs of children in care, and program group child care activities during the first week of caregiving work;
4. At Ensure that at no time place a child is placed in an environment that would be harmful or dangerous to a the child's physical, cognitive, social, or emotional health;
5. Certify attendance at county-approved training related to child care annually: completion of a department-approved basic child care course within their first three months of employment with the exception of substitute staff and emergency designees;
6. Shall certify the staff member's own completion of department-approved training related to child care annually as set forth below:
 - a. A caregiver staff member working thirty to forty or more hours per week shall certify a minimum of eight hours of county-approved department-approved training annually;
 - b. A caregiver staff member working fewer than thirty and at least twenty to thirty hours per week shall certify a minimum of six hours of county-approved department-approved training annually;
 - c. A caregiver staff member working fewer than twenty and at least ten to twenty hours per week shall certify a minimum of four hours of county-approved department-approved training annually;
 - d. A caregiver staff member working less fewer than ten hours per week shall certify a minimum of two hours of county-approved department-approved training annually; and
 - e. An emergency backup care worker designee is exempt from county-approved department-approved annual training; and
7. Ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety are protected.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-12.1. Minimum qualifications of volunteers. If a volunteer is providing child care, the volunteer shall meet the qualifications of a staff member responsible for caring for or teaching children and shall receive orientation for all assigned tasks.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-13. Minimum health requirements for all applicants, operators, and staff members.

- ~~1. Each operator or caregiver shall complete a health self-certification form certifying that the operator or caregiver does not have health problems that would interfere with his or her functioning as a caregiver or that would be detrimental to the health of the children or other staff. If the operator adds or replaces a caregiver after the licensure process is complete, the operator shall submit a self-certification form completed by the new caregiver to the county agency within five working days of the caregiver's first workday.~~
- ~~2. Each operator or caregiver shall furnish documentation of a negative Mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter. If the group child care operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative Mantoux tuberculosis test before the first day of employment. Substitute staff are exempted from this requirement. A group child care operator who uses an untested emergency designee may not be found in violation of this provision.~~
- ~~3. If the physical or mental, cognitive, social, or emotional health capabilities of an operator applicant or a caregiver appears staff member appear questionable, the department may require the individual to be evaluated by appropriate professionals, with the results provided to the department present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.~~
- ~~4. 2. While children are in care, A staff members shall member or household member may not use or be under the influence of any alcohol or judgment-altering illegal drugs or alcoholic beverages while caring for children.~~

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-1.1-08

75-03-09-14. Minimum requirements for facility.

1. ~~The provider shall ensure that the group child care home or facility must be~~ is properly lighted. If the lighting of the ~~home or facility group child care~~ appears questionable, the department or ~~county agency authorized agent~~ may require the ~~operator provider~~ to obtain additional lights ~~so that a minimum of fifty foot-candles of light is used in the areas generally used for children's activities.~~
2. ~~Safe~~ The provider shall ensure that safe and comfortable arrangements for naps for enrolled children ~~must be~~ are provided.
 - a. ~~The provider may allow a child to sleep or rest on the floor may be used only when the floor is~~ carpeted or padded, warm, free from drafts, and when each child has an individual blanket or sleeping mat.
 - b. ~~There must be a minimum space of two feet [58.42 centimeters] between each crib or cot. Aisles~~ The provider shall ensure that aisles between cots and cribs must be are a minimum space of two feet [58.42 centimeters] and are kept free of all obstructions while they cots and cribs are occupied.
 - c. ~~There must be~~ The provider shall ensure that there is a room available, separate from the nap room, where an individual child can go for supervised play if the child is unable to nap, so as not to disrupt the other children's rest.
 - d. ~~A~~ The provider shall ensure that a child who is in care between the hours of eight p.m. and six a.m. shall have has an individual sleeping place.
 - e. ~~Any child under twelve months of age or unable to walk unassisted must be provided sleeping space in a crib with a firm mattress or a playpen with adequate padding.~~
 - f. ~~A staff member may not place a child on a waterbed unless the child has attained both a developmental and chronological age of thirty-six months.~~
3. Water supply:
 - a. ~~The provider shall ensure that the group child care home or facility must have~~ has a drinking supply from a community water system or from a source tested and approved by the state department of health.
 - b. ~~The group child care home or facility must have hot and cold running water. Hot water heaters must be turned down or there~~

~~must be a tempering valve or antiscalding device on~~ The water in the faucets used by children so that the temperature of hot water supplied to lavatories and bathing facilities does ~~must~~ not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

4. Toilet and lavatory sink facilities:

- a. ~~Toilet~~ The provider shall provide toilet and lavatory sink facilities must be provided and must be convenient which are easily accessible to the areas used by the children and staff.
- b. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping. A minimum of one lavatory sink and one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained. Two toilets must be provided for each sixteen to eighteen children, excluding those children who are not toilet trained.
- c. ~~Child-sized~~ The provider shall provide child-sized toilet adapters, training chairs, or potty chairs ~~must be provided~~ for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.
- d. ~~At~~ The provider shall provide at least one handwashing lavatory ~~must be provided~~ sink per toilet room facility or diapering area. ~~Sanitary~~ The provider shall provide sanitary hand-drying equipment, ~~individual~~ individually designated cloth towels, or paper towels ~~must be provided~~ near handwashing lavatories sinks.
- e. ~~Safe~~ The provider shall provide safe step stools ~~must be provided~~ to allow standard-size toilets and lavatories sinks to be used by the children or the provider shall ensure the availability of child-size toilets and lavatories ~~must be provided~~ sinks.

5. ~~Sewage and wastewater disposal:~~

- a. ~~Any~~ The operator of a group child care home or facility not on a municipal or public water supply or wastewater disposal system shall have its ensure the group child care's sewage and wastewater system has been approved by the state department of health.

- b. ~~The group child care home or facility shall meet the requirements of the state plumbing code, North Dakota Administrative Code article 62-03.~~

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-15. Minimum standards for provision of transportation.

1. ~~Within ninety days of the date of initial licensure or relicensure, the operator~~ Prior to licensure, the provider shall establish a written policy governing the transportation of children to and from the group child care home or facility, if the group child care home or facility provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the group child care home or facility. If the group child care home or facility provides transportation, the ~~operator~~ provider shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided by a group child care home or facility, children must be protected by adequate staff supervision, safety precautions, and liability ~~and medical~~ insurance.
 - a. ~~Child and staff ratios~~ Staffing requirements must be maintained to assure the safety of children while being transported.
 - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.
4. The driver ~~shall~~ must be eighteen years of age or older and must comply with all relevant federal, state, and local laws, including child restraint system laws.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-09-16. Minimum emergency evacuation and disaster plan.

1. ~~Each group child care home or facility provider shall, within ninety days of the date of initial licensure or relicensure,~~ establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with ~~the authorities:~~ local emergency management agencies. The plan must include:
 - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
 - b. What will be done if parents are unable to pick up their child as a result of the emergency; and
 - c. What will be done if the group child care has to be relocated or must close as a result of the emergency.
2. Fire and emergency evacuation drills must be performed in accordance with the local fire department's guidelines.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-09-17. Fire inspections.

1. ~~Annual~~ The provider shall ensure that annual fire inspections ~~must be~~ are completed by local or state fire authorities ~~on for all facilities~~ group child cares in which care is provided to ~~seven~~ eight or more children ~~who are not members of the immediate family of the group child care operator and upon facilities~~ any group child care providing care for any number of children in homes which are manufactured or mobile homes, in apartment buildings, homes in which care is provided to children in basements, and in homes that have alternative heating devices, such as wood burning stoves, propane heaters, or fireplaces. The ~~operator~~ provider shall have ~~corrected~~ any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the ~~county licensing agency~~ authorized agent.
2. The ~~group child care home or facility~~ provider shall provide:
 - a. The ~~local~~ fire inspector's written statement of compliance with the local fire code, if there is one; or
 - b. The ~~local~~ fire inspector's written statement that the group child care ~~home or facility~~ has been inspected and that the inspector is satisfied that the facility meets minimum fire and safety standards; or.

- ~~c. A written statement from an appropriate fire official that the group child care home or facility meets the minimum fire and safety standards adopted by the state fire marshal.~~
- 3. The provider shall ensure that the group child care home or facility shall be is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-18. Minimum sanitation and safety requirements.

1. In facilities other than an occupied private residence with license capabilities of ~~thirteen~~ up to eighteen children and where meals are prepared, the provider shall ensure that the state department of health shall conduct conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The provider shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.
2. ~~Group~~ The provider shall ensure that the group child care home or facility bathroom lavatories sinks, toilets, tables, chairs, and floors must be are cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.
3. The provider shall ensure that the group child care home or facility's building, grounds, and equipment must be are located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures must be established to protect the health of the children and the ~~caregivers~~ staff members.
4. ~~Caregivers~~ Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after nose wiping, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and ~~towels must be available at each lavatory. Clean towels must be provided daily~~ sanitary hand-drying equipment, individually designated cloth towels, or paper towels must be available at each sink.
5. ~~Indoor~~ The provider shall ensure that indoor and outdoor equipment, toys, and supplies must be are safe, strong, nontoxic, and in good repair. ~~All~~ The provider shall ensure that all toys must be easily cleanable and must be cleaned and sanitized on a routine basis and

equipment are kept clean and in sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.

6. ~~The provider shall ensure that the group child care home or facility's~~ ground areas ~~must be~~ are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
7. ~~Garbage must be~~ The provider shall ensure that garbage stored outside ~~is~~ kept away from areas used by children and ~~is~~ kept in containers with tight lids, ~~made of noncombustible materials.~~ Open burning is not permitted. The provider shall keep indoor garbage in covered containers. The provider may allow paper waste to be kept in open waste containers.
8. ~~Exterior~~ The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas ~~must be~~ are contained, or fenced, or have natural barriers, to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
9. ~~Potential~~ The provider shall ensure that potential hazards, including such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants, ~~and open stairways may~~ are not be accessible to young children. Guns must be kept The provider shall keep guns and ammunition in locked storage, each separate from ammunition the other, or shall use trigger locks must be used. Ammunition must be kept in locked storage separate from all firearms. The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
10. ~~Indoor~~ The provider shall ensure that indoor floors and steps ~~may~~ are not be slippery ~~or~~ and do not have splinters. Steps The provider shall ensure that steps and walkways ~~must be~~ are kept free from accumulations of water, ice, snow, or debris.
11. ~~Elevated~~ The provider shall ensure that elevated areas, such as including stairs or ~~and~~ porches, must have railings and safety gates where necessary to prevent falls.
12. ~~The group child care operator~~ provider shall take steps to keep the group child care home ~~or facility~~ free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the group child care home ~~or facility.~~ Insect repellent may be applied outdoors on children with parental permission.

13. ~~Exit~~ The provider shall ensure that exit doorways and pathways may are not be blocked.
14. ~~Light~~ The provider shall ensure that light bulbs in areas used by children must be are properly shielded or shatterproof.
15. ~~Combustible~~ The provider shall ensure that combustible materials must be are kept away from light bulbs and other heat sources.
16. ~~There must be~~ The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the group child care is occupied by children, the room temperature must not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
17. ~~All~~ A provider shall ensure that all group child care buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, must have these painted surfaces repainted or must shall submit evidence that the surfaces paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.
18. ~~Personal~~ The provider shall ensure that personal items, including combs, pacifiers, and toothbrushes must be, are individually identified and stored in a sanitary manner.
19. ~~All pets present in the group child care home or facility must be properly immunized. Nondomestic animals such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the group child care home or facility. Pets may not be allowed in the kitchen or eating area during meal preparation or meals. Pets and animals.~~
 - a. The provider shall ensure that only cats, dogs, and small pets that are contained in an aquarium or other approved enclosed container are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children.

- b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The provider shall ensure parents are aware of the presence of pets and animals in the group child care.
 - d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.
 - h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
20. Wading Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the group child care home or facility must be strictly supervised and must be emptied and cleaned shall empty, clean, and sanitize wading pools daily.
21. All swimming pools used by children must be approved annually by the local health unit.
22. ~~Smoking is not permitted in any group child care home or facility at any time during which a child who receives early childhood services from that group child care home or facility is present and receiving services.~~

History: Effective December 1, 1981; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-02.2, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-19. Minimum requirements regarding space.

1. ~~Each group child care home or facility shall provide adequate indoor and outdoor space for the daily activities of all children in attendance within the licensed capacity of the group child care.~~
2. ~~The group child care home or facility shall provide adequate space, indoors and out, for the daily activities of the children. This must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the home or facility at one time, the operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving every child an opportunity to play outdoors.~~
 1. There must be a minimum of thirty-five square feet [3.25 square meters] of appropriate indoor space per child in the group child care. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space that children are not permitted to occupy.
 2. There must be a minimum of seventy-five square feet [6.97 square meters] of appropriate outdoor play space per child for the group child care. If available outdoor play space does not accommodate the licensed capacity of the group child care at one time, the total appropriate outdoor play space available must be no less than the number of children in the largest class or group of the group child care multiplied by seventy-five square feet [6.97 square meters]. The provider shall prepare a written schedule of outdoor playtime which limits the use of the play area to its capacity, giving each class or group an opportunity to play outdoors daily.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-20. Program requirements.

1. ~~The group child care home or facility operator~~ provider shall have a program of daily individual or small group activities appropriate to the ages and needs of the children in the group child care ~~home or facility~~. The program must include activities which foster sound social, intellectual cognitive, emotional, and physical growth, and the program must be developed with consideration of parental input. A written

daily routine including mealtimes, rest times, planned developmentally appropriate activities, free play, and outside time must be available to parents. The daily routine must be flexible enough to allow for spontaneous activity as appropriate.

2. The provider shall design the program ~~must be designed~~ with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest. The daily routine must be written, but subject to change. The daily routine must foster the development of good health habits and self-discipline, adequate indoor and outdoor play, rest, and sleep, with sufficient time and opportunities for various experiences.
3. The program must provide a variety of educational experiences for all ages of children served with an adequate supply of safe play equipment, toys, and materials for indoor and outdoor activity. Each ~~home or facility~~ shall group child care must have enough play materials and equipment so that, at any one time, each child in attendance may be ~~individually~~ involved individually or as a group.
4. Areas used for napping must provide an opportunity for undisturbed rest. ~~Napping~~ The provider shall set napping schedules must be set for children in consultation with their parents, according to the children's ages, and needs, ~~and the parent's wishes.~~
5. At the time of enrollment, the ~~group child care supervisor~~ provider shall meet with the parents to discuss the ~~children's~~ child's habits, activities, and schedules while at home and in school and the parent's special ~~concern~~ concerns about the ~~children's~~ child's past and future behavior and development. The provider shall design the schedule and activities must be designed to complement and supplement the ~~children's~~ child's experiences at home or in school.
6. The group child care ~~supervisor~~ provider shall contact parents to exchange information concerning the child and any concerns about the health, development, or behavior of the child. These concerns must be communicated to parents promptly and directly.
7. ~~Personal~~ Staff members shall stress personal hygiene practices appropriate for a child's age and development ~~must be stressed.~~
8. Each child's cultural and ethnic background and primary language or dialect must be respected by the ~~caregivers~~ staff members.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-09-21. Minimum standards for food and nutrition.

1. When the ~~operator~~ provider is responsible for providing food to children, the food supplied must meet United States department of agriculture standards and must be properly prepared, sufficient in amount, nutritious, varied according to the diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in the group child care must be treated in a safe and sanitary manner with safe and sanitary equipment.
2. When parents bring sack lunches for their children, the ~~operator~~ may provider shall supplement lunches, as necessary, to provide nutritious and sufficient amounts of food for children; and shall provide adequate and appropriate refrigeration and storage as required.
3. ~~Children shall be served a nutritious morning and afternoon snack, and, if the parent does not provide a sack lunch, a nourishing meal.~~
 - a. Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of day.
 - b. ~~4. Children~~ The provider shall serve nutritious meals to children in care during any normal mealtime hour ~~shall be served food appropriate to that time of day.~~
 - e. ~~5. Children~~ The provider shall serve snacks to children in care after school ~~who have not had any food since lunch shall be provided with a snack.~~
4. ~~6.~~ When the ~~operator~~ provider is responsible for providing food to children, menus must be ~~prepared~~ posted on a daily or weekly basis ~~and made available to the parents, the department, or other appropriate individuals.~~
5. ~~7. Information~~ The provider shall consider information provided by the children's parents as to their eating habits, food preferences, or special needs ~~must be considered in~~ creating the feeding schedules and in the tailoring of menus.
6. ~~8. Children~~ The provider shall be served serve snacks and meals to children in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.

- ~~7- 9. Children The provider or staff member may be encouraged encourage children to eat the food served, but the provider or staff member may not be subjected to coercion coerce or force-feeding force-feed children.~~

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-09-22. Records.

1. The provider shall keep a copy of this chapter on the premises of the group child care and shall make it available to staff members at all times.
2. ~~The group child care home or facility provider~~ shall maintain the following records:
 - a. The child's full name, birthdate, and current home address;
 - b. Names Legal names of the child's parents ~~or legal guardian~~, and the business and home personal telephone numbers where those ~~individuals may they can~~ be reached;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the ~~individual~~ individuals legally responsible for the child ~~may not~~ cannot be reached immediately in an emergency;
 - d. A written statement from the parents ~~or legal guardian~~ authorizing emergency medical care;
 - e. Names and telephone numbers of individuals authorized to take the child from the group child care ~~home or facility~~;
 - f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document citing that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs. unless the child is a drop-in or ~~school-aged~~ school-age child; and
 - g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, ~~that which~~ must indicate any special precautions for diet, medication, or activity, ~~must serve as evidence that a child is physically able to take part in the child care program, and must.~~ This assessment must be completed annually.

3. The provider must verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
- 2- 4. All The provider shall ensure that all records, photographs, and information maintained with respect to children receiving child care services ~~must be~~ are kept confidential, and ~~that access must be~~ is limited to staff members, the parents, ~~or legal guardian~~ of each child, and to the following, unless otherwise protected by law:
 - a. ~~Authorized county agency~~ The authorized agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the children concerned and who, in the judgment of the department, are in a position to serve the children's interests should that be necessary; and
 - c. Individuals who possess a written authorization from the child's parent ~~or legal guardian~~. The group child care home ~~or facility~~ shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-23. Discipline - Punishment prohibited. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, neglect, or abuse to any child is grounds for denial or revocation.

1. The group child care home ~~or facility~~ must, ~~within ninety days of the date of initial licensure or relicensure~~ have a written policy regarding the discipline of children ~~that must be interpreted to~~. The provider shall provide the policy to, and discuss the policy with, staff members before the group child care home ~~or facility~~ begins operation or before staff members begin working with children.
2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, ~~praise for~~ praising appropriate behavior, ~~and or~~ gentle physical restraint, such as holding. ~~Children~~ A child may not be subjected to physical harm, fear, or humiliation.

3. Authority to discipline may not be delegated to ~~or children nor may discipline be accomplished administered~~ by children.
4. Separation, when used as discipline, must be ~~brief and~~ appropriate to the child's ~~age~~ development and circumstances. ~~Any~~ The child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult a staff member responsible for caring for or teaching children. ~~A staff member may not isolate a child may not be isolated~~ in a locked room or closet.
5. A child may not be physically punished for lapses in toilet training.
6. ~~When addressing a child, or while in the presence of a child, staff members~~ A staff member may not use verbal abuse or make derogatory remarks about the child, the child's family, race, or religion nor use profane, threatening, unduly loud, or otherwise abusive language when addressing a child or in the presence of a child.
7. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
8. ~~A child~~ staff member may not be ~~force-fed; force-feed a child or coerce a child to eat~~ unless medically prescribed and administered under a physician's medical provider's care.
- 8: 9. ~~Deprivation~~ A staff member may not use deprivation of meals may not be used or snacks as a form of discipline or punishment.
- 9: 10. A staff member, household member, or any other adult in or at the group child care may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the facility.
11. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in the mouth of a child to deter the child from biting other children.
12. A staff member may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-24. Specialized types of care and minimum requirements therefor.

1. Infant care.

a. Environment and interactions.

(1) ~~A group child care home or facility serving children from birth to twenty-four~~ twelve months shall provide an environment which protects the children from physical harm ~~and is not so restricted as to inhibit physical, intellectual, emotional, and social development.~~

(2) The provider shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children, or emergency designee, such as being held, rocked, talked with, or sung to.

(3) The staff members responsible for caring for or teaching children, or emergency designee, shall respond promptly to comfort an infant's or toddler's physical and emotional distress.

(a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and

(b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.

b. (4) ~~Nonwalking children~~ The provider shall ensure that infants have the opportunity frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.

e. ~~Each infant shall have an individual sleeping space. The sheets must be changed whenever they become soiled or wet. If individual protective coverings are used for each child to protect linens, the protective coverings must be laundered at least weekly.~~

d. ~~Children must be taken outdoors or to other areas within the group child care home or facility for a part of each day to provide some change of physical surroundings and to be with other children. A child may not be confined to a crib or playpen during the entire time at the group child care home or facility, unless the child is preparing to sleep or sleeping for the duration of the care.~~

e. ~~Each infant shall have periodic individual personal contact and attention from an adult, such as being held, rocked, talked to, or sung to.~~

- f. ~~Low chairs and tables or infant seats with trays must be provided for table play and mealtime for children no longer being held for feeding. Highchairs, if used, must have a wide base and a safety strap.~~
- g. ~~Children may not be shaken or jostled.~~
- h. ~~All cries of infants must be investigated.~~
- i. ~~Infants must be fed or supervised individually and the diet and pattern of feeding must be appropriate to the individual developmental needs and parent's wishes.~~

(5) Staff members responsible for caring for or teaching children must take children outdoors or to other areas within the group child care for a part of each day to provide some change of physical surroundings and to be with other children.

(6) When a child is awake, staff members may not confine the child to a crib, portable crib, or other equipment for longer than twenty minutes, taking into consideration the child's emotional state.

(7) The provider shall ensure that infants are not shaken or jostled.

(8) The provider shall ensure that low chairs and tables or high chairs with trays must be provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.

(9) The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

b. Feeding.

j. (1) ~~Infants must be~~ The provider shall ensure that infants are provided age-appropriate developmentally appropriate nutritious foods. Only breast milk or iron-fortified artificial milk, meeting the requirements of the Infant Formula Act of 1980 [Pub. L. 96-359; 94 Stat. 1190; 21 U.S.C. 301 note et seq.], infant formula may be fed to infants less than six months of age, unless otherwise instructed in writing by the infant's parent or medical provider.

k. (2) ~~Infants must be~~ The provider shall ensure that infants are fed only the specific brand of artificial baby milk iron-fortified infant formula requested by the parent. Staff members shall

use brand-specific mixing instructions unless alternative mixing instructions, ~~based upon directions of~~ are directed by a child's physician, are provided medical provider.

- ~~l. (3) Mixed formula, in single bottles or batches,~~ The provider shall ensure that mixed formula that has been unrefrigerated more than one hour, ~~must be~~ is discarded.
- ~~m. (4) Frozen~~ The provider shall ensure that frozen breast milk ~~must be~~ is thawed under cool running tap water; ~~or in the refrigerator~~ in amounts needed. Unused, thawed breast milk must be discarded ~~or given to the parent~~ at the end of each day.
- ~~n. (5) An~~ The provider shall ensure that an infant ~~may~~ is not be fed by propping a bottle.
- ~~o. (6) Cereal~~ The provider shall ensure that cereal and other nonliquids or suspensions ~~may~~ are only be fed to an infant through a bottle on the written orders of the child's ~~physician~~ medical provider.
- ~~p. (7) Staff members may not leave~~ The provider shall ensure that a staff member responsible for caring for or teaching children is within sight and hearing range of an infant unattended during the infant's feeding or eating process.

c. Diapering.

- ~~q. (1) There must be~~ The provider shall ensure that there is a designated cleanable diapering area station, located separately from food preparation and serving areas in the group child care home or facility if children requiring diapering are in care. ~~Diapers must be~~
- ~~(2) The provider shall ensure that diapers are~~ changed promptly when needed ~~soiled or wet~~ and in a sanitary manner. ~~Infants~~
- ~~(3) Diapers must be changed on a cleanable nonporous surface area which must be thoroughly cleaned with detergent and sanitized and disinfected~~ after each diapering.
- ~~r. (4) Soiled~~ The provider shall ensure that soiled or wet disposable diapers must be are stored in a sanitary, airtight covered container separate from other garbage and waste until removed from the group child care home or facility.

d. Sleeping.

- (1) The provider shall ensure that infants are placed on their back when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
- (2) The provider shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.
- (3) The provider shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib.
- (4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- (5) The provider shall ensure that all items are removed from the crib or portable crib, except for one infant blanket and security item that does not pose a risk of suffocation to the infant.
- (6) The provider shall ensure that mattresses and sheets are tightly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when cribs are used by different infants, or at least weekly.
- (7) The provider shall ensure that each infant has an individual infant blanket.
- (8) The provider shall ensure that toys or objects hung over an infant crib or portable crib must be held securely and be of size and weight that would not injure an infant if the toy or object accidentally falls or if the infant pulls on the object.
- (9) The provider shall check on sleeping infants every fifteen minutes or have a monitor in the room with the sleeping infant.

2. Night care.

- a. Any group child care ~~home or facility~~ offering night care shall provide program modifications for the special needs of children and their parents during the night.
- b. In consultation with parents, special attention must be given by the ~~caregiver~~ staff member responsible for caring for or teaching children to provide a transition into this type of care, appropriate to the child's emotional needs.

- c. ~~When~~ The provider shall encourage parents to leave their children in care or pick them up before and after their normal sleeping period when practical, children must be left for care and picked up before and after their normal sleeping period to ensure minimal disturbance of the child during sleep, but with consideration must be given to the parent's parents' work schedule.
 - d. ~~Preschool age children must be~~ The provider shall ensure that children under the age of six are supervised directly when bathing.
 - e. ~~Comfortable~~ The provider shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, must be are available: and the provider shall ensure:
 - (1) Pillows and mattresses ~~must~~ have clean coverings.
 - (2) Sheets and pillowcases ~~must be~~ are changed as often as necessary for cleanliness and hygiene, at least weekly.
 - (3) If beds are used by different children, sheets and pillowcases ~~must be~~ are laundered before use by other children.
 - (4) Each bed or cot ~~must have~~ has sufficient blankets available.
 - f. ~~The child care home or facility~~ provider shall require each child in night care to have night clothing and a toothbrush marked for identification.
 - g. For a group facilities child care not operating out of an occupied private residence, ~~the staff members responsible for caring for or teaching children~~ must be awake and within ~~listening distance~~ hearing range during sleeping hours ~~in order to provide for the needs of children and to respond to an emergency. This provision does not apply to group homes.~~
3. ~~Drop-in group child care homes or facilities.~~
- a. If a group child care ~~home or facility~~ serves drop-in children, schoolchildren, or before-school and afterschool children, the group child care ~~home or facility~~ must be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program and to maintain the proper staff member to child ratio.
 - b. The provider shall ensure that the program must reflect reflects the special individual needs of the children who are provided drop-in service care.

- c. Admission The provider shall ensure that records secured must comply with all enrollment requirements contained in section 75-03-09-22, except the immunization verification record requirement.
 - d. Admittance The provider shall ensure that admittance procedures must provide for a period of individual attention for the child in order to acquaint the child with the group child care home or facility, its equipment, and the staff members.
 - e. A group child care home or facility may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the group child care home or facility to exceed the total number of children for which the group child care home or facility is licensed.
4. A provider shall ensure that a group child care serving only drop-in care children complies with this chapter but is exempt from the following provisions:
- a. Subsection 5 of section 75-03-09-20, subdivision f of subsection 2 of section 75-03-09-22, and subsection 1 of section 75-03-09-25.
 - b. A group child care serving only drop-in care children is exempt from the outdoor space requirements.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-09-25. Minimum requirements for care of children a child with special needs. ~~When~~ A provider shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of children with special needs are admitted, there must be appropriate provisions to meet those needs. The provider shall receive documentation of the child's special needs from the parent upon the child's enrollment.

- 1. When children ~~a child~~ with special needs are ~~is~~ admitted, the group child care supervisor shall consult with the child's parents, and with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The provider shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description of the special needs, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.

2. Caregivers ~~The provider shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's disability special needs and potential for growth and development.~~
3. ~~If the nature of the special needs or the number of children with special needs warrants added care, the group child care home or facility shall add sufficient staff and equipment as deemed necessary by the department to compensate for these needs.~~

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-09-26. Minimum provisions regarding emergency care for children. ~~Within ninety days of the date of initial licensure or relicensure, the~~ The group child care home or facility ~~shall~~ must have written plans to respond to illness and emergencies, including burns, serious injury, and ingestion of poison. ~~Parents~~ The provider shall ensure that parents of enrollees must be are advised of these plans. Plans ~~must provide for:~~

1. Establish emergency response procedures:
2. The Provide accessible posting of emergency response procedures and require training for all staff members concerning those emergency procedures:
2. ~~The establishment of emergency response procedures.~~
3. ~~The Require the availability of at least one working flashlight.;~~
4. ~~At Require at least one state department of health-approved department-approved first-aid kit maintained and kept in a designated location, inaccessible to children, yet readily accessible to caregivers-staff members at all times;~~
5. ~~A Provide a working telephone line immediately accessible to the caregivers staff members with a list of emergency telephone numbers accessibly conspicuously posted adjacent to the telephone.;~~
6. ~~Response Require a plan for responding to minor illnesses and minor accidents when children are cared for in the care of the group child care home or facility and available medical consultation regarding special care and medication.;~~
7. ~~Written Require written permission to dispense medication and proper instructions for the administration of medication obtained from the~~

parent, if of a child in the group child care home or facility who requires medication.

- a. ~~Medications~~ Medication prescribed by a physician medical provider must be accompanied by the physician's medical provider's written instructions as to dosage and storage, and labeled with the child's name and ~~dated~~ date.
 - b. ~~Medications~~ Medication must be stored in an area inaccessible to children, and ~~medications~~ medication stored in a refrigerator must be stored collectively in a spillproof container.
 - c. ~~A~~ The provider shall keep a written record of the administration of medication, including over-the-counter medication, ~~to~~ for each child ~~must be kept~~. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. ~~Completed~~ The provider shall include completed medication records ~~must be included~~ in the child's record. ~~For purposes of this subdivision, "medication" is defined as any drug or remedy which is taken or applied internally, orally, or topically.~~
8. ~~The designation of~~ Require a supervised temporary isolation area designated for a child who is too ill to remain in the group child care or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
- a. Parents are notified immediately and asked to pick up their child; and
 - b. First aid is provided and medical care is sought, as necessary.
9. ~~Provisions for emergency transportation, specifically that when a child is brought to another place for emergency care, the child is accompanied by an adult who remains~~ Identify a source of emergency health services available to the group child care, including:
- a. A prearranged plan for emergency medical care in which the parent of each enrolled child is advised of the arrangement; and
 - b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume responsibility for the child's care and until the parent or legal guardian arrives. or emergency contact is notified;

10. ~~Practices in which~~ Establish and implement practices in accordance with guidance obtained through consultation with local or state department of health authorities regarding the exclusion and return of children with infectious or communicable conditions are excluded from the group child care home or facility until the condition may no longer be transmitted. Guidance regarding exclusion and return to the group child care home or facility shall be obtained through consultation with local or state health department authorities. The operator may obtain this guidance directly or through current published materials regarding exclusion and return to the group child care home or facility; and
11. Require that the group child care operator inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, and immediately notify parents of any injury which requires emergency care beyond first aid, and require each injury report to be made part of the child's record.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-07, 50-11.1-07.2~~ 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-09-27. Effect of conviction on licensure and employment.

1. ~~A group child care home or facility operator~~ An applicant or provider may not be, and a group child care home or facility may not employ or allow, in any capacity that involves or permits contact between the employee emergency designee, group child care supervisor, staff member, or household member and any child cared for by the group child care home or facility, an individual, a provider, emergency designee, group child care supervisor, staff member, or household member who has been found guilty of, pled guilty to, or pled no contest to:
 - a. ~~An offense described in North Dakota Century Code chapters chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; or 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code sections section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting~~

prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an 14-09-22, abuse or neglect of a child;

- ~~b.~~ b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated ~~North Dakota statutes~~ offenses identified in subdivision a; or
- ~~b. c.~~ c. An offense, other than an offense identified in subdivision a or b, if the department in the case of a group child care ~~home or facility operator applicant, provider, or group child care supervisor, or household member,~~ or the ~~group child care home or facility operator provider~~ in the case of an ~~employee~~ a staff member or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
- 2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public as a provider, emergency designee, or staff member.
- 3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
- 4. Within ninety days of the date of initial licensure or relicensure, the group child care home or facility ~~The provider~~ shall establish written policies and engage in practices that conform to those policies to effectively implement this section before the hiring of any staff.
- ~~3.~~ For purposes of subdivision b of subsection 1, the department in the case of a group child care home or facility operator, or the group child care home or facility operator in the case of an employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
- ~~4.~~ The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's

~~ability to serve the public in a capacity involving the provision of child care services.~~

5. If the department determines that a criminal history record check as described in North Dakota Century Code section 50-11.1-06.2 is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-09-28. Child abuse and neglect determinations decisions. If a probable cause determination or a decision that services are required A provider shall ensure safe care for the children receiving services in the provider's group child care. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that any a child has been abused or neglected by a an applicant, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that individual any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department may can determine the applicant's, provider's, emergency designee's, or staff member's current ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability must be furnished to the group child care operator applicant or provider and to the regional director of the human service center or the regional director's designee for consideration and action on the group child care application or license. Each applicant, provider, emergency designee, and staff member in the group child care shall complete a department-approved authorization for background check form no later than the first day of employment. Household members over the age of twelve must complete a department-approved authorization for background check form at the time of

application or relicensure or upon obtaining residence at the location of the group child care.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-09-29. ~~Allowable time periods for correction~~ Correction of deficiencies violations.

1. Deficiencies Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care at the group child care that a correction order has been issued. In addition to providing notice to the parent of each child, the provider shall post the correction order in a conspicuous location within the facility until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of section 75-03-09-09, section 75-03-09-23, subsection 9 of section 75-03-09-18, and subsections 6 and 10 of section 75-03-09-18, within twenty-four hours;
 - b. For a violation ~~or deficiency~~ requiring the hiring of a group child care supervisor with those qualifications set forth in section ~~75-03-09-11~~ 75-03-09-10, within sixty days;
 - c. For a ~~deficiency~~ violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-09-17, within sixty days;
 - d. For a ~~deficiency~~ violation that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other ~~deficiencies~~ violations, within twenty days.
- 2: 3. All periods for correction begin on the date of receipt of the correction order by the licensee provider.
- 3: 4. The regional supervisor of early childhood ~~program licensing services~~ may grant an extension of additional time to correct ~~deficiencies~~ violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the licensee provider and a showing that the need for the extension is created by unforeseeable circumstances and the licensee provider has diligently pursued the correction of the ~~deficiency~~ violation.

4. ~~5.~~ The operator provider shall furnish written notice of to the authorized agent upon completion of the correction order required corrective action to the county agency. The correction order is effective remains in effect until the county agency receives the notice authorized agent confirms the corrections have been made.
6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a group child care that has been issued a correction order. If, upon reinspection, it is determined that the group child care has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the group child care. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a group child care receives more than one correction order in a single year, the department or its authorized agent may refer the group child care for consulting services to assist the provider in maintaining compliance and to avoid future corrective action.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

75-03-09-30. Fiscal sanctions.

1. ~~A~~ The department shall assess a fiscal sanction of twenty-five dollars per day ~~must be assessed~~ for each violation of subdivision g of subsection 1 of section 75-03-09-08, subsection 2 of section 75-03-09-09, section 75-03-09-17, subsections 7, 10, and 14 of section 75-03-09-18, section 75-03-09-19, and section 75-03-09-23, for each day ~~that the provider has not verified correction after the allowable time for correction of deficiencies violations ends, that the group child care home or facility has not verified correction.~~
2. ~~A~~ The department shall assess a fiscal sanction of fifteen dollars per day ~~must be assessed~~ for each violation of subsection 2 of section 75-03-09-10, section 75-03-09-12, subsection 2 and subdivisions b and d of subsection 4 of section 75-03-09-14, section 75-03-09-15, subsections 3, 5, 8, 9, and 12 of section 75-03-09-18, subsections 2 and 4 of section 75-03-09-20, subsection 1 of section 75-03-09-21, and subsections 1 and 3 of section 75-03-09-24, for each day ~~that the provider has not verified correction, after the allowable time for correction of deficiencies violations ends, that the group child care home or facility has not verified correction.~~

3. ~~A The department shall assess a fiscal sanction of five dollars per day must be assessed for each violation of any other provision of this chapter for each day that the provider has not verified correction after the allowable time for correction of deficiencies violations ends, that the group child care home or facility has not verified correction.~~

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-04~~ 50-11.1-01, 50-11.1-07.4, 50-11.1-08

75-03-09-31. Appeals. An applicant or provider may appeal a decision to deny or revoke a license by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of the applicant's or provider's receipt of written notice of such a the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing may be conducted in the manner ~~provided in~~ prescribed by chapter 75-01-03.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-04~~ 50-11.1-08, 50-11.1-10

CHAPTER 75-03-10

75-03-10-03. Definitions. As The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Attendance" means the total number of children present at any one time at the facility.
2. ~~"Caregiver" means any individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in a child care center under the guidance and supervision of the child care center operator.~~
3. ~~"Child care center" means an early childhood facility where early childhood services are provided to nineteen or more children.~~
4. ~~"Child care center director" means any individual responsible for overseeing and planning the day-to-day child care center activities.~~
5. ~~"Child care center operator" means the individual who has the legal responsibility and the administrative authority for the operation of a child care center. The child care center operator is the applicant for license or the licensee under this chapter.~~
6. ~~"Child care center supervisor" means any individual with the responsibility for organizing and supervising daily program activities.~~
7. ~~"Department" means the North Dakota department of human services.~~
"Child with special needs" means a child whose medical providers have determined that the child has or is at risk of chronic physical, developmental, behavioral, or emotional conditions.
3. "Director" means the individual responsible for overseeing the general operation and implementing the policies and procedures of the child care center.
- 8: 4. "Emergency designee" means an individual designated by the child-care center operator to be a backup caregiver staff member for emergency assistance or to provide substitute care.
- 9: "Parent" means an individual bearing the legal relationship of father or mother to a child enrolled in a child care center, including an individual who legally stands in place of a parent, including a legal guardian or custodian.
- 10: ~~"Staff member" means operator, substitute staff, volunteer, caregiver, or other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the child care center.~~

5. "Infant" means a child who is less than twelve months of age.
6. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
7. "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a child care center.
11. 8. "Substitute staff" means ~~paid or unpaid~~ staff who work less than thirty-two hours per month and are not regularly scheduled for work.
9. "Supervisor" means any individual with the responsibility for organizing and supervising daily child care center activities.
12. 10. "Volunteer" means an individual who visits or provides an unpaid service ~~or visit, including a fireperson firefighter for fire safety week, McGruff, or Santa Claus person a practicum student, or a foster grandparent.~~

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-10-04. Effect of licensing and display of license.

1. The issuance of a license to operate a child care center is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed prominently in the premises to which it applies.
3. The license must specify the maximum number of children who may be cared for by the center. The center may ~~at no time~~ not admit a greater number of children than the license allows.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-10-05. Denial or revocation of license.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the licenseholder operator may continue the operation of the child care center pending the final administrative determination or until the license expires, whichever occurs first; provided, however, that this subsection does not limit the actions the department may take pursuant to North Dakota Century Code ~~section~~ sections 50-11.1-07.8 and 50-11.1-12.
3. The department may revoke a license to operate a child care center without first issuing a correction order or simultaneously with a suspension if continued operation would jeopardize the health and safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

75-03-10-06. Provisional license.

1. The director of a regional human service center, ~~in the director's discretion,~~ or the director's designee, in consultation with the department, may issue a provisional license for the operation of a ~~newly opened child care center or for a previously licensed child care center,~~ although the ~~child care center~~ applicant or operator fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:
 - a. ~~Prominently state~~ State that the ~~child care center operator~~ has failed to comply with all applicable standards and rules of the department;
 - b. ~~State that the items of noncompliance are set forth on a document available upon request made to the child care center's operator;~~
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears ~~the same~~ an expiration date of one year from the date of issuance as of

the provisional license, ~~upon demonstrating~~ after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.

3. ~~A~~ The department may issue a provisional license ~~may be issued~~ only to an applicant or operator who has waived, in writing:
 - a. The right to a written statement of charges 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 nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~regional~~ director of the regional human service center or the ~~regional~~ director's designee and must be acknowledged in writing by the operator.
5. Subject to the exceptions contained in this section, a provisional license entitles the holder to all rights and privileges afforded the holder of an unrestricted license.
6. The department may not issue a provisional license if the ~~facility~~ center is not in compliance with section 75-03-10-17 or 75-03-10-18.
7. The operator shall ~~prominently~~ display prominently the provisional license and agreement.
8. The operator shall provide parents written notice that the ~~facility~~ center is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-07, 50-11.1-07.2~~ 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-10-06.1. Restricted license. The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;
2. To restrict a pet or animal from areas accessible to children; or

3. When necessary to inform parents that the operator is licensed, but is restricted to operating in certain rooms or floors or restricted from using specific outdoor space.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-07. Application for and nontransferability of child care center license. An application for a license must be submitted to the county agency in the county in which the facility is located authorized agent.

1. An applicant shall submit an application for a license to the authorized agent. Application must be made in the form and manner prescribed by the department.
2. The A license issued under this chapter is nontransferable and is valid only on for the premises that are indicated on the license.
3. A new An application for a new license must be filed by a licensed center the operator upon change of operator or location.
4. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This applies to new licenses issued on or after October 1, 2010. Existing operators will be exempt from this provision until October 1, 2015, after which time all operators will be subject to the requirements of this subsection.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-10-08. ~~Duties of child care center operator~~ Staffing and group size requirements.

1. ~~The operator of a child care center is responsible to the department for compliance with the requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. In meeting this responsibility, the operator shall ensure:~~
 - a. ~~Establishment of the child care program;~~
 - b. ~~An application is made for a license for each child care center operated;~~

- ~~c. Creation of an outline of a written plan and policies for the operation of each child care center;~~
- ~~d. Notification is provided to the county agency of any major changes in the operation or in the ownership or governing body of the child care center and of any staff or caregiver changes;~~
- ~~e. Liability insurance for bodily injury and property damage for the child care center is carried;~~
- ~~f. Formulation of written policies and procedures relating to:

 - ~~(1) Hiring practices and personnel policies for staff;~~
 - ~~(2) Methods for obtaining references and employment histories of staff;~~
 - ~~(3) Methods of conducting staff performance evaluations;~~
 - ~~(4) Children's activities, care, and enrollment; and~~
 - ~~(5) The responsibilities and rights of staff and parents;~~~~
- ~~g. Maintenance of required enrollment, attendance, health, financial, and related records;~~
- ~~h. Responsibility for all child care center staff, volunteers, or others who provide services in the facility and for notifying the department and county agency of any change of directors;~~
- ~~i. Maintenance of necessary information to verify staff qualifications and to ensure safe care for the children in the child care center;~~
- ~~j. Designation of a qualified director;~~
- ~~k. That parents of enrolled children and other interested parties are informed of the goals, policies, procedures, and content of the child care center's program, including:

 - ~~(1) An explanation of how accidents and illnesses may be dealt with; and~~
 - ~~(2) Methods of discipline and developmentally appropriate guidance techniques to be used;~~~~
- ~~l. That parents of enrolled children:~~

- (1) ~~Are advised of the center's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director; and~~
- (2) ~~Receive written notice of the effective date, duration, scope, and impact of any significant changes in the center's services;~~
- m. ~~That the center is sufficiently staffed at all times to meet the child and staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;~~
- n. ~~That the child care center has sufficient qualified caregivers available to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty;~~
- o. ~~That written agreements with the parents of each child specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;~~
- p. ~~That written policies are established which provide for emergency medical care, the care of children with special physical, emotional, or mental needs, if children with these needs are in care, and the treatment of illness and accident;~~
- q. ~~That written policies are established concerning the care and safeguarding of personal belongings brought to the child care center by children or others on their behalf;~~
- r. ~~Parents are provided unlimited access and opportunities to observe their children at any time while in care, and are provided regular opportunities to meet with caregivers before and during enrollment to discuss their children's needs;~~
- s. ~~Parents are provided, upon request, any progress reports on their children;~~
- t. ~~The reporting of any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and development of a written policy for staff to handle this reporting;~~
- u. ~~That there is, at all times when children are receiving care, a staff member on duty who meets current certification requirements in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs and in a first-aid program approved by the department. Substitute staff are exempt from this requirement;~~

- v. ~~The development of and compliance with a procedure for accountability when a child fails to arrive for the program; and~~
 - w. ~~Garecheck information is made available to parents.~~
2. ~~If the operator of the child care center is also the director, the operator shall also meet the qualifications of the director set forth in section 75-03-10-11.1.~~
 3. ~~The operator of a facility shall report within twenty-four hours to the county director or the county director's designee a death or serious accident or illness requiring hospitalization of a child while in the care of the facility or attributable to care received in the facility. The number of staff members and their responsibilities must reflect program requirements and individual differences in the needs of the children enrolled, and may permit mixed-age groups, if necessary. Service personnel engaged in housekeeping and food preparation may not be counted in the child to staff ratio for periods of time when they are engaged in housekeeping or food preparation.~~
 2. The operator shall ensure that the center is sufficiently staffed at all times to meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at one time. The minimum ratio of staff members responsible for caring for or teaching children to children in child care centers and maximum group size of children must be:
 - a. If all children in care are children less than eighteen months of age, one staff member may care for four children, a ratio of .25 in decimal form, with a maximum group size of eight children with two staff members;
 - b. If all children in care are children eighteen months of age to thirty-six months of age, one staff member may care for five children, a ratio of .20 in decimal form, with a maximum group size of ten children with two staff members;
 - c. If all children in care are children three years of age to four years of age, one staff member may care for seven children, a ratio of .14 in decimal form, with a maximum group size of fourteen children with two staff members;
 - d. If all children in care are children four years of age to five years of age, one staff member may care for ten children, a ratio of .10 in decimal form, with a maximum group size of twenty children with two staff members;

- e. If all children in care are children five years of age to six years of age, one staff member may care for twelve children, a ratio of .08 in decimal form, with a maximum group size of twenty-four children with two staff members; and
- f. If all children in care are children six years to twelve years of age, one staff member may care for eighteen children, a ratio of .05 in decimal form, with a maximum group size of thirty-six children with two staff members.

The provisions in this subsection relating to maximum group size do not apply to operators licensed prior to January 1, 1999, if those operators are otherwise qualified to operate a child care center. Any operator who discontinues operation of the child care center under a valid license or who fails to renew the operator's license upon its expiration will not be exempt subsequently from the requirements relating to maximum group size. The exemption for operators licensed prior to January 1, 1999, will end on January 1, 2015, after which time all operators will be subject to the requirements of this subsection.

- 3. If a child with special needs is admitted to the child care center, the child's developmental age level must be used to determine into which age group the child should be placed for determining child to staff ratios.
- 4. The operator shall ensure that a child with special needs requiring more than usual care and supervision has adequate care and supervision without adversely affecting care provided to the other children in the child care center.
- 5. When there are mixed-age groups in the same room, the group size must be consistent with the age of the majority of the children when no children age zero to eighteen months are in the group. When children age zero to eighteen months are in the mixed-age group, the group size may not exceed eight children.
- 6. When there is a mixed-age group, the number of children in each age category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of staff members responsible for caring for or teaching children necessary at any given time, numbers of staff members for all age categories are added, and any fractional staff member count is then rounded to the next highest whole number whenever the fractional staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.

7. Children using the child care center for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

75-03-10-09. Staffing and group size requirements Duties of child care center operator.

1. ~~The number of staff members and their use shall reflect program requirements, individual differences in the needs of the children enrolled, and shall permit flexible groupings, if necessary. Service personnel engaged in housekeeping and food preparation may not be counted in the child and staff ratio for periods of time when so engaged. Children with special conditions requiring more than usual care and supervision shall have adequate care and supervision provided to them without adversely affecting care provided to the remaining children in the child care center.~~
2. ~~The operator of a child care center shall ensure that the center is sufficiently staffed at all times to meet the staffing requirements for children in attendance, and that no more children than the licensed capacity are served at one time. The minimum ratio of caregivers or program staff to children in child care centers and maximum groups size of children must be:~~
 - a. ~~If all children in care are children less than twenty-four months of age, one staff member may care for four children, a ratio of .25 in decimal form, with a maximum group size of eight children;~~
 - b. ~~If all children in care are children twenty-four months of age to thirty-six months of age, one staff member may care for five children, a ratio of .20 in decimal form, with a maximum group size of ten children;~~
 - c. ~~If all children in care are children three years of age to four years of age, one staff member may care for seven children, a ratio of .142 in decimal form, with a maximum group size of fourteen children;~~
 - d. ~~If all children in care are children four years of age to five years of age, one staff member may care for ten children, a ratio of .10 in decimal form, with a maximum group size of twenty children;~~

- e. ~~If all children in care are children five years of age to six years of age, one staff member may care for twelve children, a ratio of .08 in decimal form, with a maximum group size of twenty-four children; and~~
- f. ~~If all children in care are children six to twelve years of age, one staff member may care for eighteen children, a ratio of .05 in decimal form, with a maximum group size of thirty-six children.~~

~~The provisions in this subsection relating to maximum group size shall not apply to child care center operators licensed prior to January 1, 1999, if such child care center operators are otherwise qualified to operate a child care center. Any child care center operator who discontinues operation of the child care center under a valid license or who fails to renew such license upon expiration thereof shall not thereafter be exempt from the requirements relating to maximum group size.~~

- 3. ~~If a child has a disabling condition which requires more than usual care, the child's developmental age level must be used in determining the number of children for which care may be provided.~~
- 4. ~~When there are mixed age groups in the same room, the group size must be consistent with the age of the majority of the children when no infants, age zero to twenty-four months, or toddlers, age twenty-four months to thirty-six months, are in the mixed age group. When infants or toddlers are in the mixed age group, the group size for infants and toddlers must be maintained.~~
- 5. ~~The number of children in each age category is divided by the corresponding ratio number and carried to the nearest hundredth. To determine the number of caregivers necessary at any given time, numbers of caregivers for all age categories are added, and any fractional caregiver count is then rounded to the next highest whole number whenever the fractional caregiver count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.~~
- 6. ~~Children using the licensed facility for a McGruff safe house, a block house, or a certified safe house program during an emergency may not be counted under this section. The operator is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator shall:~~
 - 1. Designate a qualified director and shall delegate appropriate duties to the director:

- a. The operator shall ensure that the director or a designated acting director is present at the center at least sixty percent of the time when the center is open;
 - b. The operator shall ensure that the individual designated as an acting director for an ongoing period of more than thirty days meets the qualifications of a director; and
 - c. The operator shall ensure that when the director and acting director are not present at the center, a person who meets the qualifications of a supervisor is on duty;
2. Apply for a license for the child care center;
3. Provide an environment that is physically and socially adequate for children;
4. Notify the authorized agent of any major changes in the operation, ownership, or governing body of the child care center, including staff member changes;
5. Ensure that liability insurance is carried to insure against bodily injury and property damage for the child care center;
6. Formulate written policies and procedures for the operation of the child care center relating to:
 - a. Hiring practices and personnel policies for staff members;
 - b. Methods for obtaining references and employment histories of staff members;
 - c. Methods of conducting staff member performance evaluations;
 - d. Children's activities, care, and enrollment; and
 - e. The responsibilities and rights of staff members and parents;
7. Maintain records of enrollment, attendance, health, and other required records;
8. Select an emergency designee;
9. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the child care center;

10. Ensure that parents of enrolled children and other interested parties are informed of the goals, policies, procedures, and content of the child care center's program, including:
 - a. An explanation of how the center will handle accidents and illnesses;
 - b. The methods of developmentally appropriate discipline and guidance techniques to be used;
 - c. The process for reporting a complaint, a suspected licensing violation, and suspected child abuse or neglect; and
 - d. Hiring practices and personnel policies for staff members;
11. Ensure that parents of enrolled children:
 - a. Are advised of the center's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director;
 - b. Receive written notice of the effective date, duration, scope, and impact of any significant changes in the center's services; and
 - c. Receive notice that they may request written daily reports for their child, including details regarding eating, napping, and diapering;
12. Ensure that the center is sufficiently staffed at all times to meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
13. Ensure that the child care center has sufficient qualified staff members available to substitute for regularly assigned staff who are sick, on leave, or otherwise unable to be on duty;
14. Ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
15. Ensure that written policies are established which address provision of emergency medical care, the care of a child with special needs when a child with special needs is in care, and the treatment of illness and accident;
16. Ensure that written policies are established concerning the care and safeguarding of personal belongings brought to the child care center by a child or by another on the child's behalf;

17. Provide parents with unlimited access and opportunities for parents to observe their children while in care, and provide parents with regular opportunities to meet with staff members responsible for caring for or teaching children before and during enrollment to discuss their children's needs. Providing unlimited access does not prohibit a child care center from locking its doors while children are in care;
18. Provide parents, upon request, with progress reports on their children;
19. Report immediately, as a mandatory reporter, suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
20. Ensure, whenever services are provided, that at least one staff member, emergency designee, or substitute staff is on duty who meets the current certification requirements in cardiopulmonary resuscitation by the American heart association, American red cross, or other department-approved cardiopulmonary resuscitation training programs approved by the department, and is certified or trained in a department-approved program to provide first aid;
21. Develop and ensure compliance with a written policy and procedure for accountability when a normally unaccompanied child fails to arrive as expected at the child care center;
22. Ensure that staff members responsible for caring for or teaching children under the age of eighteen are supervised by an adult staff member;
23. Meet the qualifications of the director set forth in section 75-03-10-10, if the operator is also the director; and
24. Report to the authorized agent within twenty-four hours:
 - a. A death or a serious accident or illness requiring hospitalization of a child while in the care of the child care center or attributable to care received in the child care center;
 - b. An injury to any child which occurs while the child is in the care of the child care center and which requires medical treatment;
 - c. Poisonings or errors in the administering of medication;
 - d. Closures or relocations of child care programs due to emergencies; and
 - e. Fire that occurs or explosions that occur in or on the premises of the child care center.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by

the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-01, 50-11.1-02, 50-11.1-02.1~~ 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-10. Minimum qualifications of child care center supervisor director. A supervisor director shall:

- ~~1. Have had training and demonstrated ability in working with children;~~
- ~~2. Meet at least one of the following qualifications:~~
 - ~~a. An associate degree in the field of early childhood development;~~
 - ~~b. Certification as a child development associate or similar status where such a local, state, or federal certification program exists;~~
 - ~~c. Certification from a Montessori teacher training program; or~~
 - ~~d. A high school diploma or high school equivalency with at least one year of experience in a child care or similar setting.~~
- ~~3. Possess the capacity and willingness to increase skills and competence through experience, training, and supervision;~~
- ~~4. Be an adult of good mental and physical health, capable of mature judgment, and shall possess knowledge and experience in interpersonal relationships;~~
- ~~5. Have current certification in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department; and~~
- ~~6. Certify attendance at a minimum of thirteen hours of county agency approved training related to child care annually. Be an adult of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care;~~
2. Possess knowledge or experience in management and interpersonal relationships;
3. Hold at least one of the following qualifications, in addition to those set out in subsection 1:
 - a. A bachelor's degree in the field of early childhood education;

- b. A bachelor's degree with at least twenty-four semester hours or thirty quarter hours in child development, child psychology, or directly related fields, with at least six months of experience in a child care center or similar setting;
 - c. An associate of arts degree in the field of early childhood development with at least six months of experience in a child care center or similar setting;
 - d. A teaching certificate in elementary education with at least six months of experience in a child care center;
 - e. A current certification as a child development associate or a similar status, with at least one year of experience in a child care center or similar setting;
 - f. A bachelor's degree with at least twelve semester hours or fifteen quarter hours in child development, child psychology, or directly related fields, with at least one year of experience in a child care center or similar setting; or
 - g. Certification from a Montessori teacher training program with at least one year of experience in a Montessori school, child care center, or similar setting and at least twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or related fields; and
4. Certify annual completion of a minimum of thirteen hours of department-approved training related to child care.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-11. Duties of child care center director. ~~The child care center director shall, coextensive in collaboration with the child care center operator, shall:~~

- 1. ~~Be responsible for program planning, supervision, and activity Plan, supervise, and conduct daily activities in the child care center;~~
- 2. ~~Be responsible for maintenance of~~ Maintain required enrollment, attendance, health, financial, and related other required records;
- 3. ~~Be responsible for the screening, scheduling, supervision~~ Screen, schedule, supervise, and be responsible for the conduct of staff members while staff members are on duty; and

4. ~~Ensure that a child care center has a director or a designated acting director who must be present at the center at least sixty percent of the time that the center is open; Perform other duties as delegated by the operator.~~
5. ~~Ensure that the individual designated as an acting director for an ongoing period of less than thirty days meets the qualifications of a child care supervisor; and~~
6. ~~Ensure that the individual designated as an acting director for an ongoing period of more than thirty days meets the qualifications of a child care center director.~~

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-11.1. Minimum qualifications of child care center director supervisor. A supervisor shall:

1. ~~A child care center director must be an adult of good mental and physical health, capable of mature judgment, and shall possess knowledge and experience in management and interpersonal relationships.~~
2. ~~A child care center director shall meet at least one of the following qualifications, in addition to those set out in subsection 1:~~
 - a. ~~A bachelor's degree in the field of early childhood education with eight or more weeks of supervised student teaching experience in a child care center or similar setting;~~
 - b. ~~A bachelor's degree with at least twenty-four semester hours or thirty quarter hours in child development, child psychology, or fields directly related thereto, with at least six months of experience in a child care center or similar setting;~~
 - c. ~~An associate degree in the field of early childhood development with at least six months of experience in a child care center or similar setting;~~
 - d. ~~A teaching certificate in elementary education with at least six months of experience in a child care center and at least twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or related fields;~~

- e. ~~Certification as a child development associate or similar status where such a local, state, or federal certification program exists, with at least one year of experience in a child care center or similar setting;~~
 - f. ~~A bachelor's degree with at least twelve semester hours or fifteen quarter hours in child development, child psychology, or fields directly related thereto, with at least one year of experience in a child care center or similar setting; or~~
 - g. ~~Certification for a Montessori teacher training program with at least one year of experience in a Montessori school, child care center, or similar setting and at least twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or related fields.~~
3. ~~The director shall certify attendance at a minimum of thirteen hours of county-approved training related to child care annually. Be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;~~
 2. Have a demonstrated ability in working with children;
 3. Hold at least one of the following qualifications:
 - a. An associate degree in the field of early childhood development;
 - b. Current certification as a child development associate;
 - c. Certification from a Montessori teacher training program; or
 - d. A high school diploma or high school equivalency with at least one year of experience in a child care or similar setting;
 4. Possess knowledge and experience in building and maintaining interpersonal relationships;
 5. Meet current certification requirements in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other cardiopulmonary resuscitation training programs approved by the department;
 6. Be certified or trained in a department-approved program to provide first aid;
 7. Successfully complete a department-approved basic child care course within the first three months of employment; and

8. Successfully complete a minimum of thirteen hours of department-approved training related to child care.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-11.2. Duties of the child care center supervisor. The supervisor, in collaboration with the director, shall:

1. Communicate with parents about the individual needs of their children, including any special concerns the parents may have;
2. Plan daily and weekly schedules of activities and make those plans available to parents; and
3. Ensure that program policies are adhered to in the classes and groups assigned to the supervisor.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-12. Minimum qualifications for all caregivers staff members responsible for caring for or teaching children.

1. ~~Garegivers shall~~ Staff members:
 - a. ~~Be~~ Shall be at least fourteen years of age, provided that each ~~such individual staff member~~ under age sixteen has written parental consent for ~~such employment as a staff member,~~ and the employment arrangements comply with North Dakota Century Code chapter 34-07;
 - b. ~~Be mentally, physically, and emotionally able to provide adequate care for the children under supervision;~~ Shall be individuals of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
 - c. ~~Certify~~ Shall certify completion of a department-approved basic child care course within the first three months of employment, with the exception of substitute staff members and emergency designees;
 - d. Shall certify the staff member's own annual attendance at county-approved successful completion of the department-approved training related to child care; as set forth below:

- (1) If working ~~thirty to forty~~ or more hours per week, certify thirteen hours of ~~county-approved~~ department-approved training annually;
 - (2) If working fewer than thirty hours and more than twenty to ~~thirty~~ hours per week, certify eleven hours of ~~county-approved~~ department-approved training annually;
 - (3) If working fewer than twenty hours and at least ten to ~~twenty~~ hours per week, certify nine hours of ~~county-approved~~ department-approved training annually; and
 - (4) If working ~~less~~ fewer than ten hours per week, certify seven hours of ~~county-approved~~ department-approved training annually; and
- d. ~~Not use or be under the influence of any alcohol or judgment-altering drugs while children are in care; and~~
 - e. ~~At no time~~ Shall not place a child in an environment that would be harmful or dangerous to a the child's physical, cognitive, social, or emotional health;
2. ~~Newly hired caregivers shall have~~ Receive a two-day, onsite orientation to the child care program during the first week of employment. The director shall document orientation of each staff member responsible for caring for or teaching children on an orientation certification form. The orientation must address the following:
- a. Emergency health, fire, and safety procedures at for the center;
 - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;
 - c. Any special health or nutrition problems of the children assigned to the caregiver staff member;
 - d. Any special needs of the children assigned to the caregiver staff member;
 - e. The planned program of activities at the child care center;
 - f. Rules and policies of the child care center; and
 - g. Child abuse and neglect reporting laws; and

3. ~~Caregivers under the age of eighteen and all~~ Ensure safe care for children in care shall have adult under supervision in the child care center at all times. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety is protected.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-13. Minimum health requirements for all caregivers applicants, operators, and staff members.

1. ~~Each operator or caregiver shall complete a health self-certification form certifying that the operator or caregiver does not have health problems that would interfere with the person's functioning as a caregiver or that would be detrimental to the health of the children or other staff. If the operator adds or replaces a caregiver after the licensure process is complete, the operator shall submit a self-certification form completed by the new caregiver to the county agency within five working days of the caregiver's first workday.~~
2. ~~Each operator or caregiver shall furnish documentation of a negative Mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter. If the operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative Mantoux tuberculosis test before the first day of employment. Substitute staff are exempt from this requirement. A child care center operator who uses an untested emergency designee may not be found in violation of this provision.~~
3. ~~If the physical or mental, cognitive, social, or emotional health capabilities of an applicant, operator, or caregiver staff member appears questionable, the department may require the individual to be evaluated by appropriate professionals, with the results provided to the department present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.~~

4. 2. ~~While children are in care, A staff members member~~ may not use or be under the influence of any ~~alcohol or judgment-altering~~ illegal drugs or alcoholic beverages while caring for children.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-14. Minimum qualifications for volunteers. If a volunteer is providing child care, volunteers the volunteer shall meet the qualifications of child care-caregivers a staff member responsible for caring for or teaching children and shall receive orientation ~~as needed~~ for all assigned tasks.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-15. Minimum standards for provision of transportation.

1. The operator shall establish a written policy governing the transportation of children to and from the child care center, if the child care center provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the child care center. If the child care center provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided by a child care center, children must be protected by adequate staff member supervision, safety precautions, and liability ~~and medical~~ insurance.
 - a. ~~Child and staff ratios~~ Staffing requirements must be maintained to assure the safety of children while being transported. ~~The department requires one busdriver per twenty children and one additional individual for twenty-one children or more.~~
 - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.

4. The driver must be eighteen years of age or older and shall comply with all relevant federal, state, and local laws, including child restraint system laws.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-16. Minimum emergency evacuation and disaster plan.

1. ~~Each child care center~~ The operator shall have an approved and posted establish and post an emergency disaster plan for the safety of the children in care. ~~Written~~ The operator shall develop written disaster plans ~~must be developed~~ in cooperation with the ~~authorities.~~ local emergency management agencies. The plan must include:
 - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
 - b. What will be done if parents are unable to pick up their child as a result of the emergency; and
 - c. What will be done if the child care center has to be relocated or must close as a result of the emergency.
2. ~~Fire and emergency~~ evacuation drills must be performed in accordance with the ~~local fire department's~~ state fire marshal's guidelines.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, ~~50-11.1-02, 50-11.1-02.1~~ 50-11.1-04, 50-11.1-08

75-03-10-17. Fire inspections.

1. ~~Annual~~ The operator shall ensure that annual fire inspections ~~must be~~ are completed by local or state fire authorities. The operator shall correct or have corrected any code violations noted by the fire inspector and shall file reports of the inspections and any corrections with the ~~county licensing agency~~ authorized agent.

2. ~~The operator shall ensure that the~~ child care center ~~must be~~ is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department ~~or state fire marshal~~.
3. ~~The child care center~~ operator shall provide:
 - a. ~~The local fire inspector's~~ written statement of compliance with the local fire code, if there is one; or
 - b. ~~The local fire inspector's~~ written statement that the child care center has been inspected and that the inspector is satisfied that the child care center meets minimum fire and safety standards; ~~or,~~
 - c. ~~A written statement from an appropriate fire official that the child care center meets minimum fire and safety standards adopted by the state fire marshal.~~

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-18. Minimum sanitation and safety requirements.

1. ~~In centers where meals are prepared,~~ The operator shall ensure that the state department of health shall conduct conducts an annual inspection. ~~If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.~~
2. ~~Child~~ The operator shall ensure that the child care center bathroom ~~lavatories~~ sinks, toilets, tables, chairs, and floors ~~must be~~ are cleaned daily. Cots and mats must be designated individually labeled, and cleaned and sanitized at least weekly. If different children use the same cots or mats, they must be ~~thoroughly~~ thoroughly cleaned and sanitized between each use. ~~Separate~~ The operator shall provide separate storage ~~must be provided~~ for personal blankets or coverings.
3. ~~The operator shall ensure that the~~ child care center's building, grounds, and equipment ~~must be~~ are located, cleaned, and maintained to protect the health and safety of children. ~~Routine~~ The operator shall establish routine maintenance and cleaning procedures ~~must be established~~ to protect the health of the children and the ~~caregivers~~ staff members.
4. ~~Caregivers~~ Staff members and children shall wash their hands, according to recommendations by the federal centers for disease

- control and prevention, before preparing or serving meals, ~~after nose wiping~~, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, single-use cloth towels, or paper towels must be available at each ~~lavatory~~ sink.
5. ~~Indoor~~ The operator shall ensure that indoor and outdoor equipment, toys, and supplies must be are safe, strong, nontoxic, and in good repair. ~~All~~ The operator shall ensure that all toys must be easily cleanable and must be cleaned and sanitized on a routine basis and equipment are kept clean and in sanitary condition. Books and other toys are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
 6. The operator shall ensure that the child care center ground areas must be are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
 7. ~~Garbage must be~~ The operator shall ensure that the garbage stored outside is kept away from areas used by children and is kept in containers with tight lids, made of noncombustible materials. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.
 8. ~~Exterior~~ The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas must be are contained, or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
 9. ~~Potential~~ The operator shall ensure that potential hazards, including such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants, and open stairways may are not be accessible to young children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
 10. ~~Indoor~~ The operator shall ensure that indoor floors and steps may are not be slippery or and do not have splinters. ~~Steps~~ The operator shall ensure that steps and walkways must be are kept free from accumulations of water, ice, snow, or debris.
 11. ~~Elevated~~ The operator shall ensure that elevated areas, such as including stairs or and porches, must have railings and ~~approved~~ safety gates where necessary to prevent falls.

12. ~~Child care centers~~ The operator shall take steps to keep the facility child care center free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the facility child care center. Insect repellent may be applied outdoors on children with written parental permission.
13. Exit The operator shall ensure that exit doorways and pathways may are not be blocked.
14. If the center is providing care to children in wheelchairs, the center operator shall ensure doors have sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the child care center.
15. Light The operator shall ensure that light bulbs in areas used by children must be are properly shielded or shatterproof.
16. Combustible The operator shall ensure that combustible materials must be are kept away from light bulbs and other heat sources.
17. ~~There must be~~ The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by the local fire authorities. During the heating season when the child care center is occupied by children, the room temperature may not be less than ~~sixty-eight~~ sixty-five degrees Fahrenheit [~~20~~ 18 degrees Celsius] and not more than ~~seventy-four~~ seventy-five degrees Fahrenheit [~~23.33~~ 24 degrees Celsius] ~~measured three feet [91.44 centimeters] above the floor. All heating devices must be approved by the local fire authorities.~~
18. ~~All~~ The operator shall ensure that all child care center buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, ~~must have these painted surfaces repainted or must~~ shall submit evidence that the ~~surfaces~~ paints or finishes do not contain hazardous levels of lead-bearing substances. For purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.
19. ~~Personal~~ The operator shall ensure that personal items including combs, pacifiers, and toothbrushes ~~must be are~~ are individually identified and stored in a sanitary manner.

20. ~~All pets present in the child care center must be properly immunized, restricted, and maintained. Nondomestic animals such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the child care center. Pets may not be allowed in the kitchen or eating area during meal preparation or meals and animals.~~
- a. The operator shall ensure that only cats, dogs, and small pets that are contained in an aquarium or other approved enclosed container are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children.
 - b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The operator shall ensure parents are aware of the presence of pets and animals in the child care center.
 - d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
 - h. The operator shall ensure that the child care center is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
21. ~~Wading Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the child care center must be strictly supervised and must be emptied and cleaned shall empty, clean, and sanitize wading pools daily.~~

22. All swimming pools used by children must be approved annually by the local health unit.

23. ~~Smoking is not permitted in any child care center at any time during which a child who receives early childhood services from that child care center is present and receiving services.~~

24. Diapering:

~~a. There must be a designated cleanable diapering area in the child care center if children requiring diapering are in care. A handwashing lavatory must be immediately accessible to the diapering area.~~

~~b. Cloth diapers may not be used in a child care center.~~

~~c. Diapers must be changed promptly when needed and in a sanitary manner. Infants must be changed on a cleanable surface which must be thoroughly cleaned with detergent and sanitized after each diapering.~~

~~d. Soiled or wet disposable diapers must be stored in a sanitary, airtight container until removed from the child care center.~~

25. Water supply standards:

a. The operator shall ensure that the child care center shall have has a drinking supply from an approved community water system or from a source tested and approved annually by the state department of health.

b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups.

c. The child care center must have hot and cold running water. ~~Hot water heaters must be turned down or there must be a tempering valve or antiscalding device on~~ The water in the faucets used by children ~~so that the temperature of hot water supplied to lavatories and bathing facilities does~~ may not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

26: 24. Toilet and lavatory sink facilities:

a. ~~Toilet~~ The operator shall provide toilet and lavatory sink facilities must be provided and must be convenient which are easily accessible to the areas used by the children and staff members.

- b. ~~Toilet and lavatory facilities must meet requirements of the state department of health.~~
- e. Toilets must be located in rooms separated from those used for cooking, eating, and sleeping. A minimum of one ~~lavatory sink~~ and one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained.
- d. ~~c. Separate~~ The operator shall ensure that separate restrooms must be are provided for boys and girls six years of age and over, and partitions must be are installed to separate toilets in these restrooms.
- e. ~~d. Child-sized~~ The operator shall provide child-sized toilet adapters, training chairs, or potty chairs ~~must be provided~~ for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.
- f. ~~e. At~~ The operator shall provide at least one handwashing ~~lavatory must be provided sink per toilet room facility or diapering area.~~ Sanitary The operator shall ensure that sanitary hand-drying equipment, single-use cloth towels, or paper towels ~~must be provided are available near handwashing lavatories sinks.~~
- g. ~~f. Safe~~ The operator shall provide safe step stools ~~must be provided to allow children to use standard-size toilets and lavatories to be used by the children sinks or the operator shall ensure the availability of child-size toilets and lavatories must be provided sinks.~~

27. ~~25.~~ Sewage and wastewater disposal:

- a. ~~A child care center shall meet the requirements of the state plumbing code as contained in North Dakota Administrative Code article 62-03.~~
- b. ~~Any~~ The operator of a child care center not on a municipal or public water supply or wastewater disposal system shall ensure the child care center's sewage and wastewater system has been approved by the state department of health.

28. ~~26.~~ Laundry:

- a. If the child care center provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation.

- b. ~~Soiled~~ The operator shall ensure that soiled linens ~~must be~~ are placed in closed containers or hampers during storage and transportation.
- c. ~~In~~ The operator shall ensure that in all new or extensively remodeled child care centers, the handling, sorting, or washing of soiled ~~linen~~ linens or blankets ~~must take~~ takes place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas.
- d. ~~In~~ The operator shall ensure that in an existing child care ~~centers~~ center where physical separation of laundry and kitchen areas is impractical, procedures ~~must be~~ are developed that prohibit the washing or transportation of laundry while meals are being prepared or served.
- e. ~~Sorting~~ The operator shall ensure that sorting of laundry may ~~is not~~ be allowed in food preparation, serving, or kitchen areas.
- f. If the child care center provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the operator shall ensure that water temperature must be greater than one hundred ~~seventy~~ forty degrees Fahrenheit [~~77.2~~ 60 degrees Celsius].
- g. ~~If~~ The operator shall ensure that if the water temperature is less than one hundred ~~seventy~~ forty degrees Fahrenheit [~~77.2~~ 60 degrees Celsius], then bleach ~~must be~~ or sanitizer is used in the laundry process during the rinse cycle ~~to achieve fifty parts per million of available hypochlorite at~~ or the center shall use a clothes dryer that reaches a temperature of at least ~~seventy-five~~ one hundred forty degrees Fahrenheit [~~24~~ 60 degrees Celsius].

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, ~~50-11.1-02.2~~, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-19. Minimum requirements regarding space and lighting.

- 1. Each ~~child care center~~ operator shall provide adequate indoor and outdoor space for the daily activities of all children ~~in attendance within the licensed capacity of the child care center.~~
- 2. ~~The child care center shall provide adequate space, indoors and out, for the daily activities of the children. This Adequate space must~~

include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the child care center at one time, the total appropriate outdoor play space available must not be less than what is required for the number of children in the largest class or group of the center multiplied by seventy-five square feet [6.97 square meters]. The child care center operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving every child an opportunity to play outdoors daily.

3. The child care center must be properly lighted. ~~The following technical requirements must be met:~~
 - ~~a. Sixty-five foot-candles of light for all general use and play areas;~~
 - ~~b. Twenty-five foot-candles of light for all bathrooms;~~
 - ~~c. Fifty foot-candles of light for any kitchen, laundry, and office facilities; and~~
 - ~~d. Fifteen foot-candles of light for corridors and storage areas.~~
 - e. If the lighting of the child care center appears questionable, the department may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-20. Program requirements.

1. The child care center operator shall have a program of daily individual or small group activities appropriate to the ages and needs of the children in the child care center. The program must include activities which foster sound social, intellectual cognitive, emotional, and physical growth, and the program must be developed with discussion and consultation with parents as to their children's needs consideration of parental input. A written daily routine including mealtimes, rest times, planned developmentally appropriate activities, free play, and outside

time must be available to parents. The daily routine must be flexible enough to allow for spontaneous activity as appropriate.

2. The program must be flexible and subject to modification for individual child differences.
3. The program must be written and varied ~~in order~~ to promote the physical and emotional well-being of the children, to encourage the acquisition of information and knowledge, and to foster the development of language skills, concepts, self-discipline, and problem-solving activities. The program must describe how the activities planned meet the children's developmental needs, including the special needs of children ~~in the child care center who are multilingual or disabled~~. The written program must be made available to parents.
4. The program must include firsthand experiences for children to learn about the world in which they live. ~~Opportunities must be provided for older children to participate in supervised visits and recreational activities in the community.~~
5. Learning experiences must be conducted in consultation with parents ~~in order~~ to ensure harmony with the lifestyle and cultural background of the children.
6. The program must provide a balance of quiet and active indoor and outdoor group and individual activities. A time for supervised child-initiated and self-selected activity must be established.
7. If children are allowed to assist in any food preparation, the activity must be limited to use of equipment and appliances that do not present a safety hazard. Children may not be allowed in the kitchen or laundry area unsupervised.
8. A variety of games, toys, books, crafts, and other activities and materials must be provided to enhance the child's intellectual and social development and to broaden the child's life experience. Each child care center ~~shall~~ must have enough play materials and equipment so, that at any one time, each child in attendance may be ~~individually~~ involved individually or as a group.
9. The cultural diversity of the children must be reflected in the program through incorporation of their language, food, celebration, and lifestyles, if appropriate.
10. Equipment and furniture must be durable and safe and must be appropriately adapted for children's use.
11. Sufficient space accessible to children must be provided for each child's personal belongings.

12. The child care center shall supplement, augment, and reinforce the child's activities at home; and, where applicable, at school.
13. At the time of enrollment, the ~~child care center staff~~ director or supervisor shall discuss with the parents the children's habits, activities, and schedules while at home and in school and ~~their~~ the parents' special concerns about their past and future behavior and development. The schedule and activities must be designed to complement and supplement the children's experiences at home and in school.
14. Staff members responsible for caring for or teaching children shall encourage parents to visit the facility, observe, and participate in the care of their children.
15. The ~~child care center~~ director or supervisor shall contact parents to ~~exchange information concerning the child and the child care program as well as to~~ offer meaningful opportunities to participate in general program policymaking.
16. ~~Personal~~ The child care center shall stress personal hygiene practices appropriate for a child's age and development ~~must be stressed~~.
17. The ~~child care~~ director or supervisor shall contact parents to exchange information concerning the child and any concerns about the health, development, or behavior of the child. These concerns must be communicated to the parent promptly and directly.
18. Each child's cultural and ethnic background and primary language or dialect must be respected by the ~~caregivers~~ staff members.
19. Each child care center shall have a designated area where a child can sit quietly or lie down to rest. There must be sufficient cots or sleeping mats ~~so that to allow~~ each child in attendance may have an individual napping space. The floor may be used only when the floor is carpeted or padded, warm, and free from drafts, and when individual blankets or coverings are used. ~~Napping~~ The child care center shall set napping schedules must be set for children according to ~~their~~ the children's ages and needs. For children unable to sleep, the director or supervisor shall provide time and space for quiet play ~~must be available~~.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-21. Minimum standards for food and nutrition.

1. When the operator is responsible for providing food to children, the food supplied must meet United States department of agriculture standards and must be properly prepared, sufficient in amount, nutritious, varied according to diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in a child care center must be treated in a sanitary and safe manner with sanitary and safe equipment.
2. When parents bring sack lunches for their children, the operator may supplement lunches, as necessary, to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.
3. ~~If the services are available free of charge, a dietitian or other food service professional must be used as a consultant.~~
4. ~~Children must be served a nutritious morning and afternoon snack and, if the parent does not provide a sack lunch, a nourishing meal.~~
 - a. Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of the day.
- b. ~~4. Children~~ The operator shall serve nutritious meals to children in care during any normal mealtime hour ~~must be served food appropriate to that time of the day.~~
- e. ~~5. Children~~ The operator shall serve snacks to children in care in afterschool child care center programs ~~who have not had any food since lunch must be provided with a snack.~~
5. ~~6.~~ When the operator is responsible for providing food to children, menus must be prepared on a weekly or daily basis and made available to the parents, the ~~department~~ authorized agent, ~~or and~~ other appropriate individuals.
6. ~~7. Information~~ The operator shall consider information provided by the children's parents as to their the children's eating habits, food preferences, or special needs ~~must be considered in creating~~ the feeding schedules and in the tailoring of menus.
7. ~~8. Children must be served~~ The operator shall serve snacks and meals to children in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.

- 8- 9. Children ~~The operator or staff member may be encouraged~~ encourage children to eat the food served, but the operator or staff member may not be subjected to coercion or force-feeding ~~coerce or force-feed children.~~

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07, 50-11.1-08

75-03-10-22. Records.

1. The operator shall keep a copy of this chapter on the premises of the child care center and shall make it available to staff members at all times.
2. The child care center operator shall maintain the following records:
 - a. The child's full name, birth date, and current home address;
 - b. ~~Names~~ Legal names of the child's parents ~~or legal guardian~~; and the business and home personal telephone numbers where ~~those individuals may~~ they can be reached;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individuals legally responsible for the child ~~may not~~ cannot be reached immediately in an emergency;
 - d. A written statement from the parents ~~or legal guardian~~ authorizing emergency medical care;
 - e. Names and telephone numbers of individuals authorized to take the child from the child care center;
 - f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-aged school-age child; and
 - g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, ~~that which~~ must indicate any special precautions for diet, medication, or activity, must serve as evidence that a child is physically able to take part in the child care program, and must be completed annually. This assessment must be completed annually.

3. The operator shall record and verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the operator considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
- 2- 4. ~~All~~ The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services must be are kept confidential, and that access must be is limited to staff members, the parents, or legal guardian of each child, and to the following, unless otherwise protected by law:
 - a. ~~Authorized county agency~~ The authorized agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the children concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess a written authorization from the child's parent ~~or legal guardian~~. The child care center shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-23. Discipline - Punishment prohibited. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, or neglect, or abuse, to any child is grounds for license denial or revocation:

1. The child care center must have a written policy regarding the discipline of children ~~that must be interpreted to.~~ The operator shall provide the policy to, and discuss the policy with, the staff members responsible for caring for or teaching children before the child care center begins operation or before staff members begin working with children.
2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, ~~praise for praising~~ appropriate behavior, ~~and or~~ gentle physical restraint, such as holding. ~~Children~~ A child may not be subjected to physical harm, fear, or humiliation.

3. Authority to discipline may not be delegated to ~~or children~~ nor may discipline be ~~accomplished~~ administered by children.
4. Separation, when used as discipline, must be ~~brief and~~ appropriate to the child's age development and circumstances. ~~Any~~ The child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult staff member responsible for caring for or teaching children. A ~~child staff member~~ may not be isolated isolate a child in a locked room or closet.
5. A child may not be physically punished for lapses in toilet training.
6. ~~When addressing a child, or while in the presence of a child, staff members may not~~ A staff member may not use verbal abuse or make derogatory remarks about the a child, the or a child's family, race, or religion, nor use profane, threatening, unduly loud, or otherwise abusive language when addressing the child or in the presence of a child.
7. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
8. A child staff member may not be force-fed force-feed a child or coerce a child to eat, unless medically prescribed and administered under a physician's medical provider's care.
- 8- 9. Deprivation A staff member may not use deprivation of meals may not be used or snacks as a form of discipline or punishment.
- 9- 10. A child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the child care center staff member or any other adult in or at the child care center may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.
11. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
12. A staff member may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-24. Specialized types of care and minimum requirements therefor.

1. Infant care.

a. Environment and interactions.

(1) A child care center serving children from birth to ~~twenty-four~~ twelve months shall provide an environment which protects the children from physical harm ~~and is not so restricted so as to inhibit physical, intellectual, emotional, and social development.~~

(2) The operator shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children or emergency designee such as the staff member or emergency designee holding, rocking, talking with, or singing to the child.

(3) A staff member shall respond promptly to comfort an infant's or toddler's physical and emotional distress:

(a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and

(b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.

~~b. (4) Nonwalking children shall have the opportunity~~ The operator shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, uncluttered area.

~~c. Each infant shall have an individual sleeping space. The sheets must be changed whenever they become soiled or wet. If individual protective coverings are used for each child to protect linens, the protective coverings must be laundered at least weekly.~~

~~d. Any child under twelve months of age or unable to walk unassisted must be provided sleeping space in a crib with a firm mattress or a playpen with adequate padding.~~

e. (5) Children Staff members responsible for caring for or teaching children must be taken take children outdoors or to other areas within the child care center for a part of each day to provide children with some change of physical surroundings

and to allow them to be with other children. ~~A child may not be confined to a crib or playpen during the entire time at the child care center, unless the child is preparing to sleep or sleeping for the duration of the care.~~

~~f. Each infant shall have periodic individual personal contact and attention from an adult, such as being held, rocked, talked to, or sung to.~~

~~(6) When a child is awake, staff members may not confine the child to a crib, portable crib, or other equipment for longer than twenty minutes, taking into consideration the child's emotional state.~~

~~g. (7) Low The operator shall ensure that low chairs and tables or infant seats high chairs with trays must be provided for table play and mealtime for children infants no longer being held for feeding. Highchairs High chairs, if used, must have a wide base and a safety strap.~~

~~h. (8) Children may not be The operator shall ensure that infants are not shaken or jostled.~~

~~i. All cries of infants must be investigated.~~

~~j. Infants must be fed or supervised individually and the diet and pattern of feeding must be appropriate to the individual developmental needs and parent's wishes.~~

~~(9) The operator shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.~~

b. Feeding.

~~k. (1) Infants must be The operator shall ensure that infants are provided age-appropriate developmentally appropriate nutritious foods. Only breast milk or iron-fortified artificial milk, meeting the requirements of the Infant Formula Act of 1980 [Pub. L. 96-359; 94 Stat. 1190; 21 U.S.C. 301 note et seq.], infant formula may be fed to infants less than six months of age, unless otherwise instructed in writing by the infant's parent or medical provider.~~

~~l. (2) Infants must be The operator shall ensure that infants are fed only the specific brand of artificial baby milk iron-fortified infant formula requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative~~

mixing instructions, ~~based upon directions of~~ are directed by
a child's physician, ~~are provided~~ medical provider.

m. (3) ~~Mixed formula, in single bottles or batches,~~ The operator shall ensure that mixed formula that has been unrefrigerated more than one hour, must be is discarded.

n. (4) ~~Frozen~~ The operator shall ensure that frozen breast milk must be is thawed under cool running tap water, or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent at the end of each day.

~~o. Staff members shall hold infants when bottle-feeding breast milk, artificial baby milk, soy or cow's milk based ready-to-feed, concentrate, powdered prepared formulas or cow or goat milk.~~

~~p. Infants, determined by the parent to be developmentally ready for foods other than breast milk or artificial baby milk, shall have those other foods offered from a spoon only.~~

~~q. Staff members may not leave an infant unattended during the infant's feeding or eating process.~~

~~r. There must be a minimum space of two feet [58.42 centimeters] between each crib or cot. Aisles between cots and cribs must be kept free of all obstructions while they are occupied.~~

(5) The operator shall ensure that an infant is not fed by propping the bottle.

(6) The operator shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.

(7) The operator shall ensure that staff members responsible for caring for or teaching children, emergency designee, or substitute staff are within sight and hearing range of an infant during the infant's feeding or eating process.

c. Diapering.

(1) The operator shall ensure that there is a designated cleanable diapering station, located separately from food preparation and serving areas in the child care center if children requiring diapering are in care.

- (2) The operator shall ensure that diapers are changed promptly and in a sanitary manner when soiled or wet.
- (3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
- (4) The operator shall ensure that soiled or wet diapers are stored in a sanitary, covered container, separate from other garbage and waste until removed from the child care center.

d. Sleeping.

- (1) The operator shall ensure that infants are placed on their back when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
- (2) The operator shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.
- (3) The operator shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib.
- (4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- (5) The operator shall ensure that all items are removed from the crib or portable crib, except for one infant blanket and security item that does not pose a risk of suffocation to the infant. The infant's face must remain uncovered when sleeping.
- (6) The operator shall ensure that mattresses and sheets are tightly fitted. The operator shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when used by different infants, or at least weekly.
- (7) The operator shall ensure that each infant has an individual infant blanket.
- (8) The operator shall ensure that toys or objects hung over an infant crib or portable crib are secured and are of size and weight that would not injure an infant if the toy or object accidentally falls or if the infant pulls on the object.
- (9) The operator shall ensure that a staff member responsible for caring for or teaching children checks on sleeping infants

every fifteen minutes or that a monitor is in the room with the infants.

e. The operator shall ensure that parents of each infant receive a written daily report detailing the infant's sleeping and eating processes for the day, and the infant's diapering schedule for the day.

2. Night care.

a. Any child care center offering night care shall provide program modifications for the ~~special~~ needs of children and their parents during the night.

b. In consultation with parents, ~~special~~ attention must be given by the ~~caregiver~~ staff member responsible for caring for or teaching children to provide a transition into this type of care appropriate to the child's ~~emotional~~ needs.

c. ~~When practical, The operator shall encourage parents to leave their children must be left for in care and picked pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, but with consideration must be given to the parent's work schedule.~~

d. ~~Preschool age children must be~~ The operator shall ensure that children under the age of six are supervised when bathing.

e. ~~Comfortable~~ The operator shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, must be are available- and shall ensure:

(1) Pillows and mattresses ~~must~~ have clean coverings-;

(2) Sheets and pillowcases ~~must be~~ are changed as often as necessary for cleanliness and hygiene, but at least weekly. If beds are used by different children, sheets and pillowcases ~~must be~~ are laundered before use by other children-; and

(3) Each bed or cot ~~must have~~ has sufficient blankets available.

f. ~~The child care center operator shall require each child in night care to have night clothing and a toothbrush marked for identification.~~

g. ~~For child care centers,~~ The operator shall ensure that during sleeping hours, the staff must be members are awake and within ~~listening distance in order~~ hearing range to provide for the needs of children and to respond to an emergency.

3. Drop-in child care centers.
 - a. If a child care center serves drop-in children, schoolchildren, or before-school and afterschool children, the child care center must be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program and to maintain the proper staff member to child ratio.
 - b. The operator shall ensure that the program must reflect ~~reflects~~ the special individual needs of the children who are provided drop-in service care.
 - c. ~~Admission~~ The operator shall ensure that admission records ~~must~~ comply with all enrollment requirements contained in section 75-03-10-22, except the immunization verification record requirement.
 - d. ~~Admittance~~ The operator shall ensure that admittance procedures ~~must~~ provide for a period of individual attention for the child ~~in order~~ to acquaint the child with the child care center, its equipment, and the staff members.
 - e. A child care center may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the child care center to exceed the total number of children for which the child care center is licensed.
4. An operator shall ensure that a child care center serving only drop-in care children complies with this chapter, but is exempt from the following provisions:
 - a. Subsections 12, 14, and 15 of section 75-03-10-20, subdivision f of subsection 2 of section 75-03-10-22, and subsection 1 of section 75-03-10-25; and
 - b. A child care center serving only drop-in care children is exempt from the outdoor space requirements.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-25. Minimum requirements for care of children a child with special needs. ~~When~~ An operator shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of children with special needs ~~are admitted to a child care center, there must be appropriate~~

~~provisions to meet those needs. The child care center shall document how receive documentation of the child's special needs may be met from the parent upon the child's enrollment.~~

1. ~~When children a child with special needs are is admitted, the child-care center director or supervisor shall consult with the child's parents, and, with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The operator shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.~~
2. ~~Garegivers~~ The operator shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's disability special needs and potential for growth and development.
3. ~~If the nature of the special needs or the number of children with special needs warrants added care, the child care center shall add sufficient staff and equipment as deemed necessary by the department to compensate for these needs.~~

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-26. Minimum provisions regarding emergency care for children. The child care center shall have written plans to respond to illness and emergencies, including burns, serious injury, and ingestion of poison. ~~Parents~~ The operator shall ensure that parents of enrollees must be are advised of these plans. Plans must provide that:

1. ~~Emergency~~ Establish emergency response procedures;
2. Provide accessible posting of emergency response procedures be conspicuously posted and require training for all staff members concerning those emergency procedures;
2. ~~Training concerning emergency procedures be available for all staff members to ensure awareness of the hazards of infection and accidents and how such problems may be minimized;~~
3. ~~At~~ Require the availability of at least one working flashlight;

4. ~~Require at least one state department of health-approved department-approved~~ first-aid kit ~~be maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times;~~
4. 5. ~~The child care center have~~ Provide a working telephone line immediately accessible to staff ~~members with a list of emergency telephone numbers conspicuously posted adjacent to the telephone;~~
5. 6. ~~Medical consultation be available regarding special care and medication when health policies of the facility allow ill children to be admitted or to remain in the child care center;~~ Require a plan for responding to minor illnesses and minor accidents when children are in the care of the child care center;
6. 7. ~~Written~~ Require written permission to dispense medication ~~be and proper instructions for the administration of medication~~ obtained from the parent if of a child in the child care center who requires medication; ~~as well as proper instructions for the administration of medication:~~
 - a. ~~Medications~~ Medication prescribed by a ~~physician~~ medical provider must be accompanied by the ~~doctor's~~ medical provider's written instructions as to dosage and storage, and labeled with the child's name and ~~dated~~ date;
 - b. ~~Medications~~ Medication must be stored in an area inaccessible to children, and ~~medications~~ medication stored in a refrigerator must be stored collectively in a spillproof container;
 - c. ~~A~~ The operator shall keep a written record of the administration of medication, including over-the-counter medication, ~~to for each child must be kept, and records.~~ Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child; and
 - d. ~~Completed~~ The operator shall include completed medication records ~~must be included~~ in the child's record;
7. 8. ~~A~~ Require a supervised temporary isolation area ~~be provided designated~~ for a child who is too ill to remain in the ~~group~~ child care center or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
 - a. Parents are notified immediately and asked to pick up their child; and
 - b. First aid is provided and medical care is sought as necessary;

- ~~8.~~ 9. ~~Children with infectious or communicable conditions be excluded from the child care center until the condition may no longer be transmitted, and guidance regarding exclusion and return to the child care center is obtained through consultation with local and state health department authorities; Establish and implement practices in accordance with guidance obtained through consultation with local or state department of health authorities implemented regarding the exclusion and return of children with infectious or communicable conditions. The program may obtain this guidance directly or through current published materials regarding exclusion and return to the child care center;~~
9. Adequate supervision be available for all children who are ill and remain at the center;
10. A Identify a source of emergency health services be readily available to the child care center, including:
- a. A prearranged plan for emergency medical care in which parents of enrollees are advised of the arrangement; and
 - b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, ~~the child is to be accompanied by an adult who will~~ staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume responsibility for the child's care and until the parent ~~or legal guardian arrives~~ is notified;
11. ~~Information~~ Require information be provided to parents, as needed, concerning child health and social services available in the community; ~~and that assistance be available for parents to obtain these services; and~~
12. ~~The~~ Require that the child care center inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, ~~and~~ immediately notify parents of any injury which requires emergency care beyond first aid; ~~and~~
- ~~13.~~ Each ~~require each~~ injury report to be made a part of the child's record.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-27. Effect of conviction on licensure and employment.

1. ~~A child-care center~~ An applicant, operator, director, or supervisor may not be, and a child care center may not employ or allow, in any capacity that involves or permits contact between the employee emergency designee, substitute staff member, or staff member and any child cared for by the child care center, an individual operator, emergency designee, substitute staff member, director, supervisor, or staff member who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code ~~chapters~~ chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; ~~or~~ 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code sections section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; ~~or~~ 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; ~~North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections~~ 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; ~~or~~ 12.1-31-05, child procurement; ~~or an~~ 14-09-22, abuse or neglect of a child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes offenses identified in subdivision a; or
 - ~~b:~~ c. An offense other than an offense identified in subdivision a or b, if the department in the case of a child care center applicant, operator, director, or supervisor, or the child-care operator in the case of a child-care center employee an emergency designee, substitute staff, or staff member, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. ~~A child-care center~~ The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, operator's, emergency designee's, substitute staff member's, director's, supervisor's, or staff member's ability to serve the public as an operator, emergency designee, substitute staff member, director, supervisor, or staff member.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another

jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.

4. The operator shall establish written policies; and engage in practices that conform to those policies; to effectively implement this section before hiring any staff member.
3. ~~For the purposes of subdivision b of subsection 1, the department in the case of a child care center operator, or the child care center operator in the case of a child care center employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.~~
4. ~~The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's ability to serve the public in a capacity involving the provision of child care services.~~
5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-10-28. Child abuse and neglect determinations decisions. If a probable cause determination or a decision that services are required An operator shall ensure safe care for the children receiving services in the child care center. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that any a child has been abused or neglected by a an applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, that individual decision has a direct

bearing on the applicant's or operator's ability to serve the public in a capacity involving the provisions of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, the applicant or operator shall furnish information satisfactory to the department, from which the department may can determine the applicant's, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's current ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability must be furnished to the child care center applicant or operator and to the regional director of the regional human service center or the regional director's designee for consideration and action on the center child care application or license. Each applicant, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete a department-approved authorization for background check form no later than the first day of employment.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-29. Allowable time periods for correction of deficiencies
Correction of violations.

1. Deficiencies Within three business days of the receipt of the correction order, the operator shall notify the parents of each child receiving care at the child care center that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the child care center until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of section ~~75-03-10-09~~ 75-03-10-08, ~~subsection~~ subsections 3 and 9 of section 75-03-10-18, and section 75-03-10-23, within twenty-four hours;
 - b. For a violation ~~or deficiency~~ requiring the hiring of a child care supervisor with those qualifications set forth in section ~~75-03-10-10~~ 75-03-10-11.1, or a child care center director with those qualifications set forth in section ~~75-03-10-11.4~~ 75-03-10-10, within sixty days;

- c. For a deficiency violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-10-17, within sixty days;
 - d. For a deficiency violation that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other deficiencies violations, within twenty days.
- ~~2.~~ 3. All periods for correction begin on the date of receipt of the correction order by the licensee operator.
 - ~~3.~~ 4. The regional supervisor of early childhood ~~program licensing services~~ may grant an extension of additional time to correct deficiencies violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the licensee operator and a showing that the need for the extension is created by unforeseeable circumstances and the licensee operator has diligently pursued the correction of the deficiency violations.
 - ~~4.~~ 5. The operator shall furnish a written notice ~~of to the authorized agent upon completion of the correction order~~ required corrective action to the county agency. The correction order ~~is effective~~ remains in effect until the ~~county receives the notice~~ authorized agent confirms that the corrections have been made.
 6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a child care center that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the child care center has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the child care center. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
 7. If a child care center receives more than one correction order in a single year, the operator may be referred by the department for consulting services to assist the operator in maintaining compliance and to avoid future corrective action.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, ~~50-11.1-04~~ 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

75-03-10-30. Fiscal sanctions.

1. A The department shall assess a fiscal sanction of twenty-five dollars per day must be assessed for each violation of subdivision i of subsection 2 of section 75-03-10-08; subsection 2 of section 75-03-10-09 75-03-10-08; section 75-03-10-17; subsections 6, 9, and 13 of section 75-03-10-18; subsection 2 of section 75-03-10-19; section 75-03-10-23; and section 75-03-10-28, for each day that the operator has not verified correction after the allowable time for correction of deficiencies violations ends, that the child care center has not verified correction.
2. A The department shall assess a fiscal sanction of fifteen dollars per day must be assessed for each violation of section 75-03-10-11.1 75-03-10-10; section 75-03-10-15; subsections 2, 3, 4, 7, 8, 11, 19, and subdivision f of subsection 26 e of subsection 24 of section 75-03-10-18; subsection 1 of section 75-03-10-19; subsections 3, 8, and 19 of section 75-03-10-20; and subdivision a of subsection 1 of subsection 3 of section 75-03-10-24, for each day that the operator has not verified correction after the allowable time for correction of deficiencies violations ends, that the child care center has not verified correction.
3. A The department shall assess a fiscal sanction of five dollars per day must be assessed for each violation of any other provision of this chapter, for each day that the operator has not verified correction after the allowable time for correction of deficiencies violations ends, that the child care center has not verified correction.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, ~~50-11.1-04~~ 50-11.1-07.4, 50-11.1-08

75-03-10-31. Appeals. An applicant or provider operator may appeal a decision to deny or revoke a license by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of the applicant's or operator's receipt of written notice of such a the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-07.2~~ 50-11.1-08, 50-11.1-10

CHAPTER 75-03-11

75-03-11-03. Definitions. ~~As~~ The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. ~~"Aide Assistant"~~ means any individual ~~other than a teacher or one who works directly with children~~ in a preschool educational facility under the supervision of a teacher or a director.
2. ~~"Caregiver"~~ means any individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in a preschool educational facility under the guidance and supervision of the preschool educational facility operator. "Attendance" means the total number of children present at any one time at the facility.
3. ~~"County agency"~~ means the county social service board in the county where the preschool educational facility is located. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
4. ~~"Department"~~ means North Dakota department of human services.
5. ~~"Director"~~ means an individual responsible for supervising and organizing program activities in a preschool educational facility.
6. ~~5.~~ "Emergency designee" means an individual designated by the facility operator to be a backup caregiver staff member for emergency assistance or to provide substitute care.
6. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
7. ~~"Facility operator" or "operator Operator"~~ means the individual or group governing board who has the legal responsibility and the administrative authority for the operation of a preschool educational facility. ~~The facility operator is the applicant for license or the licensee under this chapter.~~
8. ~~"Parent"~~ means an individual bearing the legal relationship of father or mother to a child enrolled in a preschool educational facility, including an individual who legally stands in place of a parent, such as a legal guardian or custodian.
9. ~~"Preschool educational facility" or "facility"~~ means a program licensed under this chapter and the provisions of North Dakota Century Code chapter 50-11.1, to provide early childhood services which serves a child no more than three hours per day, offers early childhood services, and follows a preschool curriculum and course of study designed

primarily to enhance the educational development of the children enrolled in the facility and which serves no child for more than three hours per day.

10. ~~"Staff" or "staff member" means operator, substitute staff, volunteer, caregiver, or any other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the preschool educational facility.~~
11. ~~9.~~ "Substitute staff" means ~~paid or unpaid~~ staff who work less than thirty-two hours per month, and are not regularly scheduled for work.
12. ~~10.~~ "Teacher" means an individual with the responsibility of implementing program activities, either as the director or under the supervision of the director.
13. ~~11.~~ "Volunteer" means an individual who visits or provides an unpaid service or visit, including a ~~fireperson~~ firefighter for fire safety week, a ~~McGruff, or Santa Claus person~~ practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-11-04. Effect of licensing and display of license.

1. The issuance of a license to operate a preschool ~~educational facility~~ is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed prominently in the premises to which it applies.
3. The license must specify the maximum number of children who for whom the preschool may be cared for by the preschool educational facility provide care. The preschool educational facility may at no time not admit a greater number of children than the license allows.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-11-05. Denial or revocation of license.

1. ~~A~~ The department may deny or revoke a license ~~may be denied or revoked~~ under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.
2. If an applicant or operator appeals an action to revoke a license is appealed, the licenseholder operator may continue the operation of the preschool ~~educational facility~~ pending the final administrative determination or until the license expires, whichever occurs first; provided, however, that this subsection does not limit the actions the department may take pursuant to North Dakota Century Code ~~section~~ sections 50-11.1-07.8 and 50-11.1-12.
3. The department may revoke a license to operate a preschool ~~educational facility~~ without first issuing a correction order or simultaneously with a suspension if continued operation would jeopardize the health and safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

75-03-11-06. Provisional license.

1. The director of a regional human service center, ~~in the director's discretion,~~ or the director's designee, in consultation with the department, may issue a provisional license for the operation of a newly opened preschool educational facility ~~or for a previously licensed preschool educational facility~~ although the preschool educational facility applicant or operator fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:
 - a. ~~Prominently state~~ State that the preschool ~~educational facility operator~~ has failed to comply with all applicable standards and rules of the department;
 - b. ~~State that the items of noncompliance are set forth on a document available, upon request made to the operator;~~
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears ~~the same~~ an expiration date of one year from the date of issuance as of

the provisional license, ~~upon demonstrating after the applicant or operator demonstrates~~ compliance, satisfactory to the department, with all applicable standards and rules.

3. A ~~The department may issue a~~ provisional license ~~may be issued~~ only to an applicant or operator who has waived, in writing:
 - a. The right to a written statement of charges 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 nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~regional~~ director of the regional human service center or the ~~regional~~ director's designee and must be acknowledged in writing by the applicant or operator.
5. Subject to the exceptions contained in this section, a provisional license entitles the ~~holder~~ operator to all rights and privileges afforded the ~~holder~~ operator of an unrestricted license.
6. The department ~~shall~~ may not issue a provisional license if the facility preschool is not in compliance with section 75-03-11-17 or 75-03-11-18.
7. The operator shall ~~prominently~~ display prominently the provisional license and agreement.
8. The operator shall provide parents written notice that the facility preschool is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-11-06.1. Restricted license. The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;
2. To restrict a pet or animal from areas accessible to children; or

3. When necessary to inform the parents that the operator is licensed, but is restricted to operating in certain rooms or floors or restricted from using specific outdoor space.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-07. Application for and nontransferability of preschool educational facility license. ~~An application for a license must be submitted to the county agency in the county in which the facility is located.~~

1. An applicant shall submit an application for a license to the authorized agent. Application must be made in the form and manner prescribed by the department.
2. The A license issued under this chapter is nontransferable and valid only on for the premises indicated on the license. A new An application for a new license must be filed by a licensed facility upon change of operator or location.
3. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This applies to new licenses issued on or after October 1, 2010. Existing operators will be exempt from this provision until October 1, 2015, after which time all operators will be subject to the requirements of this subsection.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-11-08. Duties of preschool education facility operator.

4. ~~The operator of a preschool educational facility is responsible to the department for compliance with the requirements set forth in the standards this chapter and North Dakota Century Code chapter 50-11.1. In meeting this responsibility, the~~ The operator shall ensure:
 1. Designate a qualified director, delegate appropriate duties to the director, and shall:
 - a. Establishment of the preschool educational facility program; Ensure that the preschool director or designated acting director is present at the preschool at least sixty percent of the time that the preschool is open; and

- b. Ensure that the individual designated as an acting director for an ongoing period of more than thirty days meets the qualifications of a preschool director;
- b. ~~2.~~ Apply for a license for each the preschool educational facility operated;
- e. ~~3.~~ Creation of an outline of a written plan and policies for the operation of each preschool educational facility; Possess knowledge or experience in management and interpersonal relations;
- d. ~~4.~~ Notify the county agency authorized agent of any major changes in the operation or in the ownership or governing body of the preschool educational facility and of any, including staff member changes;
- e. ~~5.~~ Liability Ensure that liability insurance for against bodily injury and property damage for the preschool educational facility is carried;
- f. ~~6.~~ Formulate written policies and procedures for the operations of the preschool relating to:
 - (1) a. Hiring practices and personnel policies for staff members;
 - (2) b. Methods for obtaining references and employment histories of staff members;
 - (3) c. Methods of conducting staff member performance evaluations; and
 - (4) d. Children's activities, care, and enrollment; and the responsibilities and rights of staff and parents; and
 - e. The responsibilities and rights of staff members and parents;
- g. ~~7.~~ Maintenance Maintain records of required enrollment, attendance, health, financial, and related other required records;
- h. ~~8.~~ Responsibility Be responsible for all preschool educational facility staff members, teachers, preschool assistants, substitute staff members, emergency designees, volunteers, or others who provide services in the facility and for notifying the department and county agency of any change of director preschool;
- i. ~~9.~~ Report immediately, as a mandatory reporter, any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and development of a written policy for staff to handle this reporting section 50-25.1-03;

- j. ~~10.~~ ~~Maintenance of~~ Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the preschool educational facility;
- k. ~~Designation of a qualified director;~~
- t. ~~11.~~ That Ensure preadmission visits for children and their parents are offered ~~in order that so~~ the preschool educational facility's preschool's program, fees, operating policies, and procedures can be viewed and discussed, including:
- (1) a. An explanation of how accidents and illnesses may be ~~dealt with~~ handled; ~~and~~
- (2) b. ~~Methods~~ The methods of developmentally appropriate discipline and ~~developmentally appropriate~~ guidance techniques to be used; ~~and~~
- c. The process for reporting a complaint, a suspected licensing violation, and suspected child abuse or neglect;
- m. ~~12.~~ That Ensure that there are signed written agreements with the parents of each child which specify the fees to be paid, methods of payments, and policies regarding delinquency of fees;
- n. ~~13.~~ That Ensure the preschool educational facility is sufficiently staffed at all times to meet the child and staff member ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
- o. ~~14.~~ That Ensure that written policies are established concerning the care and safeguarding of personal belongings brought to the preschool educational facility by enrollees children or others on their behalf;
- p. ~~15.~~ ~~Parents are provided, upon request, any~~ Provide parents, upon request, with progress reports on their children and provide unlimited ~~access and~~ opportunities for parents to observe their children while in care;
- q. ~~16.~~ ~~Parents are provided~~ Provide parents with the name of the preschool educational facility's operator, the director, teachers, preschool assistants, staff members, substitute staff members, and the emergency designee;
- r. ~~17.~~ ~~The development of and~~ Develop and ensure compliance with a written policy and procedure for accountability when a normally unaccompanied child fails to arrive for as expected at the program preschool;

- s. 18. ~~That there is at all times when children are receiving care, a~~ Ensure, whenever services are provided, that at least one staff member, substitute staff member, or emergency designee, is on duty who meets current certification requirements in basic cardiopulmonary resuscitation by that meets the requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department and is certified or trained in a first-aid program approved by the department. Substitute staff are exempted from this requirement department-approved program to provide first aid; and
- t. ~~Garecheck information is made available to parents.~~
2. 19. ~~If the operator of the preschool educational facility is also the director, the operator shall also meet~~ Meet the qualifications of the director set forth in section 75-03-11-28: if the operator is also the director; and
3. 20. ~~The operator of a facility shall report~~ Report to the authorized agent within twenty-four hours to the county director or the county director's designee a:
- a. A death or serious accident or illness requiring hospitalization of a child while in the care of the facility preschool or attributable to care received in the facility: preschool;
- b. An injury to any child which occurs while the child is in the care of the preschool which requires medical treatment;
- c. Poisonings or errors in the administering of medication;
- d. Closures or relocations due to emergencies; and
- e. Fire that occurs or explosions that occur in or on the premises of the preschool.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-07.2, 50-11.1-08

75-03-11-08.1. Minimum qualifications of a preschool educational facility director.

1. A preschool educational facility director shall be an adult of good ~~mental and physical, cognitive, social, and emotional health, capable of and shall use~~ mature judgment, and shall possess knowledge and experience in management and interpersonal relationships when making decisions impacting the quality of child care.

2. The director shall ~~meet~~ hold at least one of the following qualifications, in addition to those set out in subsection 1:
 - a. A bachelor's degree in the field of early childhood education with eight or more weeks of supervised student teaching experience in a preschool educational facility or similar setting;
 - b. A bachelor's degree with at least twenty-four quarter hours or sixteen semester hours in child development, child psychology, or fields directly related thereto fields, with at least six months of experience in a preschool educational facility or similar setting;
 - c. An associate degree in the field of early childhood development with at least six months of experience in a preschool educational facility or similar setting;
 - d. ~~Certification~~ Current certification as a child development associate or similar status ~~where such a local, state, or federal certification program exists~~, with at least one year of experience in a preschool educational facility or similar setting;
 - e. A bachelor's degree with at least eight semester hours or twelve quarter hours in child development, child psychology, or fields directly related thereto fields, with at least one year of experience in a preschool educational facility or similar setting; or
 - f. Certification from a Montessori teacher training program with at least one year of experience in a Montessori school, preschool educational facility, or similar setting.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-08.2. Minimum qualifications of a preschool educational facility teacher. A teacher shall:

1. ~~A teacher shall be~~ Be an adult of good mental and physical, cognitive, social, and emotional health, ~~capable of and shall use~~ mature judgment, ~~and shall possess knowledge of teaching and working with young children. when making decisions impacting the quality of child care and early childhood education.~~
2. ~~The teacher shall have met~~ Hold at least one of the following qualifications:
 - a. A bachelor's degree with at least eight semester hours or twelve quarter hours in child development, child psychology, or fields directly related thereto fields;

- b. A teaching certificate in elementary education or kindergarten endorsement;
 - c. An associate degree in the field of early childhood education;
 - d. ~~Certification~~ Current certification as a child development associate or similar status ~~where such a local, state, or federal certification program exists~~; or
 - e. Certification from a Montessori teacher training program.
3. ~~If the teacher is also the director, that individual shall meet~~ Meet the qualifications of the director and perform the function of a director as defined in section 75-03-11-08.1, if the teacher is also the director.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-08.3. Minimum qualifications of a preschool educational facility aide assistant. Each aide assistant shall:

- 1. ~~Be mentally, physically, and emotionally able to provide care and attention to the children in the aide's charge~~ an individual of good physical, cognitive, social, and emotional health and use mature judgment when making decisions impacting the quality of child care and early education.
- 2. ~~Meet one of the following qualifications:~~
 - a. ~~A~~ Hold either a high school diploma; or
 - b. ~~A~~ a high school equivalency.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-09. Staffing requirements.

- 1. The number of staff members and their ~~use shall~~ responsibilities must reflect program requirements; and individual differences in the needs of the children enrolled, and ~~shall may~~ permit flexible groupings mixed-age groups, where if necessary. Service personnel ~~that are~~ engaged in housekeeping and food preparations ~~shall may~~ not be counted in the child and to staff member ratio for periods of time when they are so engaged in housekeeping or food preparation.

2. The minimum ratio of caregivers or program staff members responsible for caring for or teaching children to children in preschool educational facilities must be:
 - a. If all children in care are children two years of age to three years of age, one staff member may care for six children, a ratio of .167 in decimal form.
 - b. If all children in care are children three years of age to four years of age, one staff member may care for eleven children, a ratio of .09 in decimal form.
 - c. If all children in care are children four years of age to five years of age, one staff member may care for thirteen children, a ratio of .077 in decimal form.
 - d. If all children in care are children five years of age to six years of age, one staff member may care for sixteen children, a ratio of .063 in decimal form.
 - e. There must be at least one director or teacher, in addition to at least one staff member responsible for caring for or teaching children, per group of ten children, if the group includes children two years old.
 - f. There must be at least one director or teacher, in addition to at least one staff member responsible for caring for or teaching children, per group of twenty children, if the group includes children three years old.
 - g. There must be at least one director or teacher, in addition to at least one staff member responsible for caring for or teaching children, per group of twenty-four children, ages four to six.
 - h. ~~There must be one Montessori-certified director or teacher per group of thirty children enrolled in accredited Montessori programs.~~
3. When there are mixed-age groups, the number of children in each category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of staff members responsible for caring for or teaching children necessary at any given time, numbers of staff members for all age categories are added, and any fractional staff member count is then rounded to the next highest whole number whenever the fractional staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.
4. If a child in care has a disabling condition, and which requires more than usual care with special needs is admitted to the preschool, the child's

developmental age level must be used in determining the number of children for which care may be provided child to staff ratios.

4. ~~5.~~ Children The operator shall ensure that a child with special conditions needs requiring more than usual care and supervision ~~shall have~~ has adequate care and supervision ~~provided to them~~ without adversely affecting care provided to the remaining other children in the facility preschool.
5. ~~To determine the number of caregivers necessary at any given time, numbers of caregivers for all age categories are added, and any fractional caregiver count is then rounded to the next highest whole number whenever the fractional caregiver count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.~~
6. Children using the licensed facility preschool for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

75-03-11-10. [Reserved] Duties of a preschool director. The director, in collaboration with the operator, shall:

1. Implement policies and procedures for maintaining compliance with licensing rules;
2. Maintain required enrollment, attendance, health, and other required records;
3. Screen, schedule, supervise, and be responsible for the conduct of staff members while the staff members are on duty;
4. Ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of each child at all times so the staff member is capable of intervening to protect the health and safety of the child; and

5. Perform other duties as delegated by the operator.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-11. ~~{Reserved}~~ Duties of a preschool teacher. A teacher, in collaboration with the director, shall:

1. Communicate with parents about the individual needs of their children, including any special concerns the parents may have;
2. Plan daily and weekly schedules of activities and make those plans available to parents; and
3. Ensure that the program policies are adhered to in the class or group assigned to the teacher.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-12. ~~{Reserved}~~ Minimum qualifications of volunteers. If a volunteer is providing child care, the volunteer shall meet the qualifications of a staff member responsible for caring for or teaching children and must receive orientation for all assigned tasks.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-13. Minimum health and training requirements for applicants, operators, and staff members.

1. ~~Each operator or caregiver shall complete a health self-certification form certifying that the operator or caregiver does not have health problems that would interfere with the person's functioning as a caregiver or that would be detrimental to the health of the children or other staff. If the operator adds or replaces a caregiver after the licensure process is complete, the operator shall submit a self-certification form completed by the new caregiver to the county within five working days of the caregiver's first workday.~~
2. ~~Each operator or caregiver shall furnish documentation of a negative Mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter. If the operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative Mantoux tuberculosis test before the first day of employment. Substitute staff are exempted from this~~

~~requirement. A preschool educational facility operator who uses an untested emergency designee may not be found in violation of this provision.~~

- ~~3.~~ 3. If the physical ~~or mental~~, cognitive, social, or emotional health capabilities of an applicant, operator, or caregiver staff member appears questionable, the department may require the individual to be evaluated by appropriate professionals, with the results provided to the department present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.
- ~~4. 2.~~ 2. While children are in care, A staff members shall member may not use or be under the influence of any alcohol or judgment-altering alcoholic beverages or illegal drugs while children are in care.
3. A staff member may not place a child in an environment that is harmful or dangerous to the child's physical, cognitive, social, or emotional health.
- ~~5. 4.~~ 4. All staff members responsible for caring for or teaching children shall certify attendance at county-approved completion of department-approved training related to child care annually.
 - a. Staff A staff member working thirty to forty or more hours per week shall certify a minimum of thirteen hours of county-approved department-approved training annually.
 - b. Staff A staff member working fewer than thirty hours and at least twenty to thirty hours per week shall certify a minimum of eleven hours of county-approved department-approved training annually.
 - c. Staff A staff member working fewer than twenty hours and at least ten to twenty hours a week shall certify a minimum of nine hours of county-approved department-approved training annually.
 - d. Staff A staff member working less fewer than ten hours per week shall certify a minimum of seven hours of county-approved department-approved training annually.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-14. Minimum requirements for facility.

1. The preschool educational facility must be properly lighted. The following technical requirements must be met:

- ~~a. Sixty-five foot-candles of light for all general use and play areas;~~
- ~~b. Twenty-five foot-candles of light for all bathrooms;~~
- ~~c. Fifteen foot-candles of light for corridors and storage areas; and~~
- ~~d. Fifty foot-candles of light for any kitchen, laundry, and office areas.~~
- e. If the lighting of the preschool educational facility appears questionable, the department or county agency may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities. If the lighting of the preschool appears questionable, the department may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.

2. Water supply.

- a. The operator shall ensure that the preschool educational facility must have has a drinking water supply from an approved community water system or from a source tested and approved annually by the state department of health;
- b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual single-service drinking cups; and
- c. The preschool educational facility must have hot and cold running water. Hot water heaters must be turned down or there must be a tempering valve or antiscalding device on The water in the faucets used by children so that the temperature of hot water supplied to lavatories and bathing facilities does must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

3. Toilet and lavatory sink facilities:

- a. Toilet The operator shall provide toilet and lavatory sink facilities must be provided and must be convenient which are easily accessible to the areas used by the children and staff members;
- b. Toilet and lavatory facilities must meet requirements of the state department of health;
- e. A The operator shall provide a minimum of one lavatory sink and one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained;

- d. ~~c.~~ At The operator shall provide at least one handwashing lavatory must be provided sink per toilet room facility; and
 - e. ~~d.~~ Sanitary The operator shall provide hand soap, sanitary hand-drying equipment, individual single-use cloth, towels, or paper towels must be provided near handwashing lavatories sinks.
4. ~~Sewage and wastewater disposal:~~
- a. ~~Any The operator of a preschool educational facility not on a municipal or public water supply or wastewater disposal system shall have its ensure the preschool's sewage and wastewater system has been approved by the state department of health.~~
 - b. ~~The preschool educational facility shall meet the requirements of the state plumbing code, North Dakota Administrative Code article 62-03.~~

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-02, 50-11.1-02.1~~ 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-15. Minimum standards for provision of transportation.

1. ~~The provider~~ Prior to licensing, the operator shall establish a written policy governing the transportation of children to and from the preschool educational facility, if the preschool educational facility provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the preschool educational facility. If the preschool educational facility provides transportation, the ~~provider~~ operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.
2. If When transportation is provided by a preschool educational facility, children must be protected by adequate staff member supervision, safety precautions, and liability ~~and medical~~ insurance.
 - a. ~~Child and staff ratios~~ Staffing requirements must be maintained to assure the safety of children while being transported.
 - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.

4. The driver must be eighteen years of age or older and must comply with all relevant federal, state, and local laws, including child restraint system laws.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-16. ~~[Reserved]~~ Minimum emergency evacuation and disaster plan.

1. Each operator shall establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with local emergency management agencies. The plan must include:
 - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
 - b. What will be done if parents are unable to pick up their child as a result of the emergency; and
 - c. What will be done if the group child care has to be relocated or must close as a result of the emergency.
2. Fire and emergency evacuation drills must be performed in accordance with the local fire department's guidelines.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-17. Fire inspections. Annual

1. The operator shall ensure that annual fire inspections must be are completed for the preschool by local or state fire authorities. Emergency plans must be developed in cooperation with authorities. The operator shall correct or have corrected any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the county licensing agency authorized agent.
1. The program must provide the following as approved by an appropriate fire official:
 - a. Approved smoke detectors placed as directed;

- b. ~~Fire extinguishers that bear approval ratings for 2A classification or better;~~
 - c. ~~Emergency exit signs with at least six-inch [15.24-centimeter] stroke letters;~~
 - d. ~~At least two qualifying exits;~~
 - e. ~~A boiler room door and frame with a one-hour fire rated enclosure if it faces an exit corridor; and~~
 - f. ~~A self-closing solid core door on any stairwells if the preschool educational facility is more than a two-story building.~~
2. ~~Fire evacuation drills must be performed in accordance with the local fire department's guidelines.~~
3. ~~2. The preschool educational facility shall be~~ operator shall ensure that the preschool is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.
3. The operator shall provide:
- a. The fire inspector's written statement of compliance with the local fire code; or
 - b. The fire inspector's written statement that the preschool has been inspected and that the inspector is satisfied that the preschool meets the minimum fire and safety standards.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-18. Minimum sanitation and safety requirements.

1. The ~~preschool educational facility's~~ operator shall ensure that the preschool's bathroom lavatories sinks, toilets, tables, chairs, and floors ~~must be~~ are cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.
2. The ~~preschool educational facility's~~ operator shall ensure that the preschool's building, grounds, and equipment ~~must be~~ are located, cleaned, and maintained to protect the health and safety of children. Routine The operator shall establish routine maintenance and cleaning

procedures ~~must be established~~ to protect the health of the children and caregivers staff members.

3. ~~If~~ The operator shall ensure that in preschools where meals are prepared, the state department of health shall ~~conduct~~ conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.
4. ~~Indoor~~ The operator shall ensure that indoor and outdoor equipment, toys, and supplies must be are safe, strong, nontoxic, and in good repair. ~~All~~ The operator shall ensure that all toys must be easily cleanable and must be cleaned and sanitized on a routine basis and equipment are kept clean and in a sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
5. ~~There must be~~ The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. ~~During the heating season when~~ All heating devices must be approved by the local fire authorities. When the preschool educational facility is occupied by children, the room temperature may not be less than ~~sixty-eight~~ sixty-five degrees Fahrenheit [~~20~~ 18 degrees Celsius] and not more than ~~seventy-four~~ seventy-five degrees Fahrenheit [~~23.33~~ 24 degrees Celsius] measured ~~three feet~~ [~~91.44 centimeters~~] above the floor. ~~All heating devices must be approved by the local fire authorities.~~
6. ~~Exterior~~ The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas must be are contained, or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
7. ~~Potential~~ The operator shall ensure that potential hazards, including such as noncovered electrical outlets, guns, cleaning chemicals, uninsulated wires, medicines, and poisonous plants, ~~and open stairways~~ may are not be accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
8. ~~Indoor~~ The operator shall ensure that indoor floors and steps must are not be slippery or and do not have splinters. Steps The operator shall ensure that steps and walkways must be are kept free from accumulations of water, ice, snow, or debris.

9. ~~Elevated~~ The operator shall ensure that elevated areas such as including stairs or and porches must have railings and safety gates; where necessary to prevent falls.
10. ~~All heating devices must be approved by the local fire authorities.~~
11. ~~The preschool educational facility operator shall take steps to keep the preschool educational facility free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the preschool educational facility. Insect repellent may be applied outdoors on children with written parental permission.~~
12. ~~11. Combustible~~ The operator shall ensure that combustible materials must be are kept away from light bulbs and other heat sources.
13. ~~12. Exit~~ The operator shall ensure that exit doorways and pathways may are not be blocked.
14. ~~13. All~~ An operator shall ensure that all preschool educational buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, must have these painted surfaces repainted or must shall submit evidence that the surfaces paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.
15. ~~14. Wading~~ Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the preschool educational facility must be strictly supervised and emptied and cleaned shall empty, clean, and sanitize wading pools daily.
16. ~~15. All swimming pools used by children must be approved annually by the local health unit.~~
17. ~~16. All pets present in the preschool educational facility must be properly immunized, restricted, and maintained. Nondomestic animals, such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the preschool educational facility. Pets may not be allowed in the kitchen or eating area during meal preparation or meals. Pets and animals.~~

- a. The operator shall ensure that only cats, dogs, and small pets that are contained in an aquarium or other approved enclosed container are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children.
 - b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The operator shall ensure parents are aware of the presence of pets and animals in the preschool.
 - d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall closely supervise all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
 - h. The operator shall ensure that the preschool is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
17. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids.
18. ~~Smoking is not permitted in any preschool educational facility at any time during which a child who receives early childhood services from that preschool educational facility is present and receiving services.~~

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the

Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, ~~50-11.1-02.2,~~ 50-11.1-04, 50-11.1-07,
50-11.1-08

75-03-11-19. Minimum requirements regarding space.

1. Each preschool ~~educational facility~~ shall provide adequate indoor and outdoor space for the daily activities of all children in attendance for the licensed capacity of the preschool.
2. ~~The preschool educational facility shall provide adequate space, indoors and out, for the daily activities of the children. This Adequate space~~ must include a minimum of thirty-five square feet [3.25 square meters] of indoor space per child ~~indoors~~ and a minimum of seventy-five square feet [6.97 square meters] of outdoor play space per child ~~outdoors~~. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the preschool ~~educational facility at one time,~~ the total appropriate outdoor play space available must be no less than the number of children in the largest class or group of the preschool multiplied by seventy-five square feet [6.97 square meters]. The operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving ~~every child~~ each class or group an opportunity to play outdoors daily.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-20. Program requirements.

1. A preschool ~~educational program~~ must have a written curriculum which describes the program's philosophy, goals, objectives, and a program evaluation process.
2. ~~a.~~ a. The curriculum must promote intellectual cognitive, social, emotional, and physical development growth of children in care.
3. ~~b.~~ b. The curriculum must be based on the developmental levels and needs of children enrolled.
4. 2. The director shall exchange information with parents concerning the program, its activities, and the adjustment of the child to the program.

- 5- ~~3.~~ Each child's cultural and ethnic background and primary language or dialect must be respected by the ~~caregivers~~ staff members.
- 6- ~~4.~~ ~~There must be~~ The director or teacher shall design a written daily plan of program activities for the children enrolled in the program.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-21. Minimum standards for the provision of snacks. ~~Children~~ An operator shall serve a nutritious snack on a regular basis to children in care for more than two and one-half hours ~~shall be served a nutritious snack on a regular basis.~~

History: Effective December 1, 1981; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-22. Records.

1. ~~A~~ The operator shall keep a copy of this chapter must be kept on the premises of the preschool and shall make it available to staff members at all times.
2. The ~~preschool-educational facility~~ operator shall maintain the following records:
 - a. The child's full name, ~~birthdate~~ birth date, current home address, legal names of the child's parents ~~or legal guardian~~, and the business and ~~home~~ personal telephone numbers where ~~these individuals may they can~~ be reached;
 - b. A written statement from the parents ~~or legal guardian~~ authorizing emergency medical care;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the ~~individual~~ individuals legally responsible for the child ~~may not~~ cannot be reached immediately in an emergency;
 - d. Names and telephone numbers of individuals authorized to take the child from the ~~preschool educational facility~~;
 - e. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document citing that the

child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in child; and

- f. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, that which must indicate any special precautions for diet, medication, or activity, must serve as evidence that a child is physically able to take part in the child care program, and must be completed annually. This assessment must be completed annually.
3. All The operator shall verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services must be are kept confidential, and that access must be is limited to staff members, the parents, or legal guardian of each child, and to the following, unless otherwise protected by law:
 - a. Authorized county agency The authorized agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent or legal guardian. The preschool educational facility shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-23. Discipline - Punishment prohibited. Disregard of any of the following disciplinary rules is grounds for denial or revocation: or any disciplinary measure resulting in physical or emotional injury, neglect, or abuse to any child is grounds for license denial or revocation:

1. The preschool educational facility must have a written policy regarding the discipline of children that must be interpreted to. The operator

shall provide the policy to, and discuss the policy with, staff members responsible for caring for or teaching children before the preschool educational facility begins operation or before staff members begin working with children.

2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, ~~praise for~~ praising appropriate behavior, ~~and or~~ gentle physical restraint, such as holding. ~~Children~~ A child may not be subjected to physical harm, fear, or humiliation.
3. Authority to discipline may not be delegated to ~~or~~ children nor may discipline be accomplished administered by children.
4. Separation, when used as discipline, must be ~~brief and~~ appropriate to the child's age development and circumstances. ~~Any~~ The child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult a staff member responsible for caring for or teaching children. ~~A staff member may not isolate a child may not be isolated~~ in a locked room or closet.
5. A child may not be ~~physically~~ punished for lapses in toilet training.
6. ~~When addressing a child, or while in the presence of a child, staff members may not~~ A staff member may not use verbal abuse or make derogatory remarks about the a child, the or a child's family, race, or religion nor use profane, threatening, unduly loud, or otherwise abusive language when addressing the child or in the presence of other children.
7. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
8. A child staff member may not be force-fed, force-feed a child or coerce a child to eat unless medically prescribed and administered under a physician's medical provider's care.
- 8- 9. Deprivation A staff member may not use deprivation of meals may not be used or snacks as a form of discipline or punishment.
- 9- 10. A staff member or any other adult in or at the preschool may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the facility.
11. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in the mouth of a child to deter the child from biting other children.

12. A staff member may not withhold active play as a form of discipline or punishment, beyond a brief period of separation.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-25. Minimum requirements for care of children a child with special needs. ~~When~~ The operator shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of children with special needs are admitted, there must be appropriate provisions to meet those needs. The operator shall receive documentation of the child's special needs from the parent upon the child's enrollment.

1. ~~When children~~ a child with special needs ~~are is~~ admitted, the ~~preschool educational facility~~ operator shall consult with the child's parents, and with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The operator shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.
2. ~~The caregivers~~ operator shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's ~~disability~~ special needs and potential for growth and development.
3. ~~If the nature of the special need or the number of children with special needs warrants added care, the preschool educational facility shall add sufficient staff and equipment as deemed necessary by the department to compensate for those needs.~~

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-26. Minimum provisions regarding emergency care for children. ~~The preschool educational facility shall~~ must have written plans to respond to illness and emergencies including burns, serious injury, and ingestion of poison. ~~Parents~~ The operator shall ensure that parents of enrollees ~~must be~~ enrolled children are advised of these plans. Plans ~~must provide for:~~

1. ~~The conspicuous~~ Establish emergency response procedures:
2. Provide accessible posting of emergency response procedures: and require training for all staff members concerning those emergency procedures:
2. ~~The establishment of emergency response procedures:~~
3. ~~The~~ Require the availability of at least one working flashlight:
4. ~~Maintenance of~~ Require at least one state department of health-approved department-approved first-aid kit maintained and kept in a designated location, inaccessible to children, yet readily accessible to caregivers: staff members at all times;
5. ~~A~~ Provide a working telephone line immediately accessible to the caregivers staff members with a list of emergency telephone numbers conspicuously posted adjacent to the telephone:
6. ~~Responses~~ Provide a plan for responding to be made regarding minor illnesses and minor accidents when children are cared for in the care of the preschool educational facility, and provide a plan for accessing available medical consultation regarding special care and medication:
7. ~~Written~~ Require written permission to dispense medication and proper instructions for the administration of medication, obtained from the parent if of a child in the preschool education facility who requires medication.
 - a. ~~Medications~~ Medication prescribed by a physician medical provider must be accompanied by the physician's medical provider's written instructions as to dosage and storage, and labeled with the child's name and dated: date;
 - b. ~~Medications~~ Medication must be stored in an area inaccessible to children, and medications medication stored in a refrigerator must be stored collectively in a spillproof container: and
 - c. ~~A~~ The operator shall keep a written record of the administration of medication, including over-the-counter medication, to for each child shall be kept. Records must include the date and time of each administration dose administered, the dosage, the name of the staff member administering the medication, and the name of the child. Completed The operator shall include completed medication records shall be included in the child's record:
8. ~~The designation of~~ Require a supervised temporary isolation area designated for a child who is too ill to remain in the group preschool, or who has an infectious or contagious disease, with the following

procedures being followed when those signs or symptoms are observed:

- a. Parents are notified immediately and asked to pick up their child; and
 - b. First aid is provided and medical care is sought, as necessary;.
9. ~~Provisions for emergency transportation, specifically that when a child is brought to another place for~~ Identify a source of emergency services available to the preschool, including:
- a. A prearranged plan for emergency medical care in which parents of enrolled children are advised of the arrangement; and
 - b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child is accompanied by an adult who remains with the child until medical personnel assume the responsibility for the child's care and until the parent or legal guardian arrives. is notified;
10. ~~Practices in which~~ Establish and implement practices in accordance with guidance obtained through consultation with local or state health department authorities regarding the exclusion and return of children with infectious or communicable conditions are excluded from the preschool educational facility until the condition may no longer be transmitted. Guidance regarding exclusion and return to the preschool educational facility must be obtained through consultation with local and state health department authorities. The operator may obtain this guidance directly or through current published materials regarding exclusion and return to the preschool;
11. Require information be provided to parents, as needed, concerning child health and social services available in the community; and
12. Require that the preschool inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, immediately notify parents of any injury which requires emergency care beyond first aid, and require each injury report to be made a part of the child's record.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-07.2~~ 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-27. Effect of conviction on licensure and employment.

1. ~~A preschool educational facility~~ An applicant, operator, or director may not be, and a preschool educational facility may not employ or allow, in any capacity that involves or permits contact between the employee teacher, assistant, emergency designee, or staff member and any child cared for by the preschool educational facility, an individual operator, director, staff member, teacher, assistant, or emergency designee, who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code ~~chapters~~ chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; ~~or~~ 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code sections section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; ~~or~~ 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; ~~North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections~~ 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; ~~or~~ 12.1-31-05, child procurement; ~~or an~~ 14-09-22, abuse or neglect of a child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes offenses identified in subdivision a; or
 - ~~b-~~ c. An offense, other than an offense identified in subdivision a or b, if the department in the case of ~~a preschool educational facility~~ an applicant, operator, or director, or the preschool educational facility operator in the case of ~~an employee~~ a staff member, teacher, assistant, substitute staff member, or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivision a or b of subsection 1 have a direct bearing on the applicant's, operator's, director's, teacher's, assistant's, substitute staff member's, emergency designee's, or a staff member's ability to serve the public as an operator, director, teacher, assistant, emergency designee, or a staff member.

3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. The preschool educational facility operator shall establish written policies, and engage in practices that conform to those policies, to effectively implement this section, before hiring any directors, staff members, teachers, assistants, substitute staff members, or emergency designees.
- ~~3. For purposes of subdivision b of subsection 1, the department in the case of a preschool educational facility operator, or a preschool educational facility operator in the case of an employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.~~
- ~~4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's ability to serve the public in a capacity involving the provision of child care services.~~
5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-11-28. Child abuse and neglect determinations. ~~If a probable cause determination or a decision that services are required~~ An operator shall ensure safe care for the children receiving services in the preschool. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that any a child has been abused or neglected by a ~~any applicant, operator, director, teacher, assistant, staff member, substitute~~

staff member, or emergency designee, it has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that individual any child has been abused or neglected by the applicant, operator, director, teacher, assistant, staff member, substitute staff member, or emergency designee, the applicant or operator shall furnish information satisfactory to the department, from which the department may can determine the applicant's, operator's, director's, teacher's, assistant's, staff member's current, substitute staff member's, or emergency designee's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability must be furnished to the preschool educational facility applicant or operator and to the regional director of the regional human service center or the regional director's designee for consideration and action on the preschool educational facility application or license. Each applicant, operator, director, teacher, assistant, staff member, substitute staff member, and emergency designee shall complete a department-approved authorization for background check form no later than the first day of employment.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-11-29. ~~Allowable time periods for correction~~ Correction of deficiencies violations.

1. Deficiencies Within three business days of receipt of the correction order, the operator shall notify the parents of each child enrolled in the preschool that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the preschool until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of section 75-03-11-09, ~~or~~ section 75-03-11-23, or subsection 7 of section 75-03-11-18, within twenty-four hours;
 - b. For a violation ~~or deficiency~~ requiring the hiring of a director with those qualifications set forth in section 75-03-11-08.1 or a teacher with those qualifications as set forth in section 75-03-11-08.2, within sixty days;
 - c. For a deficiency violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11-17, within sixty days;

- d. For a deficiency violation that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other deficiencies violations, within twenty days.
- ~~2.~~ 3. All periods for correction begin on the date of receipt of the correction order by the licensee operator.
 - ~~3.~~ 4. The regional supervisor of early childhood ~~program licensing services~~ may grant an extension of additional time to correct deficiencies violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the licensee operator and a showing that the need for the extension is created by unforeseeable circumstances and the licensee operator has diligently pursued the correction of the deficiency violation.
 - ~~4.~~ 5. The operator shall furnish written notice ~~of to the authorized agent upon completion of the correction order~~ required corrective action to the county agency. The correction order ~~is effective~~ remains in effect until the ~~county agency receives the notice~~ authorized agent confirms that the corrections have been made.
 6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a preschool that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the preschool has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the preschool. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
 7. If a preschool receives more than one correction order in a single year, the operator may be referred by the department for consulting services. The consulting services will be offered to assist the operator in maintaining compliance and to avoid future corrective action.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

75-03-11-30. Fiscal sanctions.

1. A The department shall assess a fiscal sanction of twenty-five dollars per day ~~must be assessed~~ for each violation of section 75-03-11-13, 75-03-11-17, 75-03-11-18, or 75-03-11-19 for each day that the operator has not verified correction, after the allowable time for correction of deficiencies violations ends, that the ~~preschool educational facility operator~~ operator has not verified correction.

2. ~~A~~ The department shall issue a fiscal sanction of fifteen dollars per day ~~must be assessed~~ for each violation of section 75-03-11-09 for each day that the operator has not verified correction, after the allowable time for correction of ~~deficiencies~~ violations ends, that the ~~preschool-educational facility operator~~ has not verified correction.
3. ~~A~~ The department shall issue a fiscal sanction of five dollars per day ~~must be assessed~~ for each violation of any other provision of this chapter for each day that the operator has not verified correction, after the allowable time for correction of ~~deficiencies~~ violations ends, that the ~~preschool-educational facility operator~~ has not verified correction.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-07.4, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.4, 50-11.1-08

75-03-11-31. Appeals. An applicant or operator may appeal a decision to deny or revoke a license by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of the applicant's or operator's receipt of written notice of such a the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, ~~50-11.1-09~~ 50-11.1-10

CHAPTER 75-03-11.1

75-03-11.1-03. Definitions. As The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Attendance" means the total number of children present at any one time at the facility.
2. ~~"Caregiver or group leader" means any individual whose prime responsibility is the provision of direct care, supervision, and guidance to school age children in a child care facility under the guidance and supervision of the school age child care center operator.~~ "Child with special needs" means a child whose medical providers have determined that the child has or is at risk of chronic physical, developmental, behavioral, or emotional conditions.
3. ~~"Department" means the North Dakota department of human services.~~
4. ~~"Director" means an individual responsible for supervising and organizing program activities in a school age overseeing the general operation of, and implementing the policies and procedures of, the school-age child care center program.~~
5. 4. "Emergency designee" means an individual designated by the school age school-age child care center program to be a backup caregiver staff member for emergency assistance or to provide substitute care.
5. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
6. ~~"Operator" means the individual or group governing board who has the legal responsibility and the administrative authority for the operations of a school-age school-age child care center program. The operator is the applicant for license or the licensee under this chapter.~~
7. ~~"Parent" means an individual bearing the legal relationship of father or mother to a child enrolled in a school age child care center, including an individual who legally stands in place of a parent, such as a legal guardian or custodian.~~
8. ~~"School age child care center" means the location for adult supervised care of a school age child care program on a regular basis for nineteen or more children who are usually between the ages of five and twelve years old.~~
9. ~~"School age School-age child care center program satellite" means the location for adult supervised care of a school age child care program on a regular basis for nineteen or more children who are usually between~~

~~the ages of five and twelve years old in a building or a location used at any time by the a licensed school-age child care program other than the building or location listed as the main location on the license.~~

~~10. 8.~~ "School-age School-age child care program" or "program" means a school-age child care center providing school-age child care program licensed to provide early childhood services exclusively to school-age school-age children before and after school, during school holidays, and during summer vacation.

~~11.~~ "Staff member" means ~~operator, substitute staff, volunteer, caregiver, group leader, or any other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the school-age child care center.~~

~~12. 9.~~ "Substitute staff" means ~~paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.~~

~~13. 10.~~ "Supervisor ~~or site coordinator~~" means any person with the responsibility for organizing and supervising daily program activities.

~~14. 11.~~ "Volunteer" means an individual who visits or provides an unpaid service or visit, including a ~~fireperson~~ firefighter for fire safety week, a ~~McGruff, or Santa Claus person~~ practicum student, or a foster grandparent.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-11.1-04. Effect of licensing and display of license.

1. The issuance of a license to operate a ~~school-age~~ school-age child care center program is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed prominently in the premises to which it applies.
3. The license must specify the maximum number of children ~~who for whom the school-age child care program, including any satellite locations, may be cared for by the school-age child care center provide care.~~ The school-age school-age child care center program, including

satellite locations, may at no time not admit a greater number of children than the license allows.

History: Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-11.1-05. Denial or revocation of license.

1. A The department may deny or revoke a license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.
2. If an operator appeals an action to revoke a license is appealed, the licenseholder operator may continue the operation of the school-age school-age child care center program pending the final administrative determination or until the license expires, whichever occurs first; provided, however, that this subsection does not limit the actions the department may take pursuant to North Dakota Century Code section sections 50-11.1-07.8 and 50-11.1-12.
3. The department may revoke a license to operate a school-age school-age child care center program without first issuing a correction order or simultaneously with a suspension if continued operation would jeopardize the health and safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

75-03-11.1-06. Provisional license.

1. The director of a regional human service center, in the director's discretion, or the director's designee, in consultation with the department may issue a provisional license for the operation of a newly opened school-age school-age child care center or for a previously licensed school-age child care center program although the school-age child care center applicant or operator fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:

- a. ~~Prominently state~~ State that the ~~school age child care center operator~~ has failed to comply with all applicable standards and regulations of the department;
 - b. ~~State that the items of noncompliance are set forth on a document available upon request made to the operator;~~
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears ~~the same~~ an expiration date of one year from the date of issuance as of the provisional license, upon demonstrating after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. ~~A~~ The department may issue a provisional license ~~may be issued~~ only to an applicant or operator who has waived, in writing:
 - a. The right to a written statement of charges 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 nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
 4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~regional~~ director of the regional human service center or the ~~regional~~ director's designee and must be acknowledged in writing by the applicant or operator.
 5. Subject to the exceptions contained in this section, a provisional license entitles the ~~holder~~ operator to all rights and privileges afforded the ~~holder~~ operator of an unrestricted license.
 6. The department may not issue a provisional license if the ~~facility~~ school-age child care program is not in compliance with section 75-03-11.1-17 or 75-03-11.1-18.
 7. The operator shall ~~prominently~~ display prominently the provisional license and agreement.

8. The operator shall provide parents written notice that the facility school-age child care program is operating on a provisional license and the basis for the provisional license.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-11.1-06.1. Restricted license. The department may issue a restricted license:

1. To restrict an individual's presence when children are in care;
2. To restrict a pet or animal from areas accessible to children; or
3. When necessary to inform parents that the operator is licensed, but is restricted to operating in certain rooms or floors of the facility or restricted from using specific outdoor space of the facility.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11.1-07. Application for and nontransferability of school-age school-age child care center program license. An application for a license must be submitted to the county agency in the county in which the facility is located.

1. An applicant shall submit an application for a license to the authorized agent. Application must be made in the form and manner prescribed by the department.
2. The A license issued under this chapter is nontransferable and is valid only on for the premises indicated on the license.
3. A new An application for a new license must be filed by a licensed center upon change of operator or location.
4. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This subsection applies to new licenses issued on or after October 1, 2010. Existing operators will be exempt from this

provision until October 1, 2015, after which time all operators will be subject to the requirements of this subsection.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-03.1, 50-11.1-04(3)~~ 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-11.1-08. Duties of ~~school-age~~ school-age child care center program operator. The operator of a ~~school-age~~ school-age child care center program is responsible to the department for compliance with the requirements set forth in the standards this chapter and North Dakota Century Code chapter 50-11.1. ~~In meeting this responsibility, the~~ The operator shall ensure:

1. ~~Establishment of the school-age child care program;~~ Shall designate a qualified director, shall delegate appropriate duties to the director, and shall:
 - a. Ensure that the director is present at the school-age child care program at least sixty percent of the time that the program is open. If the operation has satellite sites, the director shall be present a combined total of sixty percent of the school-age program's hours of operation.
 - b. Ensure that when the director and designated acting director are not present at the program, a person who meets the qualifications of a supervisor is on duty.
 - c. Ensure that the individual designated as an acting director for longer than thirty consecutive days meets the qualifications of a school-age child care program director.
 - d. Ensure that if the operator of the school-age child care program is also the director, that the operator meets the qualifications of a director set forth in section 75-03-11.1-08.1;
2. ~~An application is made~~ Shall apply for a license for each school-age the school-age child care center-operated program;
3. ~~Creation of an outline of a written plan and policies for the operation of each school-age child care center;~~ Shall provide an environment that is physically and socially adequate for children;
4. ~~Notification is provided to~~ Shall notify the county agency authorized agent of any major changes in the operation of, or in the ownership or governing body of the school-age school-age child care center and of any program, including staff member changes;

5. ~~Liability~~ Shall ensure that the school-age child care program carries liability insurance for against bodily injury and property damage for the school-age child care center is carried;
6. ~~The development and maintenance of~~ Shall formulate written policies and procedures relating to children's activities and care, enrollment, and the responsibilities and rights of staff and parents; for the operation of the school-age child care program relating to:
 - a. Hiring practices and personnel policies for all staff members;
 - b. Methods for obtaining references and employment histories of staff members;
 - c. Methods of conducting staff member performance evaluations;
 - d. Children's activities, care, and enrollment; and
 - e. The responsibilities and rights of staff members and parents;
7. ~~That personnel policies include written references, employment histories, and a method of conducting staff performance evaluations;~~
8. ~~Maintenance of~~ Shall maintain enrollment, attendance, health, financial, and other related required records as required by statute or rule;
9. ~~8.~~ Authorization is obtained from each staff member and volunteer for the department to conduct a child abuse and neglect background check; Shall select an emergency designee;
10. ~~9.~~ Maintenance of Shall maintain necessary information to verify staff member qualifications and to ensure safe care; for the children in the school-age school-age child care center program;
11. ~~Designation of a qualified director. The minimum qualifications for a director are set forth in section 75-03-11.1-08.1, but specifically:~~
 - a. ~~At no time shall a school-age child care center be without a director or an acting director;~~
 - b. ~~An individual designated as acting director for an ongoing period of less than thirty days shall meet the qualifications of a supervisor or site coordinator under section 75-03-11.1-08.3; and~~
 - c. ~~An individual designated as acting director for an ongoing period of more than thirty days shall meet the qualifications of a director under section 75-03-11.1-08.1;~~

- ~~12.~~ 10. ~~Parents~~ Shall inform parents of enrolled children and other interested parties ~~are informed~~ about the ~~school-age~~ school-age child care center's ~~program's~~ goals, policies, procedures, and content of the program, including:
- a. How accidents and illnesses will be ~~dealt with~~ handled; and
 - b. Methods of developmentally appropriate discipline and ~~developmentally appropriate~~ guidance techniques to be used; and
 - c. The process for reporting a complaint, a suspected licensing violation, and suspected child abuse or neglect;
- ~~13.~~ 11. ~~Parents~~ Shall advise parents of enrolled children ~~are advised~~ of the ~~school-age~~ school-age child care center's ~~program's~~ service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director;
- ~~14.~~ 12. ~~Written notice is provided to the~~ Shall provide parents of enrolled children information regarding the effective date, duration, scope, and impact of any significant changes in the ~~school-age~~ school-age child care center's ~~program's~~ services;
- ~~15.~~ 13. ~~That the center~~ Shall ensure that the school-age child care program is sufficiently staffed at all times to ~~provide physical care to each child for the benefit of their social competence, emotional well-being, and intellectual development~~ meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
- ~~16.~~ 14. ~~That~~ Shall ensure that the ~~school-age~~ school-age child care center program has sufficient qualified caregivers ~~on call~~ staff members available to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty;
- ~~17.~~ 15. ~~That~~ Shall ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
- ~~18.~~ 16. ~~That~~ Shall ensure that written policies are established which ~~provide for~~ address the provision of emergency medical care, the care of children a child with special physical, emotional, or mental needs; if children with ~~these needs are~~ a child with special needs is in care, and the treatment of illness and accident;
- ~~19.~~ 17. ~~That~~ Shall ensure that written policies are established concerning the care and safeguarding of personal belongings brought to the ~~school age~~ school-age child care center program by children a child or others by another on their the child's behalf;

- ~~20.~~ 18. ~~Parents are provided~~ Shall provide parents with unlimited access and opportunities for parents to observe their children ~~at any time~~ while in care and ~~are provided~~ provide parents with regular opportunities to meet with ~~caregivers~~ staff members responsible for caring for or teaching children before and during enrollment to discuss their children's needs. Providing unlimited access does not prohibit a school-age child care program from locking its doors when children are in care;
- ~~21.~~ 19. ~~Parents are provided~~ Shall provide parents, upon request, ~~any~~ with progress reports on their children;
- ~~22.~~ 20. ~~Provisions~~ Shall ensure that provisions are made for safe arrival and departure of all children ~~that also allows for parent-staff interaction,~~ and a system is developed to ensure that children are released only as authorized by the parent ~~or legal guardian;~~
- ~~23.~~ 21. ~~Development of and~~ Shall develop and ensure compliance with a written policy and procedure for accountability when a normally unaccompanied child fails to arrive ~~for~~ as expected at the program;
- ~~24.~~ 22. ~~Development of~~ Shall develop a system to ensure the safety of children whose parents have agreed to allow them to leave the program without supervision, ~~with such system including~~ which must include, at a minimum:
- a. ~~Written permission from the parents allowing the operator to allow the children~~ a child to leave the program without supervision; and
 - b. Consistent sign-out procedures for released children.;
- ~~25.~~ 23. ~~The reporting of~~ Shall report immediately, as a mandated reporter, any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and ~~development of~~ shall develop a written policy ~~for~~ to address reporting by staff to handle this reporting members;
- ~~26.~~ 24. ~~That there is, at all times when children are receiving care,~~ Shall ensure that a staff member is on duty at all sites who meets current certification requirements in ~~basic~~ cardiopulmonary resuscitation by the American heart association, American red cross, or other ~~similar~~ department-approved cardiopulmonary resuscitation training ~~programs~~ program and in a department-approved first-aid program ~~approved by the department, except that substitute staff are exempted from this requirement;~~
- ~~27.~~ 25. If Shall meet the qualifications of the director set forth in section 75-03-11.1-08.1 if the operator of the ~~school-age~~ school-age child care center program is also the director, ~~the operator meets the qualifications of the director set forth in section 75-03-11.1-08.1;~~

- ~~28.~~ 26. ~~That caregivers and~~ Shall ensure that staff members responsible for caring for or teaching children under the age of eighteen have adult supervision in the school age child care center at all times are directly supervised by an adult staff member; and
- ~~29.~~ 27. ~~The operator of a facility shall~~ Shall report to the authorized agent within twenty-four hours to the county director or the county director's designee a:
- a. The death or serious accident or illness requiring hospitalization of a child while in the care of the facility program or attributable to care received in the facility program; and
 - b. An injury to any child which occurs while the child is in the care of the program and which requires medical treatment;
 - c. Poisonings or errors in the administration of medication;
 - d. Closures or relocations of child care programs due to emergencies; and
 - e. Fire that occurs or explosions that occur in or on the premises of the school-age child care program.
- ~~30.~~ That carecheck information is made available to parents.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-03.1, 50-11.1-04(3)~~ 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.1. Minimum qualifications of a ~~school-age~~ school-age child care center program director.

- ~~1. A school-age child care center~~ The director shall be an adult of good mental and physical, cognitive, social, and emotional health, capable of and shall use mature judgment, and shall possess knowledge and experience in management and interpersonal relationships. when making decisions impacting the quality of child care;
2. The director shall possess knowledge and experience in management and interpersonal relationships;
3. The director shall meet hold at least one of the following qualifications, in addition to those set out in subsection 1:

- a. A bachelor's degree in the field of elementary education ~~with eight weeks of experience in a child care center or similar setting;~~
 - b. A bachelor's degree with at least twenty-four semester hours or thirty quarter hours in child development, child psychology, or directly related fields ~~directly related to child psychology, and with at least six months of experience in a child care center program~~ or similar setting;
 - c. An associate degree in the field of early childhood development and with at least six months of experience in a child care center program or similar setting;
 - d. A teaching certificate in elementary education with ~~twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or related fields~~ at least six months of experience in a child care program;
 - e. ~~Certification~~ A current certification as a child development associate or similar status ~~where such a local, state, or federal certification program exists, and with at least one year of experience in a child care center program~~ or similar setting;
 - f. A bachelor's degree with twelve semester hours or fifteen quarter hours in child development, child psychology, or directly related fields ~~directly related to child psychology, and with at least one year of experience in a child care center program~~ or similar setting; or
 - g. Certification ~~for~~ from a Montessori teacher training program with one year of experience in a Montessori school, school-age school-age child care center program, or similar setting, and at least twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or fields directly related thereto; and
 - h. ~~A high school diploma with three years of experience as a licensed school-age child care supervisor and three positive reference letters from parents whose children were in the supervisor's care; and~~
- 3: 4. The director shall certify ~~attendance at annual completion of~~ a minimum of thirteen hours of ~~county-approved~~ department-approved training related to child care ~~annually~~.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-04(2)~~ 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.2. Duties of school-age school-age child care center program director. The ~~school-age~~ school-age child care center program director

~~shall, coextensive, in collaboration with the school-age school-age child care center program operator, be responsible for shall:~~

1. ~~Program planning, supervision Plan, supervise, and activity conduct daily activities in the school-age child care program;~~
2. ~~Assisting the operator in maintaining Maintain enrollment, health, attendance, financial, and other related required records as required by this chapter;~~
3. ~~Scheduling, supervision Screen, schedule, supervise, and be responsible for the conduct of staff members while the staff members are on duty;~~
4. ~~Designating Designate a supervisor or onsite coordinator for each school-age school-age child care center program site; and~~
5. ~~Assisting the operator in efforts to improve the quality of care and the competence of caregivers. Perform other duties as delegated by the operator.~~
6. ~~The director shall be present at the school-age child care center at least sixty percent of the time that the center is open. If the operation has satellite sites, the director shall be present an aggregate of sixty percent of the combined time that the director is present at all sites.~~

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.3. Minimum qualifications of school-age school-age child care center program supervisor or site coordinator.

1. A supervisor or site coordinator shall meet hold at least one of the following qualifications:
 - a. An associate degree in the field of early childhood development or elementary education, or a secondary degree with an emphasis on middle school or junior high training;
 - b. ~~Certification~~ Current certification as a child development associate or similar status where such local, state, or federal certification program exists;
 - c. Certification for from a Montessori teacher training program; or
 - d. A high school diploma and or high school equivalency with at least one year of experience in a child care center program or similar setting; or.

- e. ~~A high school equivalency and one year of experience in a child care center or similar setting.~~
- 2. The supervisor shall demonstrate the ability to work with children and the willingness to increase skills and competence through experience, training, and supervision.
- 3. The supervisor shall be an adult of good mental and physical, emotional, social, and cognitive health, capable of and shall use mature judgment, and shall possess knowledge and experience in management and interpersonal relationships when making decisions impacting the quality of child care. A supervisor must possess knowledge and experience in building and maintaining interpersonal relationships.
- 4. The supervisor must be certified shall meet current certification requirements in basic cardiopulmonary resuscitation by that meets the requirements of the American heart association, American red cross, or other similar department-approved cardiopulmonary resuscitation training programs approved by the department.
- 5. The supervisor shall be certified or trained in a department-approved program to provide first aid.
- 6. The supervisor shall certify ~~attendance at annual completion of a~~ minimum of thirteen hours of county-approved department-approved training related to child care annually.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-04(2)~~ 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.4. Minimum qualifications for all school-age school-age child care center caregivers or group leaders program staff members responsible for caring for or teaching children.

- 1. ~~Caregivers or group leaders~~ Each staff member shall be at least sixteen years of age and, shall be mentally, physically, and emotionally able to ~~provide adequate care for the children under supervision~~ an individual of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care.
- 2. Each caregiver or group leader ~~staff member~~ shall certify ~~attendance at county-approved~~ the staff member's own annual completion of department-approved training related to child care as set forth below:
 - a. ~~Caregivers or group leaders~~ Staff members working more than thirty to forty hours per week shall certify a minimum of thirteen hours of ~~county-approved~~ department-approved training annually;

- b. ~~Caregivers or group leaders~~ Staff members working ~~fewer than thirty hours and at least twenty to thirty~~ hours per week shall certify a minimum of eleven hours of ~~county-approved~~ department-approved training annually;
 - c. ~~Caregivers or group leaders~~ Staff members working ~~fewer than twenty hours and at least ten to twenty~~ hours per week shall certify a minimum of nine hours of ~~county-approved~~ department-approved training annually; and
 - d. ~~Caregivers or group leaders~~ Staff members working ~~less fewer~~ than ten hours per week shall certify a minimum of seven hours of ~~county-approved~~ department-approved training annually.
3. ~~Newly hired caregivers~~ The director shall ~~have provide~~ provide newly hired staff members with responsibilities for caring for or teaching children a two-day onsite orientation to the child care program during the first week of employment. The director shall document orientation of each staff member on an orientation certification form. The orientation must address the following:
- a. Emergency health, fire, and safety procedures at ~~for the school-age~~ school-age child care ~~center~~ program;
 - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;
 - c. Any special health or nutrition problems of the children assigned to the caregiver staff member;
 - d. Any special needs of the children assigned to the caregiver staff member;
 - e. The planned program of activities at the ~~school-age~~ school-age child care ~~center~~ program;
 - f. Rules and policies of the ~~school-age~~ school-age child care ~~center~~ program; and
 - g. Child abuse and neglect reporting laws.
4. ~~No caregiver or group leader may use or be under the influence of any alcohol or judgment-altering drugs while children are in care.~~ Staff members shall ensure safe care for children under supervision. For the school-age child, supervision means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety are protected.

5. ~~No caregiver or group leader may at any time~~ A staff member may not place a child in an environment that would be harmful or dangerous to a the child's physical, cognitive, social, or emotional health.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-04(2)~~ 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.5. Minimum qualifications for volunteers. If a volunteer is providing child care, ~~volunteers~~ the volunteer shall meet the qualifications of ~~caregivers or group leaders;~~ a staff member responsible for caring for or teaching children and shall receive orientation ~~as needed~~ for all assigned tasks.

History: Effective January 1, 1999; amended effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-04(2)~~ 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.6. Duties of school-age child care program supervisor.

The supervisor, in collaboration with the director, shall:

1. Communicate with parents about the individual needs of their children, including any special concerns the parents may have;
2. Plan daily and weekly schedules of activities and make those plans available to parents; and
3. Ensure that program policies are adhered to in the classes and groups assigned to the supervisor.

History: Effective October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-09. Staffing and group size requirements.

1. The number of staff members responsible for caring for or teaching children and their ~~use shall~~ responsibilities must reflect program requirements; and individual differences in the needs of the children enrolled, and ~~shall may permit flexible groupings mixed groups,~~ if necessary. Service personnel engaged in housekeeping and food preparation may not be counted in the child ~~and to~~ staff ratio for periods of time when they are ~~so engaged in housekeeping or food preparation.~~ Children The operator shall ensure that a child with special conditions needs requiring more than usual care and supervision ~~shall have~~ has adequate care and supervision ~~provided to them~~ without adversely affecting care provided to the remaining other children in the school age school-age child care center program.
2. Staffing requirements and maximum group size.

- a. The operator of a ~~school-age~~ school-age child care center ~~program~~ shall ensure that the center ~~program~~ is sufficiently staffed at all times to meet the ~~staffing requirements~~ child to staff ratios for children in attendance, and that no more children than the licensed capacity are served at one time. The ~~staffing requirements for caregivers or program staff~~ minimum ratio of staff members responsible for caring for or teaching children to children and maximum group size of children must be:
- (1) For one to fourteen children, one staff member; and
 - (2) For fifteen children or more, two staff members, with a maximum group size of thirty children.
 - (3) The provisions in this subsection relating to maximum group size ~~shall do~~ not apply to ~~school-age~~ school-age child care center ~~program~~ operators licensed prior to January 1, 1999, if such those operators are otherwise qualified to operate a ~~school-age~~ school-age child care center ~~program~~. Any ~~school-age~~ school-age child care center ~~program~~ operator who discontinues operation of the ~~school-age~~ school-age child care center ~~program~~ under a valid license, or who fails to renew such the license ~~upon expiration thereof when it expires~~, shall will not thereafter be exempt from the requirements relating to maximum group size if the operator subsequently reapplies for a school-age child care program license. This exemption for operators licensed prior to January 1, 1999, will end on January 1, 2015, after which time all operators will be subject to the requirements of this subsection.
- b. ~~Staff members meeting the qualifications of center director, site coordinator, group leader, assistant group leader, or caregiver over eighteen years of age~~ A staff member may be counted in the required ratio only for the time ~~they are~~ the staff member is directly responsible for a group of children.
- c. ~~Caregivers~~ The director shall ensure that staff members responsible for caring for or teaching children and children under the age of eighteen shall have are supervised by an adult supervision at all times while in the ~~school-age~~ school-age child care center ~~at all times~~ program.
- d. ~~When more than eight children are taken off the premises, the children shall be accompanied by at least two staff members, one of whom is a qualified group leader or caregiver who is at least age eighteen years. When eight or fewer children are taken off the premises, the accompanying staff member must be a qualified group leader or caregiver who is at least age eighteen.~~

3. Children using the licensed facility program for a McGruff safe house, a block house, or a certified safe house program during an emergency shall are not be counted under this section.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08, 54-12-20

75-03-11.1-13. Minimum health requirements for all caregivers applicants, operators, and staff members.

1. ~~Each operator or caregiver shall complete a health self-certification form certifying that the operator or caregiver does not have health problems that would interfere with the person's functioning as a caregiver or that would be detrimental to the health of the children or other staff. If the operator adds or replaces a caregiver after the licensure process is complete, the operator must submit a self-certification form completed by the new caregiver to the county within five working days of the caregiver's first workday. If the physical, cognitive, social, or emotional health capabilities of an applicant, operator, or staff member appear questionable, the department may require the individual to present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.~~
2. ~~Each operator or caregiver shall furnish documentation of a negative Mantoux tuberculosis test prior to each licensure or employment, and every two years thereafter. If the operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative Mantoux tuberculosis test before the first day of employment. Substitute staff, substituting for less than thirty-two hours per month, are exempted from this requirement. A school age child care center operator who uses an untested emergency designee may not be found in violation of this provision. A staff member may not use or be under the influence of any illegal drugs or alcoholic beverages while caring for children.~~

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04(2) 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-15. Minimum standards for provision of transportation.

1. The operator shall establish a written policy governing the transportation of children to and from the ~~school-age~~ school-age child care center

~~program~~, if the ~~school-age~~ school-age child care center ~~program~~ provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the ~~school-age~~ school-age child care center ~~program~~. If the ~~school-age~~ school-age child care center ~~program~~ provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.

2. When transportation is provided by a ~~school-age~~ school-age child care center ~~program~~, children must be protected by adequate staff ~~member~~ supervision, safety precautions, and liability ~~and medical~~ insurance.
 - a. ~~Child and staff ratios~~ Staffing requirements must be maintained to assure the safety of the children while being transported. ~~The department requires one busdriver per twenty children and one additional individual for twenty-one children or more.~~
 - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.
4. The driver must be at least eighteen years of age and shall comply with all relevant federal, state, and local laws, including child restraint system laws.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11.1-16. Minimum emergency evacuation and disaster plan.

1. ~~Each school-age child care center must have an approved and posted~~ The operator shall establish and post an emergency disaster plan for the safety of the children in care. ~~Written~~ The operator shall develop written disaster plans ~~must be developed~~ in cooperation with the ~~authorities:~~ local emergency management agencies. The plan must include:
 - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
 - b. What will be done if parents are unable to pick up their child as a result of an emergency; and

- c. What will be done if the school-age child care program has to be relocated or must close as a result of the emergency.
2. Fire and emergency evacuation drills must be performed in accordance with the ~~local fire department's~~ state fire marshal's guidelines.

History: Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11.1-17. Fire inspections.

1. ~~Annual~~ The operator shall ensure that annual fire inspections ~~must be~~ are completed by local or state fire authorities. The operator shall ~~correct or~~ have corrected any code violations noted by the fire inspector and shall file reports of the inspections and any corrections with the ~~county licensing agency~~ authorized agent.
2. ~~The school-age operator shall ensure that the school-age child care center must be~~ program is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.
3. ~~The school-age operator shall ensure that the school-age child care center shall provide~~ program provides:
 - a. ~~The local fire inspector's written statement of compliance with the local fire code, if there is one; or~~
 - b. ~~The local fire inspector's written statement that the school-age school-age child care center program has been inspected and that the inspector is satisfied that the school-age school-age child care center program meets minimum fire and safety standards; or.~~
 - c. ~~A written statement from an appropriate fire official that the school age child care center meets minimum fire and safety standards adopted by the state fire marshal.~~

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-18. Minimum sanitation and safety requirements.

1. ~~In school age child care centers where meals are prepared; The~~ operator shall ensure that the state department of health ~~shall conduct~~

conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.

2. The school-age operator shall ensure that the school-age child care center's program's building, grounds, and equipment must be are located, cleaned, and maintained to protect the health and safety of children. Routine The operator shall establish routine maintenance and cleaning procedures must be established to protect the health of the children and the caregivers staff members.
3. The school-age operator shall ensure that the school-age child care center program ground areas must be are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
4. Exterior The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas must be are contained, or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
5. Garbage must be The operator shall ensure that garbage stored outside is kept away from areas used by children and is kept in containers with tight lids, made of noncombustible materials. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.
6. Wading The operator shall ensure that wading pools used by the school-age school-age child care center must be program are strictly supervised and must be are emptied and, cleaned, and sanitized daily.
7. All The operator shall ensure that all swimming pools must be are approved annually by the local health unit.
8. All school-age The operator shall ensure that all school-age child care center program buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, must have these painted surfaces repainted or must shall submit evidence that the surfaces paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the

dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.

9. ~~Indoor~~ The operator shall ensure that indoor and outdoor equipment, toys, and supplies ~~must be~~ are safe, strong, nontoxic, and in good repair. ~~All~~ The operator shall ensure that all toys must be easily cleanable and must be cleaned and sanitized on a routine basis are kept clean and in a sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
10. ~~Indoor~~ The operator shall ensure that indoor floors and steps ~~may~~ are not be slippery ~~or~~ and do not have splinters. ~~Steps~~ The operator shall ensure that steps and walkways must be are kept free from accumulations of water, ice, snow, or debris.
11. ~~Elevated~~ The operator shall ensure that elevated areas ~~such as,~~ including stairs ~~or~~ and porches, ~~must~~ have railings and safety gates where necessary to prevent falls.
12. ~~If the school-age school-age child care center program~~ is providing care to children in wheelchairs, the center operator shall provide doors of sufficient width and construction to accommodate any children in wheelchairs who are receiving care.
13. ~~Exit~~ The operator shall ensure that exit doorways and pathways ~~may~~ are not be blocked.
14. ~~Light~~ The operator shall ensure that light bulbs in areas used by children ~~must be~~ are properly shielded or shatterproof.
15. ~~Combustible~~ The operator shall ensure that combustible materials must be are kept away from light bulbs and other heat sources.
16. ~~There must be~~ The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the ~~school-age school-age child care center program~~ is occupied by children, the room temperature must not be less than sixty-eight sixty-five degrees Fahrenheit [20 18 degrees Celsius] and not more than seventy-four seventy-five degrees Fahrenheit [23.33 24 degrees Celsius] measured three feet [91.44 centimeters] above the floor. All heating devices must be approved by the local fire authorities.
17. ~~School-age child care center~~ The operator shall ensure that school-age child care program bathroom lavatories sinks, toilets, tables, chairs, and floors must be are cleaned daily. Cots and mats must be individually ~~labeled~~ designated and cleaned and sanitized at least weekly. If

- different children use the same cots or mats, the cots or mats must be cleaned thoroughly and sanitized between each use. The operator shall provide separate storage for personal blankets or coverings.
18. ~~Personal~~ The operator shall ensure that personal items including combs and toothbrushes ~~must be~~ are individually identified and stored in a sanitary manner.
 19. ~~Caregivers~~ Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, ~~after nose wiping,~~ after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and paper towels, sanitary hand-drying equipment, or single-use cloth towels must be available at each lavatory sink. ~~Clean towels must be provided daily.~~
 20. ~~Potential~~ The operator shall ensure that potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways ~~may~~ are not be accessible to young children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
 21. Water supply standards:
 - a. ~~The school-age operator shall ensure that the school-age child care center must have~~ program has a drinking supply from an approved community water system or from a source tested and approved annually by the state department of health;
 - b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups; and
 - c. ~~The school-age school-age child care center program~~ must have hot and cold running water. ~~Hot water heaters must be turned down or there must be a tempering valve or antiscalding device on the faucets used by children so that the temperature of hot water supplied to lavatories does not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].~~
 22. Toilet and lavatory sink facilities:
 - a. ~~Toilet~~ The operator shall provide toilet and lavatory sink facilities must be provided and must be convenient which are easily accessible to the areas used by the children and staff members;

- ~~b.~~ Toilet and lavatory facilities must meet requirements of the state department of health;
- ~~c.~~ Toilets must be located in rooms separate from those used for cooking, eating, and sleeping;
- ~~d.~~ c. A minimum of one lavatory sink and one flush toilet must be provided for each fifteen children;
- ~~e.~~ d. Separate The operator shall provide separate restrooms must be provided for boys and girls six years of age and over, and shall ensure that partitions must be are installed to separate toilets in these restrooms;
- ~~f.~~ e. At The operator shall provide at least one handwashing lavatory must be provided sink per toilet room facility; and
- ~~g.~~ Sanitary hand-drying equipment, individual cloth, or paper towels must be provided near handwashing lavatories; and
- ~~h.~~ f. Safe The operator shall provide safe step stools must be provided to allow children to use standard-size toilets and lavatories to be used by the children sinks or the operator shall ensure the availability of child-size toilets and lavatories must be provided sinks.

23. ~~Sewage and wastewater disposal:~~

- ~~a.~~ A school age child care center shall meet the requirements of the state plumbing code as contained in North Dakota Administrative Code article 62-03; and
- ~~b.~~ Any school age The operator of a school-age child care center program not on a municipal or public water supply or wastewater disposal system shall have its ensure the school-age child care program's sewage and wastewater system has been approved by the state department of health.

24. Laundry:

- ~~a.~~ If the school age school-age child care center program provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation;
- ~~b.~~ Soiled The operator shall ensure that soiled linens must be are placed in closed containers or hampers during storage and transportation;

- c. ~~In~~ The operator shall ensure that in all new or extensively remodeled school-age ~~school-age~~ child care centers ~~programs~~, the handling, sorting, or washing ~~of~~ of soiled linen ~~linens~~ or blankets ~~must take~~ takes place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas;
 - d. ~~In~~ The operator shall ensure that in an existing school-age ~~school-age~~ child care centers ~~program~~ where physical separation of laundry and kitchen areas is impractical, procedures ~~must be~~ are developed to prohibit the washing or transportation of laundry while meals are being prepared or served;
 - e. ~~Sorting~~ The operator shall ensure that sorting of laundry ~~may is~~ not be allowed in food preparation, serving, or kitchen areas;
 - f. If the ~~school-age~~ school-age child care center ~~program~~ provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the water temperature must be greater than one hundred ~~seventy~~ forty degrees Fahrenheit [~~77.2~~ 60 degrees Celsius]; and
 - g. ~~If~~ The operator shall ensure that if the water temperature is less than one hundred ~~seventy~~ forty degrees Fahrenheit [~~77.2~~ 60 degrees Celsius], ~~then bleach must be~~ or sanitizer is used in the laundry process during the rinse cycle ~~to achieve fifty parts per million of available hypochlorite at~~ or the program shall use a clothes dryer that reaches a temperature of at least ~~seventy-five~~ one hundred forty degrees Fahrenheit [~~24~~ 60 degrees Celsius].
25. ~~School-age child care centers~~ The operator shall take steps to keep the facility ~~school-age child care program~~ free of insects and rodents. Chemicals for ~~insect and~~ rodent control may not be applied in areas accessible to children when children are present in the ~~facility~~ school-age child care program. Insect repellent may be applied outdoors on children with written parental permission.
26. ~~All pets present in the school-age child care center must be properly immunized, restricted, and maintained. Nondomestic animals, such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the school-age child care center. Pets may not be allowed in the kitchen or eating area during meal preparation or meals.~~
27. ~~Smoking is not permitted in any school-age child care center at any time during which a child who receives early childhood services from that school-age child care center is present and receiving care. Pets and animals:~~

- a. The operator shall ensure that only cats, dogs, and small pets that are contained in an aquarium or other approved enclosed container are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children.
- b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
- c. The operator shall ensure parents are aware of the presence of pets and animals in the school-age child care program.
- d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
- e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
- f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
- g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
- h. The operator shall ensure that the school-age child care program is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

History: Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, ~~50-11.1-02.2~~, 50-11.1-04, ~~50-11.1-07~~, ~~50-11.1-08~~

75-03-11.1-19. Minimum requirements regarding space and lighting.

- 1. Each ~~school-age~~ school-age child care center program shall provide adequate indoor and outdoor space for the daily activities of all children ~~in attendance~~ within the licensed capacity of the school-age child care program.

2. ~~The school-age child care center shall provide adequate space, indoors and out, for the daily activities of the children. This Adequate space~~ must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the ~~school-age~~ school-age child care center program at one time, the total appropriate outdoor space available must not be less than what is required for the number of children in the largest class or group of the program multiplied by seventy-five square feet [6.96 square meters]. The operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving every child an opportunity to play outdoors daily.

3. The ~~school-age~~ school-age child care center program must be properly lighted. The following technical requirements must be met:
 - a. ~~Sixty-five foot-candles of light for all general use and play areas;~~
 - b. ~~Twenty-five foot-candles of light for all bathrooms;~~
 - c. ~~Fifty foot-candles of light for any kitchen, laundry, and office areas; and~~
 - d. ~~Fifteen foot-candles of light for corridors and storage areas.~~
 - e. If the lighting of the ~~school-age~~ school-age child care center program appears questionable, the department may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.

History: Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-20. Program requirements.

1. The ~~school-age~~ school-age child care center program operator shall have a program plan of daily individual or small group activities appropriate to the ages and needs of the children in the ~~school-age~~ school-age child care center program. The program plan must include activities which foster sound social, intellectual cognitive, emotional, and physical growth, and the plan must be developed with discussion and consultation with parents as to their children's needs consideration

of parental input. A written daily routine including mealtimes, rest times, planned developmentally appropriate activities, free play, and outside time must be available to parents. The daily routine must be flexible enough to allow for spontaneous activity as appropriate.

2. The program plan must be flexible and subject to modification for individual child differences.
3. The program plan must be written and varied ~~in order~~ to promote the physical and emotional well-being of the children, to encourage the acquisition of information and knowledge, and to foster the development of language skills, concepts, self-discipline, and problem-solving activities. The program plan must describe how the activities planned meet the children's developmental needs, including the special needs of children ~~in the school-age child care center who are multilingual or disabled~~. The written program plan must be made available to parents.
4. The program plan must include firsthand experiences for children to learn about the world in which they live.
5. Learning experiences must be conducted in consultation with parents ~~in order~~ to ensure harmony with the lifestyle and cultural background of the children.
6. The program plan must provide a balance of quiet and active indoor and outdoor group and individual activities. A time for supervised child-initiated and self-selected activity must be established.
7. If the children are allowed to assist in any food preparation, the activity must be limited to use of equipment and appliances that do not present a safety hazard. Children may not be allowed in the kitchen or laundry area unsupervised.
8. A variety of games, toys, books, crafts, and other activities and materials must be provided to enhance the child's intellectual and social development and to broaden the child's life experience. Each ~~school-age~~ school-age child care center ~~shall~~ program must have enough play materials and equipment so that at any one time, each child in attendance can be ~~individually~~ individually or as a group.
9. The cultural diversity of the children must be reflected in the program plan through incorporation of their language, food, celebration, and lifestyles, if ~~appropriate~~ appropriate.
10. Equipment and furniture must be durable and safe, and must be appropriately adapted for children's use.

11. Sufficient space accessible to children must be provided for each child's personal belongings.
12. ~~The school-age school-age child care center program~~ shall supplement, augment, and reinforce the child's activities at home and school.
13. At the time of enrollment, the ~~school-age child care center staff director or supervisor~~ shall discuss with the parents the children's habits, activities, and schedules while at home and in school and the parents' special concerns about their past and future behavior and development. The schedule and activities must be designed to complement and supplement the children's experiences at home and in school.
14. Staff members responsible for caring for or teaching children shall encourage parents to visit the facility, observe, and participate in the care of their children.
15. The ~~school-age child care center operator~~ director or supervisor shall contact parents to ~~exchange information concerning the child and the child care program as well as~~ offer them meaningful opportunities to participate in general program policymaking.
16. ~~Personal~~ Staff members shall stress hygiene practices appropriate for a child's age and development must be stressed.
17. The ~~school-age child care center operator~~ director or supervisor shall contact parents to exchange information concerning the child and any concerns about the health, development, or behavior of the child. These concerns must be communicated to the parent promptly and directly.
18. Each child's cultural and ethnic background and primary language or dialect must be respected by the caregivers staff members.
19. Each ~~school-age school-age child care center program~~ shall have a designated area where a child can sit quietly or lie down to rest. ~~There must be sufficient cots or sleeping mats so that each child in attendance may have an individual napping space. The floor may be used only when carpeted or padded, warm, and free from drafts, and when individual blankets or coverings are used. Napping schedules must be set for children according to their ages and needs. For children unable to sleep, time and space for quiet play must be available.~~

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11.1-21. Minimum standards for food and nutrition.

1. When the operator is responsible for providing food to children, the food supplied must meet United States department of agriculture standards, and must be properly prepared, sufficient in amount, nutritious, varied according to diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in a ~~school-age~~ school-age child care center program must be treated in a sanitary and safe manner with sanitary and safe equipment.
2. ~~Safe drinking water must be accessible to the children at all times.~~
3. When parents bring sack lunches for their children, the operator ~~may~~ shall supplement lunches when necessary to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.
4. ~~If the services are available free of charge, a dietician or other food service professional must be used as a consultant.~~
5. ~~3. Children must be served a nutritious morning and afternoon snack, and if the parent does not provide a sack lunch, a nourishing meal:~~
 - a. ~~Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of day;.~~
 - b. ~~Children~~ The operator shall serve nutritious meals to children in care during any normal mealtime hour shall be served food appropriate for that time of day; and.
 - c. ~~Children who are present for more than four hours or come directly to the center from a morning kindergarten class shall receive a meal.~~
6. ~~4.~~ When the operator is responsible for providing food to children, menus must be prepared on a weekly basis and made available to the parents, the department, or authorized agent, and other appropriate individuals.
7. ~~5.~~ Information The operator shall consider information provided by the children's parents as to ~~their~~ the children's eating habits, food preferences, or special needs ~~must be considered in~~ creating the feeding schedules and in the tailoring of menus.
8. ~~6.~~ ~~Children must be served~~ The operator shall serve snacks and meals to children in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.
9. ~~7.~~ ~~Children must be encouraged~~ The operator or staff members may encourage children to eat the food served, but ~~shall~~ the operator or staff

members may not be subjected to coercion or force-feeding coerce or force-feed children.

History: Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11.1-22. Records.

1. A The operator shall keep a copy of this chapter must be kept on the premises of the school-age child care program and all satellite sites and shall make it available to staff members at all times.
2. The school-age child care center operator shall maintain the following records:
 - a. The child's full name, ~~birthdate~~ birth date, and current home address;
 - b. ~~Names~~ Legal names of the child's parents or legal guardian, and the business and home ~~personal~~ telephone numbers where those individuals may they can be reached;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individual legally responsible for the child ~~may not~~ cannot be reached immediately in an emergency;
 - d. A written statement from the parents or legal guardian authorizing emergency medical care;
 - e. Names and telephone numbers of individuals authorized to take the child from the school-age school-age child care center program; and
 - f. ~~Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, unless the child is a drop-in; and~~
 - g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, ~~that which~~ must indicate any special precautions for diet, medication, or activity, must serve as evidence that a child is physically able to take part in the child care program, and must be completed annually. This assessment must be completed annually.
3. ~~All~~ The operator shall record and verify the identification of the child through official documentation such as a certified birth certificate.

certified school records, passport, or any other documentary evidence the operator considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.

4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services must be are kept confidential, and that access must be is limited to staff members, the parents, or legal guardian of each child, and to the following, unless protected by law:
 - a. ~~Authorized county agency~~ The authorized agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent ~~or legal guardian~~. The school-age school-age child care center program shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-23. Discipline - Punishment prohibited. Disregard of any of the following disciplinary rules or disciplinary measure resulting in physical or emotional injury, neglect, or abuse to any child is grounds for license denial or revocation.

1. The school-age school-age child care center program must have a written policy regarding the discipline of children that must be interpreted to. The operator shall provide the policy to, and discuss the policy with, the staff members before the school-age school-age child care center program begins operation or before staff members begin working with children.
2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, ~~praise for~~ praising appropriate behavior, ~~and or~~ gentle physical restraint, such as holding. Children A child may not be subjected to physical harm, fear, or humiliation.
3. Authority to discipline may not be delegated to ~~or~~ children nor may discipline be accomplished administered by children.

4. Separation, when used as discipline, must be brief and appropriate to the child's age development and circumstances. ~~Any~~ The child separated must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult a staff member responsible for caring for or teaching children. A child staff member may not be isolated isolate a child in a locked room or closet.
5. A child may not be physically punished for lapses in toilet training.
6. ~~When addressing a child, or while in the presence of a child, staff members may not~~ A staff member may not use verbal abuse or make derogatory remarks about the a child, the or a child's family, race, or religion nor use profane, threatening, unduly loud, or otherwise abusive language when addressing a child or in the presence of a child.
7. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
8. A child staff member may not be force-fed force-feed a child or coerce a child to eat, unless medically prescribed and administered under a physician's medical provider's care.
- 8- 9. Deprivation A staff member may not use deprivation of meals may not be used or snacks as a form of discipline or punishment.
- 9- 10. A child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the school age child care center staff member or any other adult at the school-age child care program may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.
11. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
12. A staff member may not withhold active play from children as a means of discipline or punishment, beyond a brief period of separation.

History: Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-01, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-24. Specialized types of care and minimum requirements therefor.

1. **Night care:.**

- a. ~~Any school-age school-age child care center program~~ offering night care shall provide program modifications for the ~~special~~ needs of children and their parents during the night;
- b. In consultation with parents, ~~special~~ attention must be given by the ~~caregiver~~ staff member responsible for caring for or teaching children to provide for a transition into this type of care appropriate to the child's ~~emotional~~ needs;
- c. ~~When practical,~~ The operator shall encourage parents to leave their children shall be left for in care and picked or pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, ~~but with~~ consideration must be given to the parent's work schedule;
- d. ~~Comfortable~~ The operator shall ensure that comfortable beds and cots, complete with a mattress or pad, must be are available and shall ensure:
 - (1) Pillows and mattresses ~~must~~ have clean coverings;
 - (2) Sheets and pillowcases ~~must be are~~ changed as often as necessary for cleanliness and hygiene, but ~~not less than at least weekly.~~ The operator shall ensure that if beds are used by different children, sheets and pillowcases are laundered before use by other children; and
 - (3) ~~If beds are used by different children, sheets and pillowcases must be laundered before use by other children; and~~
 - (4) Each bed or cot ~~must have~~ has sufficient blankets available;
- e. The ~~school-age school-age child care center-operator program~~ shall require each child in night care to have night clothing and a toothbrush marked for identification; and
- f. ~~During~~ The operator shall ensure that during sleeping hours, ~~the staff shall be members responsible for caring for or teaching children are~~ awake and within listening distance in order hearing range to provide for the needs of children and to respond to an emergency.

2. Drop-in ~~school-age school-age child care centers.~~

- a. If a ~~school-age school-age child care center program~~ serves drop-in children, it shall be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program; and to maintain the proper staff member to child ratio.

- b. ~~The operator shall ensure that the program must reflect~~ reflects the special individual needs of the children who are provided drop-in service; care.
 - c. ~~Admission The operator shall ensure that admission records must comply with all enrollment requirements contained in section 75-03-11.1-22, except the immunization record requirement;.~~
 - d. ~~Admittance The operator shall ensure that admittance procedures must provide for a period of individual attention for the child in order to acquaint the child with the school-age school-age child care center program, its equipment, and the staff; and members.~~
 - e. ~~A school-age school-age child care center program may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the school-age school-age child care center program to exceed the total number of children for which the school-age school-age child care center program is licensed.~~
3. Drop-in school-age child care programs. An operator shall ensure that a school-age child care program serving only drop-in care children complies with this chapter, but is exempt from the following provisions:
- a. Subsections 12, 14, and 15 of section 75-03-11.1-20; subdivision f of subsection 1 of section 75-03-11.1-22; and subsection 1 of section 75-03-11.1-25; and
 - b. A school-age child care program serving only drop-in children is exempt from the outdoor space requirements.

History: Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11.1-25. Minimum requirements for care of children a child with special needs. ~~When children~~ An operator shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of a child with special needs are admitted, there must be appropriate provisions to meet those needs. The school-age child care center operator shall document how receive documentation of the child's special needs may be met from the parent upon the child's enrollment.

- 1. ~~When children~~ a child with special needs are is admitted, the school age child care center director or supervisor shall consult with the child's parents, and with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The operator shall receive a written health care plan

from the child's medical provider or parent with information related to the child's special needs, such as a description of the special needs, definition of the diagnosis, and general information for emergency and required care such as usual medication and procedures.

2. Garegivers The operator shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's ~~disability~~ special needs and potential for growth and development.
3. ~~If the nature of the special needs or the number of children with special needs warrants added care, the school age child care center shall add sufficient staff and equipment as deemed necessary by the department to compensate for those needs.~~

History: Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11.1-26. Minimum provisions regarding emergency care for children.

4. ~~The school-age~~ school-age child care center program shall have written plans to respond to illness, accidents, and emergencies, including burns, serious injury, and ingestion of poison. ~~Parents~~ The operator shall ensure that parents of enrollees must be enrolled children are advised of these plans. Plans must require:
 1. Establish emergency response procedures:
 - a. ~~2. The conspicuous~~ Provide accessible posting of emergency response procedures, ~~with all staff members receiving and training for all staff members concerning such those~~ emergency procedures;
 3. Require the availability of at least one working flashlight;
 - b. ~~4. At~~ Require at least one ~~state department of health-approved~~ department-approved first-aid kit be maintained and kept in each major activity area, inaccessible to children, yet readily accessible to staff members at all times;
 - e. ~~5. A~~ Provide a working telephone ~~be~~ immediately accessible to staff members with a list of emergency telephone numbers conspicuously posted ~~adjacent to the telephone;~~
 - d. ~~6. The school age child care center~~ Require that the program inform parents in writing of any first aid administered to their child within

twenty-four hours of the incident and immediately notify parents of any injury which requires emergency care beyond first aid; and require an

~~e. That each injury report to be made a part of the child's record;~~

f. 7. ~~The school age child care center implement infection control measures to prevent the spread of communicable diseases and follow rules and recommendations set by the division of communicable disease control of the state department of health relating to serious illnesses, contagious diseases, and reportable diseases; Require a plan for responding to minor illnesses and minor accidents when children are in the care of the school-age child care program;~~

~~g. That when health policies of the school age child care center allow ill children to be admitted or to remain in the school age child care center, medical consultation must be available regarding special care and medication;~~

h. 8. ~~The following procedures where children in the school age child care center require medication:~~

(1) ~~Written~~ Require written permission to dispense medication ~~must and require proper instructions for the administration of medication be obtained from the parent, and proper instructions for the administration of the medicine must be given by the parent or physician; of a child in the school-age child care program who requires medication.~~

(2) a. ~~Any medication~~ Medication prescribed by a physician ~~medical provider must be accompanied by the physician's medical provider's written instructions as to its dosage and storage, and labeled with the child's name and dated; date.~~

(3) b. ~~A~~ The program shall keep a written record of the administration of medication, including over-the-counter medication, ~~to for~~ for each child ~~must be kept.~~ Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child;.

(4) ~~Completed~~ The program shall include completed medication records ~~must be included in the child's record; and.~~

(5) c. ~~Medications~~ Medication must be stored in an area inaccessible to children, and ~~medications~~ medication stored in a refrigerator must be stored collectively in a spillproof container;.

i. 9. ~~A~~ Require a supervised, temporary isolation area be designated for a child who is too ill to remain in the ~~group~~ school-age child care program, or who has an infectious or contagious disease, with the

following procedures being followed when those signs or symptoms are observed:

- (1) a. Parents ~~shall be~~ are notified immediately and asked to pick up their child; and
 - (2) b. First aid ~~must be~~ is provided and medical care sought, as necessary;
- j. 10. ~~Children~~ Establish and implement practices in accordance with guidance obtained through consultation with local or state department of health authorities regarding the exclusion and return of children with infectious or communicable conditions ~~be excluded from the school age child care center until the condition may no longer be transmitted, and.~~ The program may obtain this guidance regarding exclusion and return to the school age child care center be obtained through consultation with local and state health department authorities directly or through current published material regarding exclusion and return to the school-age child care program;
- k. 11. ~~That provisions~~ Identify a source of emergency health services readily available to the school-age child care program, including:
- a. A prearranged plan for emergency medical care in which parents of enrolled children are advised of the arrangement; and
 - b. Provisions for emergency transportation be made, specifically that when a child is to be brought to another place for emergency care, the child be accompanied by an adult who staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume the responsibility for the child's care and until the parent or legal guardian arrives is notified; and
- l. 12. ~~That~~ Require information be provided to parents, as needed, concerning child health and social services available in the community, ~~and that there be assistance for parents in obtaining the services.~~

History: Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01

75-03-11.1-27. Effect of conviction on licensure and employment.

- 1. ~~A school age child care center~~ An applicant, operator, director, or supervisor may not be, and a ~~school-age~~ school-age child care center program may not employ or allow, in any capacity that involves or permits contact between the employee emergency designee, substitute

staff member, or staff member and any child cared for by the school age school-age child care center program, an individual operator, emergency designee, substitute staff member, director, supervisor, or staff member who has been found guilty of, pled guilty to, or pled no contest to:

- a. An offense described in North Dakota Century Code chapters chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; or 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code sections section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an 14-09-22, abuse or neglect of a child;
- b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes offenses identified in subdivision a; or
- b. c. An offense, other than an offense identified in subdivision a or b, if the department in the case of a school-age school-age child care center program applicant, operator, director, or supervisor, or the school-age school-age child care center program operator in the case of an employee emergency designee, substitute staff member, or staff member, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, operator's, emergency designee's, substitute staff member's, director's, supervisor's, or staff member's ability to serve the public as an operator, emergency designee, substitute staff member, director, supervisor, or staff member.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements

as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.

4. ~~The school age child care center operator shall establish written policies, and engage in practices that conform to those policies, to effectively implement this section before hiring any staff member.~~
3. ~~For purposes of subdivision b of subsection 1, the department in the case of a school age child care center, or the school age child care center operator in the case of an employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.~~
4. ~~The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's ability to serve the public in a capacity involving the provision of child care services.~~
5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-11.1-28. Child abuse and neglect determinations decisions. If a probable cause determination or a decision that services are required An operator shall ensure safe care for the children receiving services in the school-age child care program. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that any a child has been abused or neglected by a an applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, that individual decision has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied

or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that a child has been abused or neglected by the applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, the applicant or operator shall furnish information satisfactory to the department from which the department may can determine the applicant's, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's current ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability must be furnished to the school-age child care center applicant or operator and to the regional director of the regional human service center or the regional director's designee for consideration and action of on the school-age child care center application or license. Each applicant, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete a department-approved authorization for background check form no later than the first day of employment.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-11.1-29. ~~Allowable time periods for correction~~ Correction of deficiencies violations.

1. Deficiencies Within three business days of the receipt of a correction order, the operator shall notify the parents of each child receiving care at the school-age child care program that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the school-age child care program and applicable satellite location until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of section 75-03-11.1-09, ~~subsection subsections 3 and 20~~ of section 75-03-11.1-18, and section 75-03-11.1-23, within twenty-four hours.
 - b. For a deficiency violation requiring the hiring of a school age school-age child care center program director with those qualifications set forth in section ~~75-03-11.1-07~~ 75-03-11.1-08.1 or a child care supervisor with those qualifications set forth in section ~~75-03-11.1-09~~ 75-03-11.1-08.3, within sixty days.
 - c. For a deficiency violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11.1-17, within sixty days.

- d. For a deficiency violation that requires substantial building remodeling, construction, or change, within sixty days.
 - e. For all other deficiencies violations, within twenty days.
- ~~2.~~ 3. All time periods for correction begin on the date of receipt of the correction order by the licensee operator.
 - ~~3.~~ 4. The regional supervisor of early childhood program licensing services may grant an extension of additional time to correct deficiencies violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the licensee operator and a showing that the need for the extension is created by unforeseeable circumstances and the licensee operator has diligently pursued the correction of the deficiency violation.
 - ~~4.~~ 5. The operator shall furnish a written notice ~~of to the authorized agent upon completion of the correction order required corrective action to the county.~~ remains in effect until the ~~county receives the notice~~ authorized agent confirms that the corrections have been made.
 6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a school-age child care program that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the school-age child care program has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the school-age child care program. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
 7. If a school-age child care program receives more than one correction order in a single year, the department or authorized agent may refer the school-age child care program for consulting services to assist the operator in maintaining compliance to avoid future corrective action.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

75-03-11.1-30. Fiscal sanctions.

1. A The department shall assess a fiscal sanction of twenty-five dollars per day shall be assessed for each violation of subsections 3, 13, and 19 of section 75-03-11.1-20; and section 75-03-11.1-23 for each day

~~that the operator has not verified correction, after the allowable time for correction of deficiencies violations ends, that the school-age child-care center has not verified correction.~~

2. A ~~The department shall assess a~~ fiscal sanction of fifteen dollars per day ~~shall be assessed~~ for each violation of section 75-03-11.1-08; subsections 1, 2, 4, 5, 10, 17, and 20 of section 75-03-11.1-18; subsection 1 of section 75-03-11.1-19; subsections 3 and 11 of section 75-03-11.1-20; section 75-03-11.1-23; and subdivision a of subsection 1 of section 75-03-11.1-24 for each day that the operator has not verified correction, after the allowable time for correction of deficiencies violations ends, ~~that the school-age child-care center has not verified correction.~~
3. A ~~The department shall assess a~~ fiscal sanction of five dollars per day ~~shall be assessed~~ for each violation of any other provision of this chapter for each day that the operator has not verified correction, after the allowable time for correction of deficiencies violations ends, ~~that the school-age child-care center has not verified correction.~~

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-07.4, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.4, 50-11.1-08

75-03-11.1-31. Appeals. An applicant or operator may appeal a decision to deny or revoke a license by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of receipt of the applicant's or operator's written notice of such a the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, ~~50-11.1-09~~ 50-11.1-10

TITLE 111
MARRIAGE AND FAMILY THERAPY LICENSURE BOARD

OCTOBER 2010

ARTICLE 111-01

ADMINISTRATION

Chapter
111-01-01 Organization of Board

CHAPTER 111-01-01
ORGANIZATION OF BOARD

Section
111-01-01-01 Organization of Marriage and Family Therapy Licensure Board

111-01-01-01. Organization of marriage and family therapy licensure board.

1. **History and function.** The 2005 legislative assembly passed the Marriage and Family Therapy Practice Act, codified as North Dakota Century Code chapter 43-53. This chapter requires the governor to appoint the board. The board, generally speaking, monitors the relationship and interaction between the licenseholder and the public. It is the responsibility of the board to protect the public against poorly trained marriage and family therapists.
2. **Board membership.** The board consists of five members, of which at least three must be licensed practicing marriage and family therapists and at least one must represent the general public. Board members are appointed by the governor. The members serve four-year terms.
3. **Inquiries.** Inquiries regarding the board may be addressed to:

Reverend Larry J. Giese
3910 Lewis Road NW

Mandan, ND 58554-1361

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02, 43-53-04, 43-53-05

ARTICLE 111-02

LICENSURE AND FEES

Chapter

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CHAPTER 111-02-01 GENERAL PROVISIONS

Section

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<u>111-02-01-05</u>	<u>Code of Ethics</u>
<u>111-02-01-06</u>	<u>Continuing Education</u>

111-02-01-01. Definitions. Unless the context otherwise requires, the following terms have the meanings given:

1. "Applicant" means an individual seeking licensure by the marriage and family therapy licensure board as a marriage and family therapist.
2. "Certified professions or occupations" means those professions or occupations that have a certification process based upon specific criteria identified as necessary for effective performance of the profession or occupation. The certification process must include:
 - a. Eligibility requirements established through education or experience, or both;
 - b. Successful completion of a competency-based written examination;
 - c. Successful demonstration of competent clinical skills; and
 - d. Assurance of practitioner competencies through mandatory recertification and continuing education requirements.
3. "Dual relationship" means a relationship between a therapist and another person with whom such relationships are prohibited by law or rule that is both professional and one or more of the following: cohabitational, familial, or supervisory, or that includes significant personal involvement or financial involvement other than legitimate payment for therapeutic services rendered.

4. "Emeritus" means retired from active practice but retaining one's license and title.
5. "Family system" means an open, ongoing, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality, and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health, and temperament) and its sociocultural and historic position in its larger environment.
6. "Fee splitting" means the practice of paying commissions to colleagues for referrals.
7. "LAMFT" are the initials permitted to be used by an associate marriage and family therapist licensee to designate that the individual has completed the educational requirements for a marriage and family therapy license, has successfully passed the licensing examination, and is in the process of completing postgraduate supervision for the licensing requirements.
8. "Licensee" means a licensed marriage and family therapist.
9. "LMFT" are the initials permitted to be used by a licensed marriage and family therapist to designate that the individual is licensed by the marriage and family therapy licensure board.
10. "Postgraduate supervised experience" means supervised experience occurring after the accredited educational institution grants the degree for licensure as shown on the applicant's transcript and all educational requirements specified in section 111-02-02-02.
11. "Regionally accredited" means that an educational institution has been accredited by the north central association of schools and colleges, middle states association of colleges and schools, New England association of schools and colleges, northwest association of schools and colleges, southern association of colleges and schools, western association of schools and colleges, or a postgraduate academic program in marriage and family therapy accredited by the commission on accreditation of the American association for marriage and family therapy.
12. "Sexual contact" means any of the following, whether or not occurring with the consent of a person with whom such conduct is prohibited by law or rule:

- a. Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, into the genital or anal openings of the body by any part of the therapist's body or by any object used by the therapist for this purpose, or any intrusion, however slight, into the genital or anal openings of the therapist's body by any part of another person's body or by any object used by another person for this purpose, if agreed to by the therapist;
- b. Kissing of, or the intentional touching by the therapist of another person's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts; or
- c. Kissing of, or the intentional touching by another person of the therapist's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts if the therapist agrees to the kissing or intentional touching.

Sexual contact includes requests by the therapist for conduct described in subdivisions a to c.

Sexual contact does not include conduct described in subdivision a or b that is a part of standard medical treatment of a patient.

13. "Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature when:
- a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;
 - b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
 - c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment; and in the case of employment, the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.
14. "Supervisee" means an individual who is engaged in postgraduate, supervised experience under the direction of a supervisor.

15. "Supervision" means taking full professional responsibility for training, work experience, and performance in the practice of marriage and family therapy of a supervisee, including planning for and evaluation of the work product of the supervisee, and including face-to-face contact between the supervisor and supervisee.
16. "Supervisor" means an individual who has met the requirements in section 111-02-02-04 and takes responsibility for the practice of the supervisee during a specific time to enable the supervisee to meet the requirements of licensing.
17. "Therapeutic deception" means a representation by a therapist that sexual contact or unethical conduct with the therapist is consistent with or part of the professional work with a client, student, or supervisee or former client, student, or supervisee.
18. "Therapist" means a licensee of the board.
19. "Variance" means permission from the board to comply with a rule in a manner other than that generally specified.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-01, 43-53-02

111-02-01-02. Representation to the public.

1. No person other than those individuals exempt in North Dakota Century Code section 43-53-03 shall engage in marriage and family therapy practice, advertise the performance of such services, or use a title or description denoting marriage and family therapist without obtaining a license issued under North Dakota Century Code chapter 43-53.
2. An individual engages in marriage and family therapy practice if the individual performs or offers to perform marriage and family therapy or if the individual is held out as able to perform such a service.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-02, 43-53-03, 43-53-06, 43-53-12

111-02-01-03. Exemptions. Those qualified individuals of other licensed or certified professions or occupations who are performing services consistent with their training are exempt from licensure so long as they do not represent themselves by a title denoting marriage and family therapist, such as marriage and family therapist, marriage therapist, family therapist, marriage and family counselor, marriage counselor, or family counselor unless specifically allowed to do so under law. Those qualified individuals listed in North Dakota Century Code

section 43-43-03 may advertise the performance of marriage and family therapy services.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-03

111-02-01-04. Criminal background checks. The purpose of this section is to comply with North Dakota Century Code section 12-60-24 by establishing background checks for persons applying for license or renewal of license as a licensed marriage and family therapist under North Dakota Century Code chapter 43-53, except that criminal history record checks need not be made unless required by the board. The required fees of a background check are the full responsibility of the applicant or licensee. Furthermore:

1. The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee or if the crime involves moral turpitude.
2. In considering whether a criminal conviction directly relates to the occupation of a licensee, the board shall consider:
 - a. The nature and seriousness of the crime;
 - b. The relationship of the crime to the purposes for requiring a license to be a licensed marriage and family therapist or an associate marriage and family therapist. The following felonies and misdemeanors relate to the license of a licensed marriage and family therapist or associate marriage and family therapist because these criminal offenses indicate an inability to perform as a therapist or a tendency to be unable to perform as a licensed marriage and family therapist or licensed marriage and family therapist associate:
 - (1) The misdemeanor of knowingly or intentionally acting as a therapist without a license;
 - (2) A misdemeanor or a felony offense under various chapters of North Dakota Century Code which relates to offenses against:
 - (a) The person;
 - (b) Property;
 - (c) Public order and decency; or

- (d) Public health, safety, and morals;
- c. Other misdemeanors and felonies that the board may consider in order to promote the intent of North Dakota Century Code chapter 43-53 and this title;
- d. The extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- e. The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed marriage and family therapist or associate marriage and family therapist. In making this determination, the board will apply the criteria outlined in North Dakota Century Code chapter 43-53 and this title.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 12-60-24, 43-53-06

111-02-01-05. Code of ethics.

1. The code of ethics applies to all licensees and applicants who practice marriage and family therapy and applies to their conduct during the period of education and training required for licensure.
2. The code of ethics constitutes the standards by which the professional conduct of a marriage and family therapist is measured.
3. A violation of the code of ethics is unprofessional or unethical conduct and is a sufficient reason for disciplinary action or denial of licensure.
4. A marriage and family therapist must act in accordance with the highest standards of professional integrity and competence. A marriage and family therapist must be honest in dealing with clients, students, trainees, colleagues, and the public.
 - a. A therapist must not perform, nor pretend to be able to perform, professional services beyond the therapist's field or fields of competence.
 - b. A therapist must not permit a trainee or intern under the therapist's supervision to perform, nor pretend to be competent to perform, professional services beyond the trainee's or intern's level of training.
 - c. A therapist must recognize the potentially influential position the therapist may have with respect to students, interns,

employees, and supervisees, and must avoid exploiting the trust and dependency of these persons. A therapist must make every effort to avoid dual relationships that could impair the therapist's professional judgment or increase the risk of exploitation. Sexual contact between the therapist and students, employees, independent contractors, colleagues, or supervisees is prohibited for two years after the date that the relationship is terminated, whether or not the party is informed that the relationship is terminated. Sexual contact after two years with a former student, intern, employee, or supervisee is prohibited:

(1) If the former student, intern, employee, or supervisee was emotionally dependent upon the therapist; or

(2) If the sexual contact occurred by means of therapeutic deception.

d. A therapist must not engage in sexual contact or other harassment, therapeutic deception, or exploitation of students, trainees, interns, employees, independent contractors, colleagues, research subjects, or actual or potential witnesses or complainants in ethical proceedings.

e. A therapist must not use or exploit the professional relationship with a student, trainee, intern, employee, independent contractor, colleague, research subject, or actual or potential witness or complainant in ethical proceedings in any manner for the therapist's emotional, financial, sexual, religious, political, or personal advantage or benefit.

f. A therapist must recognize that there are other professional, technical, and administrative resources available to clients. The therapist must make referrals to those resources when it is in the best interest of clients to be provided with alternative or complementary services. The therapist must make a reasonably prompt referral when requested to do so by the client, without consideration of limitation of third-party payers.

g. A therapist must not offer, nor accept, payment for referrals.

h. A therapist must not knowingly offer services to a client who is in treatment with another professional without consultation among the parties involved. If a client refuses to allow consultation, the therapist should delay the administration of service until the client gives consent to consultation. The exception to the consultation requirement would be if the client reports ethical violations by the other professional.

- i. A therapist must understand the areas of competence of related professions and act with due regard for the need, special competencies, and obligations of their colleagues in other allied professions, and must not disparage the qualifications of any colleague.
- j. A therapist must seek appropriate professional assistance for the therapist's own personal problems or conflicts that are likely to impair the therapist's work performance and clinical judgment.
- k. A therapist must not practice under the influence of alcohol or any controlled substance not lawfully prescribed.
- l. A therapist must not allow an individual or agency that is paying for the professional services of a client to exert undue influence over the therapist's evaluation or treatment of the client.
- m. A therapist must file a complaint with the board when the therapist has reason to believe that another therapist is or has been engaged in conduct which violates this section, North Dakota criminal statutes, or which is grounds for disciplinary proceedings in North Dakota Century Code section 43 53 10.
- n. A therapist must not engage in any conduct likely to deceive or defraud the public or the board.
- o. A therapist must not advertise in a way that is false, fraudulent, or misleading to the public.
- p. A therapist shall use only academic degrees from regionally accredited institutions that are related to the practice of marriage and family therapy in any situation or circumstance related to the practice of marriage and family therapy. Those therapists holding current North Dakota mental health professional licenses issued by other North Dakota licensing boards may also use degrees and titles directly related to these licenses as permitted by the other boards when the other licensure is cited with the marriage and family licensure.
- q. A therapist must correct, wherever possible, false, misleading, or inaccurate information and representations made by others concerning the therapist's qualifications, services, or products.
- r. A therapist must make certain that the qualifications of a person in a therapist's employ as a student, independent contractor, or an intern are represented in a manner that is not false, misleading, or deceptive.

- s. A therapist must not engage in any unprofessional conduct. Unprofessional conduct is any conduct violating this section or violating those standards of professional behavior that have become established by consensus of the expert opinion of marriage and family therapists as reasonably necessary for the protection of the public interest.
5. A marriage and family therapist's primary professional responsibility is to the client. A marriage and family therapist must make every reasonable effort to advance the welfare and best interests of families and individuals. A marriage and family therapist must respect the rights of those persons seeking assistance and make reasonable efforts to ensure that the therapist's services are used appropriately. A marriage therapist is bound by these ethics primarily. These ethics supersede any policies of an employer or contractor that may be contrary.
- a. Once a client has been accepted into therapy, a therapist must not discriminate on the basis of age, sex, race, national origin, religion, physical disability, political affiliation, or social or economic status. In addition, a therapist must not discriminate on the basis of affectional preference, or choice of lifestyle. When unable to offer services for any reason, a therapist shall make an appropriate referral.
- b. A therapist must recognize the potentially influential position the therapist may have with respect to clients, and must avoid exploiting the trust and dependency of clients. A therapist must make every effort to avoid dual relationships with clients that could impair the therapist's professional judgment or increase the risk of exploitation.
- c. A therapist must be careful to truthfully represent to clients facts regarding services rendered.
- d. A therapist must recognize the importance of clear understandings on financial matters with clients. Arrangements for fees and payments must be made at the beginning of the therapeutic relationship.
- e. A therapist must not engage in sexual contact or other physical intimacies with a client. Sexual contact with a former client is prohibited for two years after termination of services whether informed or not that the relationship is terminated. Sexual contact after two years with a former client is prohibited:
- (1) If the former client was emotionally dependent upon the therapist; or

- (2) If the sexual contact occurred by means of therapeutic deception.
- f. A therapist must not engage in sexual or other harassment of a client, nor in any verbal or physical behavior that is sexually seductive or sexually demeaning to the client. For purposes of this item, sexual harassment has the meaning given it in subsection 15 of section 111-02-01-01.
- g. A therapist must not use or exploit the professional relationship with a client in any manner for the therapist's emotional, financial, sexual, religious, political, or personal advantage or benefit.
- h. A therapist must not use any confidence of a client to the client's disadvantage.
- i. A therapist must terminate a client relationship when it is reasonably clear that the treatment no longer serves the client's needs or interests.
- j. A therapist must not provide services to a client when the therapist's objectivity or effectiveness is impaired. Whenever a therapist's objectivity or effectiveness becomes impaired during a professional relationship with a client, the therapist must notify the client orally and in writing that the therapist can no longer see the client professionally and must assist the client in obtaining services from another professional.
- k. A therapist must respect the right of a client to make decisions and must help the client understand the consequences of the decisions. A therapist must advise a client that a decision on marital status is the responsibility of the client.
- l. A therapist must inform a client of a divergence of interests, values, attitudes, or biases between a client and the therapist that is sufficient to impair their professional relationship. Either the client or the therapist may terminate the relationship.
- m. In the course of professional practice, a therapist must not violate any law concerning the reporting of abuse of children under North Dakota Century Code chapter 50-25 and vulnerable adults under North Dakota Century Code chapter 50-25.2.
- n. A therapist must display prominently on the premises of the therapist's professional practice or make available as a handout the bill of rights of clients, including a statement that consumers of marriage and family therapy services offered by marriage and family therapists licensed by the state of North Dakota have the right to:

- (1) Expect that a therapist has met the minimal qualifications of training and experience required by state law;
 - (2) Examine public records maintained by the marriage and family therapy licensure board which contain the credentials of a therapist;
 - (3) Obtain a copy of the code of ethics from the marriage and family therapy licensure board;
 - (4) Report complaints to the marriage and family therapy licensure board;
 - (5) Be informed of the cost of professional services before receiving the services;
 - (6) Privacy as defined by rule and law;
 - (7) Be free from being the object of discrimination on the basis of race, religion, gender, or other unlawful category while receiving services;
 - (8) Have access to their records; and
 - (9) Be free from exploitation for the benefit or advantage of a therapist.
- o. A therapist must, upon request from the client, provide information regarding the procedure for filing a complaint with the board.
6. A marriage and family therapist must hold in confidence all information obtained in the course of professional services. A marriage and family therapist must safeguard client confidences as required by law.
- a. A therapist, and employees and professional associates of the therapist, must not disclose any private information that the therapist, employee, or associate may have acquired in rendering services except as provided by law. All other private information must be disclosed only with the informed consent of the client.
 - b. A therapist must be responsible for informing clients of the limits of confidentiality.
 - c. For purposes of safeguarding confidentiality, when seeing a couple or a family, a therapist must define who the "client" is as soon as it is possible to determine the client. For example, a therapist must define whether the couple or family, as a unit, is the client or whether the individuals who make up the couple or family are the clients.

- d. When seeing a couple or a family, a therapist must inform the client, at the beginning of the relationship, what the therapist's procedures are for handling confidences from individual members of the family and for protecting individuals' privacy while safeguarding the integrity of the therapy process.
- e. Whenever marriage and family therapy services are requested or paid for by one client for another, the therapist must inform both clients of the therapist's responsibility to treat any information gained in the course of rendering the services as private information.
- f. A therapist must limit access to client records and must inform every individual associated with the agency or facility of the therapist, such as a staff member, student, or volunteer, that access to client records must be limited to only the therapist with whom the client has a professional relationship, an individual associated with the agency or facility whose duties require access, and an individual authorized to have access by the informed written consent of the client.
- g. A therapist must continue to maintain as private information the records of a client for ten years after the professional relationship between the therapist and the client has ceased. The therapist must store and dispose of records in ways that maintain confidentiality.
- h. A therapist must disclose to the board and its agents client records that the board and its agents consider to be germane to a disciplinary proceeding.
- i. A therapist must obtain written, informed consent from each client before electronically recording sessions with that client or before permitting third-party supervisory observation of their sessions. The consent form should specify the purpose and proposed audience for the recording.
- j. A therapist must disguise adequately the identity of a client when using material derived from a counseling relationship for purposes of training, research, professional meetings, or publications.
- k. A client who is the recipient of marriage and family therapy services has the right to access the records related to the service maintained by the licensee on that client, provided the records are not classified as confidential by North Dakota law.
- l. A marriage and family therapist must maintain an accurate record for each client. Each record must minimally contain:

- (1) A client personal data record which shall include the presenting problem;
 - (2) A treatment plan with a diagnosis and justification for it and treatment goals;
 - (3) An accurate chronological listing of all client contacts and a summary of each;
 - (4) Records of any consultation or supervision received in relation to the client;
 - (5) A termination statement indicating the date and reason for termination, the client's condition at the time, and any recommendations made to the client;
 - (6) Copies of all client authorization for release of information and any other legal forms pertaining to the client; and
 - (7) A chronological listing of all fees or charges for services related to the client and to whom the fees were charged. This record may be kept separate from the client's clinical file.
7. A marriage and family therapist must conduct research activities with full respect for the rights and dignity of participants and with full concern for their welfare according to the requirements of the "Ethical Principles of Psychologists, General Principle 9: Research With Human Participants", American psychological association, as amended June 2, 1989. These requirements are incorporated by reference. The requirements were published in "American Psychologist", March 1990, volume 45, number 3, pages 390-395. Participation in research is voluntary.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-05, 43-53-10, 43-53-11

111-02-01-06. Continuing education.

1. A licensee must regularly engage in continuing education related to the practice of marriage and family therapy as defined in this section.
2. Licensees must complete a minimum of thirty hours of continuing education every two years, of which six hours must be ethics. Licensed associates must complete fifteen hours of continuing education every two years, of which six hours must be ethics. The required number of hours shall be prorated for persons who are initially licensed during a given reporting period. Proof of completion of the required hours

must be submitted to the board by December thirty-first of each odd-numbered year. The initial two-year period begins on January first of each even-numbered year.

3. When the licensee applies for renewal of the license, the licensee must submit documentation of the licensee's completion of the required hours of continuing education on an appropriate form furnished by the board. A receipt for payment of the fees for the course is not sufficient evidence of completion of the required hours of continuing education. Licensees shall keep attendance certificates for at least five years as the board may conduct random audits to verify compliance with subsection 2.

4. A course may not be counted toward a licensee's continuing education requirements unless it has been approved by the board according to the procedures in this subsection and subsections 5 to 9. Courses may be approved for all attendees when submitted by the sponsor as prescribed in subsection 6 or a licensee may request individual approval as prescribed in subsection 7. The board shall consider the following factors in determining whether a course should be approved:
 - a. The course's relevance to the therapeutic practices of marriage and family therapy.

 - b. Whether the course is structured on sound educational principles and fits into one of the following categories:
 - (1) Structured educational programs with an instructor as a part of conventions, workshops, seminars, lectures, interactive media, and graduate and postgraduate courses from regionally accredited institutions. All coursework must include the areas described in subdivision d; and

 - (2) Home study courses related to marriage and family therapy as described in subdivision d. Programs must have an independently graded test component. No more than one-fourth of the required thirty continuing education hours may be earned by this method.

 - c. Whether the course is at least one hour in length. "One hour" means at least fifty minutes spent as a student in direct participation in a structured educational format. Time for home study courses shall be based on developer's research on average time to complete.

 - d. Whether the subject of the course is related to marriage and family therapy with an emphasis upon systemic approaches or the theory, research, or practice of psychotherapeutic work with couples or families. Continuing education for marriage and family therapy generally evolves from the following areas:

- (1) Historical, theoretical foundations, and contemporary conceptual directions of the field of marriage and family therapy;
 - (2) Assessment, diagnosis, and treatment in marriage and family therapy including both dysfunctional relationship patterns and nervous and mental disorders, whether cognitive, affective, or behavioral;
 - (3) Family studies including the life cycle of the family, the process and modification of family structures over time, and issues related to ethnicity, race, socioeconomic status, culture, gender, and sexuality;
 - (4) Human development including human behavior, personality theory, sexuality, psychopathology, behavior pathology, and physical and mental impairments and disabilities that affect normal development;
 - (5) Ethics and professional studies covering legal responsibilities and liabilities of licensure, clinical practice, research, family law, and confidentiality issues; and
 - (6) Supervision in marriage and family therapy including theories and practices.
- e. Whether the course's instructors or developers are qualified by practical or academic experience to teach, lecture, make presentations, or develop courses.
5. The board may use a committee, which may include nonboard members, to evaluate applications for course approval.
6. Individuals, organizations, associations, corporations, educational institutions, or groups intending to offer courses for approval must submit to the board a completed application on a form provided by the board. The course sponsor must meet the requirements in subdivisions a to d to receive and maintain course approval.
- a. The application for course approval must be submitted at least sixty days before the course is scheduled to begin and must include the sponsor's application and an annual nonrefundable continuing education course fee of seventy-five dollars.
 - b. The application for course approval must include the following information to enable the board to determine whether the course meets the standards for board approval specified in subsection 4:

- (1) A statement of the objectives of the course and the knowledge the participants will have gained upon completion of the course;
- (2) A description of the content and methodology of the course which will allow the participants to meet the objectives;
- (3) A description of the method to be used by the participants to evaluate the course;
- (4) A listing of the qualifications of each instructor or developer which shows the instructor's or developer's current knowledge and skill in the course's subject; and
- (5) A description of the certificate or other form of verification of attendance distributed to each participant upon successful completion of the course.

c. If the board approves a course, it shall assign a number to the course. The approval remains in effect for one year from the date of initial approval. The board shall compile a list of approved courses at least once per calendar year. To retain course approval, a course sponsor must submit to the board a new application for course approval required in subdivisions a and b and the application fee for approval of a continuing education course required before the expiration of the one-year period.

- (1) Each sponsor of an approved course may announce, as to a course that has been approved by the board, that: "This course has been approved by the North Dakota Marriage and Family Therapy Licensure Board for ____ hours of credit".
- (2) The course sponsor must submit proposed changes in an approved course to the board for its approval.

d. The board shall approve or disapprove a sponsor's application for course approval.

e. The board shall deny approval of a course if it does not meet the standards in subsection 4. The board shall notify the course sponsor in writing of its reasons for denying approval of a course.

f. The board shall revoke its approval of a course if a course sponsor fails to comply with subdivision c and any part of subsection 4, or if a course sponsor falsifies information requested by the board in the application for approval of a course.

7. A licensee's application for course approval:

- a. A licensee must apply individually for approval of continuing education courses that have not been approved by the board in subsection 6. The licensee must submit information required in subdivision b, as well as other information the board reasonably requires to evaluate the course for approval.
 - b. The following information must be submitted to the board, in addition to the form required in subsection 3, by the licensee:
 - (1) The name and address of the organization sponsoring the course;
 - (2) A detailed description of the course content;
 - (3) The name of each instructor or presenter and the instructor's or presenter's credentials; and
 - (4) The location, including the name and address of the facility, at which the course will be conducted.
 - c. Licensees seeking approval for a course not previously approved by the board are strongly encouraged to seek board approval before attending the course. Licensees have sixty days to seek approval for a course not preapproved in advance by the board.
 - d. The board shall deny approval for a course if it does not meet the standards in subsection 4. The board shall notify the applicant in writing of its reasons for denying approval of a course under this subsection.
8. Continuing education credit may not be applied for marketing the business aspects of one's practice, time management, supervisory sessions, staff orientation, agency activities that address procedural issues, personal therapy, or other methods not structured on sound education principles or contrary to the code of ethics. Continuing education credit may be applied for the following programs that comply with the requirements of subsection 4:
- a. Programs specifically listed in paragraphs 1 and 2 of subdivision b of subsection 4;
 - b. Teaching a marriage and family course in an institution accredited by a regional accrediting association. Continuing education hours may be earned only for the first time the licensee teaches the course. The course must be related to marriage and family therapy as described in subdivision d of subsection 4. Ten continuing education hours may be earned for each semester credit-hour taught;

- c. Research of an original nature directly related to marriage and family therapy as described in paragraphs 1 to 6 of subdivision d of subsection 4. This activity must be preapproved by the board. Hours of credit for this activity shall be negotiated based on the nature of the project. Contact the board for appropriate preapproval forms;

- d. Authoring, editing, or reviewing in an area of marriage and family therapy as described in subdivision d of subsection 4. Continuing education hours may be earned only in the year of publication. The maximum hours earned are as follows:
 - (1) Author of a professional book, thirty hours;
 - (2) Author of a professional book chapter or journal article, fifteen hours;
 - (3) Editor of a professional book or journal, twenty-five hours; and
 - (4) Journal article review, one hour per manuscript;

- e. Presentations at workshops, seminars, symposia, meetings of professional organizations, or postgraduate institutes. The presentation must be related to marriage and family therapy as described in subdivision d of subsection 4. One hour of development time equals one continuing education hour and up to three hours of development time may be claimed for each hour of presentation. Continuing education hours may be earned only for the licensee's first presentation on the subject developed; and

- f. Individually designed continuing education activity. Licensees may submit proposals for continuing education activities which do not meet other guidelines established within this section. The proposal request must include the following:
 - (1) The rationale for pursuing an individually designed activity;
 - (2) Specific goals and objectives, and an explanation of how the goals and objectives are related to the enhancement of the licensee's professional skills;
 - (3) An outline of the topics to be covered;
 - (4) A description of related resources and activities;
 - (5) The proposed documentation of completion of activity; and
 - (6) The estimate of time to be expended on the activity and the number of continuing education hours requested. The

board shall have final say in the number of hours credited for completion of such activity. Subdivisions d to f require preapproval. The applicant must obtain preapproval forms from the board.

9. Continuing education shall be credited on an hour-for-hour basis except as noted in subsection 8. "One hour" means at least fifty minutes spent as a student in direct participation in a structured educational format.
10. A licensee whose license has not expired and who meets any of the following conditions is exempt from continuing education requirements in this section if the licensee files with the board an affidavit specifying that the licensee:
 - a. Is retired from practice and does not perform marriage and family therapy services on a volunteer or free basis;
 - b. Is permanently disabled and unable to practice marriage and family therapy, accompanied by a statement from the licensee's physician;
 - c. Has been granted emeritus status as specified in section 111-02-04-05; or
 - d. Has been called to active duty in the armed forces of the United States.
11. A licensee claiming exemption under subsection 10 who later decides to resume practice must submit to the board, before resuming practice, a written notice that the licensee intends to resume practice. The licensee must also submit evidence that the licensee has completed continuing education requirements that are equivalent to what the requirements would have been without the exemption for the five years or any portion of the five years immediately preceding the date of the notice of intent to resume practice.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-05, 43-53-09

CHAPTER 111-02-02
PRELIMINARY LICENSING REQUIREMENTS

Section

<u>111-02-02-01</u>	<u>Licenses</u>
<u>111-02-02-02</u>	<u>Educational Requirements - Determination of Equivalent Degree</u>
<u>111-02-02-03</u>	<u>Experience Requirements</u>
<u>111-02-02-04</u>	<u>Requirements for Supervisor</u>
<u>111-02-02-05</u>	<u>Responsibilities of Supervisor</u>

111-02-02-01. Licenses.

1. To be eligible for licensure, an applicant must meet the following requirements:
 - a. Complete the education requirements in subsection 2 or 3 of North Dakota Century Code section 43-53-06.
 - b. Complete the experience requirements in subsection 2 or 3 of North Dakota Century Code section 43-53-06.
 - c. Provide evidence of meeting the requirements of North Dakota Century Code section 43-53-06 through endorsements from another jurisdiction.
 - d. Agree to conduct all professional activities as a licensed marriage and family therapist in accordance with the code of ethics for marriage and family therapists in section 111-02-02-02.
 - e. Pass both parts of the examination listed in North Dakota Century Code section 43-53-07.
2. An applicant who fails to meet all requirements in this section shall be denied a license.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

111-02-02-02. Educational requirements - Determination of equivalent degree.

1. In determining whether an applicant holds a master's or doctoral degree that is equivalent to degrees described in North Dakota Century Code section 43-53-06, the board shall evaluate the applicant's transcripts, documentation from the educational institution that describes the substance and purpose of the applicant's academic training, accreditation and other professional recognition of the

educational institution by regional accrediting bodies, and other necessary information as determined by the board. All requested documentation must be sent directly from the educational institution to the board.

2. A master's or doctoral degree is equivalent to a master's or doctoral degree in marriage and family therapy if the degree is from a regionally accredited institution, if the degree is in a related subject field, and if the degree contains the following coursework:
 - a. Nine semester hours in human development covering human development, human behavior, personality theory, human sexuality, psychopathology including the diagnosis of mental illness, and behavior pathology;
 - b. Six semester hours in marital and family studies covering theories of family development, theories of family functioning, the family life cycle, sociology of the family, families under stress, contemporary family forms, family subsystems, theories of marital and family interaction, theories of child development, lifespan, and theories of gerontology;
 - c. Twelve semester hours in marital and family therapy covering marital and family communication, family psychology, family therapy, methods of intervention, family assessment, treatment planning, sex therapy, major theories of marital and family therapy such as structural, strategic, transgenerational, experiential, object relations, contextual, systemic therapy, solution-focused therapy, narrative, and biofeedback methodologies;
 - d. Three semester hours in research covering research design, methods, statistics, and special issues research in marital and family studies or a related field;
 - e. Three semester hours in professional studies covering professional socialization, professional organizations, legal issues, interprofessional cooperation, professional ethics, and family law;
 - f. Applicants are required to demonstrate courses which include content on issues of diversity (race, gender, sexual orientation, spirituality, class, etc.); and
 - g. A clinical practicum in marriage and family therapy of at least five hundred hours or twelve months or nine semester hours of clinical client contact with individuals, couples, and families for the purpose of assessment and intervention. Of the five hundred hours, no more than two hundred fifty hours may be with individuals. This clinical experience must be supervised onsite or at the academic institution

by a licensed and family therapist or an American association for marriage and family therapy-approved supervisor.

3. Four quarter credit-hours shall be equivalent to three semester hours in meeting the requirements in subdivisions a to e of subsection 2. This curriculum may be completed during the qualifying master's or doctoral degree programs; or additional coursework may be taken at a college or university accredited by a regionally accredited educational institution after receiving the graduate degree in order to fulfill the requirements for each of the areas described in subdivisions a to f of subsection 2. An applicant may not use a course for more than one area described in subdivisions a to f of subsection 2.
4. A professional track may give credit for experience with a minimum of five years providing the applicant had a valid equivalent degree as described in subsection 1 during the time of working with couples and families. The applicant will take twelve semester hours from coursework requirements described in subdivision c of subsection 2 and three semester hours in subdivision e of subsection 2. The clinical client contact requirements will remain the same.
5. The burden is on the applicant to prove by a preponderance of the evidence that the coursework is equivalent to the requirements in subsection 2.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

111-02-02-03. Experience requirements. The two years of supervised, postgraduate experience required by subsection 3 of North Dakota Century Code section 43-53-06 must meet the following:

1. In calculating two years of supervised postgraduate experience in marriage and family therapy, the board shall accept a minimum of one thousand five hundred hours of clinical client contact including the assessment, diagnosis, and treatment of mental illness as specified in subsection 3 with two hundred hours of postgraduate supervision by a North Dakota or other approved jurisdiction licensed marriage and family therapist supervisor over a period of not less than twenty-four months and no more than forty-eight months. All additional work used to complete this two-year experience may be supervised in a legal and ethical manner by a licensed mental health professional listed in North Dakota Century Code title 43.
2. The applicant must demonstrate at least five hundred hours of the clinical client contact required in each of the following categories of cases:

- a. Unmarried couples, married couples, and separating and divorcing couples;
- b. Family groups, including children; and
- c. Individual services.

This contact shall include experience in the assessment, diagnosis, and treatment of mental illness. The board may consider waiving part of this requirement for good cause shown.

- 3. The supervision by a North Dakota or other jurisdiction licensed marriage and family therapist shall take place in individual and group settings, according to the following:

- a. The individual supervision shall take place in a setting in which a supervisor and not more than two supervisees are present.
- b. The group supervision shall take place in a setting in which a supervisor and not more than six supervisees, but not less than three supervisees, are present.

- 4. Supervision must involve:

- a. At least two hundred hours of face-to-face contact between the supervisor and supervisee of which at least one hundred hours must be in individual settings.
- b. One hundred hours of supervision per year.
- c. A focus on the raw data from the supervisee's clinical work that is made directly available to the supervisor through means of written clinical materials, direct observation, and audio or video recordings.
- d. During the period of supervised experience, an associate may be employed on a salary basis or be used within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.
- e. During the postgraduate supervision, both the supervisor and the associate may have disciplinary actions taken against their licenses for violations of the act or administrative rules.
- f. Supervision must be conducted under a supervision agreement, which must be submitted to the board on the official form within sixty days of the initiation of supervision.

- g. The associate must receive a minimum of one hour of supervision every two weeks. A supervision hour is forty-five minutes. Up to fifty hours of the two hundred hours of face-to-face supervision may occur via telephonic or other electronic media, as approved by the supervisor.
 - h. An associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.
 - i. The associate may receive credit for up to two hundred fifty clock-hours toward the required two thousand hours of supervised clinical services by providing services via telephonic or other electronic media, as approved by the supervisor.
5. A supervisee must verify the required supervised experience by completing a form supplied by the board. The form must be signed by the applicant's supervisor and be deemed truthful subject to penalties for making a false statement under North Dakota Century Code section 12.1-11-02. The form must include the setting, nature, and extent of the supervised experience, the time period involved, the number of hours of clinical client contact, the number of hours of supervision, and the name and qualifications of each supervisor.

History: Effective July 1, 2010.

General Authority: NDCC 23-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

111-02-02-04. Requirements for supervisor.

- 1. Supervisors are recognized by the board when subsection 1 or 2 is met by submitting an application which includes the following four documents:
 - a. A graduate degree in marriage and family therapy or a graduate degree in a related mental health field, such as counseling and guidance, psychology, psychiatry, or clinical social work, from a recognized educational institution;
 - b. A license, which is not a provisional or an associate license, issued by the board or a license as a marriage and family therapist in another jurisdiction;
 - c. One of the following:
 - (1) Successful completion of a one semester graduate course in marriage and family therapy supervision from an accredited institution; or

- (2) A forty-hour continuing education course in clinical supervision offered by a board-approved provider; and
- d. At least three thousand hours of direct client contact in the practice of marriage and family therapy over a minimum of three years as a licensed marriage and family therapist.
2. In lieu of meeting the qualifications set forth in subdivision a of subsection 1, a person is an acceptable supervisor if the person has been designated as an approved supervisor or supervisor-in-training by the American association for marriage and family therapy before the person provides any supervision.
3. A supervisor may not be employed by the person whom the supervisor is supervising.
4. A supervisor may not be related within the second degree by affinity or within the third degree by consanguinity to the person whom the supervisor is supervising.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

111-02-02-05. Responsibilities of supervisor. A supervisor must:

1. Be knowledgeable of the clinical skills required for effective delivery of marriage and family therapy services;
2. Be knowledgeable of the important literature in the field of marriage and family therapy and professional ethics, and the supervisor must be knowledgeable about the basic skills and service delivery of supervision;
3. That all supervised work is conducted in appropriate professional settings, with adequate administrative and clerical controls; and
4. Devote at least ten percent of the required continuing education hours to supervision.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

CHAPTER 111-02-03
LICENSURE PROCESS FOR LICENSED MARRIAGE AND FAMILY
THERAPISTS

Section

<u>111-02-03-01</u>	<u>Process</u>
<u>111-02-03-02</u>	<u>Examination</u>
<u>111-02-03-03</u>	<u>Procedures for Admission to Licensure</u>
<u>111-02-03-04</u>	<u>Concurrent Applications for Examination and Licensure</u>
<u>111-02-03-05</u>	<u>Examination Methods - Subjects and Procedures</u>
<u>111-02-03-06</u>	<u>License by Endorsement</u>

111-02-03-01. Process. The process of licensure by the board as a marriage and family therapist is divided into two separate parts, admission to written examination and admission to licensure.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-07

111-02-03-02. Examination.

1. To be admitted to written examination, an applicant must submit to the board the following information:
 - a. The applicant must submit a completed application for admission to written examination on a form provided by the board. The application must include an affirmation by the applicant that the statements made in the application are true and correct to the best knowledge of the applicant.
 - b. The applicant must submit the required nonrefundable fee for application for admission to written examination specified in subdivision c of subsection 3 of North Dakota Century Code section 43-53-06 made payable to the North Dakota marriage and family therapy licensure board.
 - c. The applicant must submit official transcripts of all graduate education of the applicant, including verification of the degree granted. The transcripts must be sent directly to the board from the institution granting the degree.
 - (1) The applicant must demonstrate to the board, by a preponderance of the evidence, that the degreed program documented by the applicant's transcripts meets the requirements of subdivisions a and b of subsection 3 of North Dakota Century Code section 43-53-06.

- (2) The institution granting the degree must be regionally accredited at the time the degree is granted.
- d. An applicant for licensure must inform the board within thirty days of any changes in name, residential address, or cell, business, and residential telephone numbers.
2. The board has authority to investigate or contact persons to verify the authenticity of the information in the application for admission to written examination and to require the applicant to provide verification.
3. An applicant's file shall be closed if the applicant fails to complete the application for admission to written examination and provide all information required within six months from the date the board receives the application.
4. An applicant shall be admitted to the first regularly scheduled written, objective part of the examination that occurs sixty days or more after the applicant has met the requirements of subsection 1, unless admission is denied under subsection 5. Admission to the examination shall be complete only after receipt of the examination fee by the board from the applicant.
5. The board shall deny an applicant admission to written examination if the applicant has not met the education requirements of subdivision a of subsection 3 of North Dakota Century Code section 43-53-06. The board shall notify the applicant of the denial in writing and state the reasons for the denial. Any applicant who fails an examination conducted by the board may not be admitted to a subsequent examination for a period of at least six months.
6. An application for admission to written examination submitted after denial shall be considered a new application for admission to written examination which must be accompanied by the fee for application for admission to written examination.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-07, 43-53-09

111-02-03-03. Procedures for admission to licensure.

1. To be eligible for admission to licensure, an applicant must submit to the board the following information:
- a. The applicant must submit evidence of having passed the written part of the examination in subdivision c of subsection 3 of North Dakota Century Code section 43-53-06.

- b. The applicant must submit a completed application for licensure on a form provided by the board. The application must include an affirmation by the applicant that the statements in the application are true and correct to the best knowledge of the applicant and an agreement by the applicant that the applicant will conduct all professional activities as a licensed marriage and family therapist according to the code of ethics in section 111-02-03-02.
 - c. The applicant must submit the required, nonrefundable application for initial licensure fee specified in subsection 4 of section 111-02-04-01, payable to the North Dakota marriage and family therapy licensure board.
 - d. The applicant must submit a completed form provided by the board, verifying the applicant's postgraduate, supervised experience, conforming to the requirements of subsection 3 of North Dakota Century Code section 43-53-06
 - e. The applicant must submit two endorsements attesting to the applicant's good moral character. The endorsements must be completed and signed by individuals who meet the requirements for endorsers under subsection 2. The endorsements must be truthful, and are subject to the penalties of perjury.
2. Requirements for endorsement.
- a. For an endorsement to meet the requirements of subdivision e of subsection 1, the endorser must:
 - (1) Be licensed by the board; or
 - (2) Be licensed to practice marriage and family therapy by another jurisdiction whose licensure standards are at least equivalent to or exceed the requirements for licensure in North Dakota.
 - b. An endorser must not be an employee, independent contractor, patient, or former patient, or be related in any way to the applicant.
3. The board has authority to investigate or contact persons to verify the authenticity of the information in the application for licensure and to require the applicant to provide verification.
4. An applicant who fails to meet all the requirements in subsection 1 shall be denied licensure. An applicant who is denied licensure shall be informed in writing of the denial and the reasons for it. An application for licensure submitted following denial is a new application for licensure which must be accompanied by the fee for application

for licensure specified in subsection 3 of North Dakota Century Code section 43-53-06.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-07, 43-53-08, 43-53-09

111-02-03-04. Concurrent applications for examination and licensure.

An applicant may file both the application for admission to written examination and the application for licensure at the same time if the experience requirements in subdivision b of subsection 3 of North Dakota Century Code section 43-53-06 have been met.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-07

111-02-03-05. Examination methods - Subjects and procedures.

1. Examination of an applicant for a license as a marriage and family therapist shall be composed of:
 - a. A written, objective part designed and scored by a professional examination service approved by the Association of marriage and family therapy regulatory boards; and
 - b. A state part conducted by members of the board.
2. An applicant who is admitted to written examination must pay the written examination fee to the North Dakota marriage and family therapy licensure board or its designee before taking the examination.
3. The written examination is the examination approved by the association of marriage and family therapy regulatory boards. The written examination shall be offered on dates established by the association of marriage and family therapy regulatory boards.
4. The state examination of an applicant shall be held according to those methods determined by the board to be the most practical and expeditious in testing the applicant's qualifications for licensure. The state examination of an applicant shall take place after the applicant's application for licensure has been accepted by the board and before the applicant is approved for licensure. The state examination of an applicant shall cover:
 - a. The applicant's knowledge of the laws governing marriage and family therapists;
 - b. The applicant's knowledge of the code of ethics;

- c. The applicant's awareness of the responsibilities to the board and to the public; and
 - d. Other practice-related areas.
5. The board shall notify an applicant in writing of admission to either part of the examination at least thirty days before either part of the examination is scheduled to take place. The notice shall state the date, time, and place where the applicant is scheduled to be examined.
 6. The passing score of the written part of the examination is the passing score determined by the association of marriage and family therapy regulatory boards. The passing score for the state examination shall be determined by the board. An applicant must pass both parts of the examination to qualify for licensure as a marriage and family therapist.
 7. An applicant who has failed a part of the examination may be reexamined on the part the applicant failed, but not more than five times without a variance. An applicant who is reexamined on the written part of the examination must pay the written examination fee.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-04, 43-53-07

111-02-03-06. License by endorsement.

1. The board shall issue a marriage and family therapist license to an applicant who holds a current license as a marriage and family therapist from another state or country if the board determines that the standards for licensure in effect when the individual was licensed in the other state or country are at least equivalent to or exceed the current requirements for licensure in North Dakota. If an applicant for licensure by endorsement was licensed in another state or country without passing the written examination specified in section 111-02-03-02, but meets all other North Dakota requirements, the applicant may submit an application for licensure by endorsement after passing the examination under subsections 1 through 3 of section 111-02-03-05. All applicants for licensure by endorsement must pass the state examination specified in subsection 4 of section 111-02-03-05.
2. An individual who holds a current license as a marriage and family therapist from another state or country must file a completed application for licensure by endorsement and must pay the fee for an original license in North Dakota. The application must be on a form provided by the board. The application must include a statement that the information in the application is true and correct to the best knowledge of the applicant and an agreement by the applicant that the applicant

will conduct all professional activities according to the code of ethics in section 111-02-01-05.

3. The applicant must direct the board of examiners of the state or country in which the license is held to send to the board directly a statement that the license is in effect and in good standing on a form provided by the board, and a copy of the state's current licensing law and rules.
4. The board may refuse to grant a license or may impose disciplinary action for:
 - a. Revocation, suspension, restriction, limitation, or other disciplinary action against the applicant's license in another state or jurisdiction;
 - b. Failure to report to the board that charges regarding the applicant's license have been brought in another state or jurisdiction; or
 - c. Having been refused a license by another state or jurisdiction.
5. The burden is on the applicant to establish, by a preponderance of the evidence, that the standards for licensing in effect when the individual was licensed in the other state or jurisdiction are at least equivalent to or exceed the current licensing requirements in North Dakota.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-08

CHAPTER 111-02-04
LICENSEE - RENEWAL OF LICENSE AND FEES

Section

<u>111-02-04-01</u>	<u>Renewal of License and Fees</u>
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111-02-04-01. Renewal of license and fees.

1. Licenses issued by the board must be renewed biennially upon the payment of the renewal fee required in subsection 4, completion of a renewal application, and the fulfilled reporting of continuing education requirements in section 111-02-01-06. Licensed associates renew on an annual basis up to forty-eight months.
2. The board shall send the licensee a written renewal notice identifying the amount of the renewal fee. The notice shall be sent to the licensee's last-known address on record with the board. A licensee must notify the board in writing of any change of name, address, and cell, residential, or business telephone numbers within thirty days after any change. Failure to receive the renewal notice does not relieve the licensee of the obligation to renew the license.
3. The licensee must submit to the board a completed renewal application on a form provided by the board. The licensee must submit the renewal application so that the application is postmarked on or before December thirty-first. If the postmark is illegible, the renewal application is timely if received in the board office by mail on the first workday after December thirty-first.
4. The original license fee is one hundred ninety dollars. The renewal license fee is one hundred forty dollars. These fees must accompany the original and renewal applications to be complete. The licensed associate original fee is seventy-five dollars per year. The renewal associate fee is fifty dollars per year.

Other fees:

- a. Application for admission to the written examination fee shall be the current rate as established by the association of marriage and family therapy regulatory boards and a written examination fee in accordance with the current contracted examination fee.
- b. Application for original licensure by endorsement fee, three hundred dollars.

- c. Duplicate license fee, twenty-five dollars.
 - d. Sponsor's application for approval of a continuing education course fee, seventy-five dollars.
 - e. Late fee for renewal, two hundred fifty dollars postmarked one through ninety days late, three hundred fifty dollars postmarked ninety-one through three hundred sixty-five days late. Licensed associate late fee, one hundred dollars postmarked one through three hundred sixty-five days late.
 - f. Application for an associate marriage and family therapy license fee, seventy-five dollars, plus fifty dollar application fee.
 - g. Renewal of associate marriage and family therapy license annual fee, fifty dollars. May be renewed up to four years or three renewals.
 - h. The cost of background checks are the burden of the applicant.
5. Failure to renew.
- a. The following procedure applies if a licensee fails to submit the renewal application according to subsection 3 or fails to fulfill or report continuing education requirements in section 111-02-01-06.
 - b. If the licensee fails to submit to the board the renewal application, information about continuing education requirements, and the renewal fees specified in subsection 4, on or before December thirty-first, the license expires and the licensee's right to practice terminates on December thirty-first. The board shall mail to the former licensee a written notice that the licensee's license has expired and the licensee's right to practice has terminated. The board shall send the notice to the licensee's last-known address on record with the board. The board shall instruct the former licensee to promptly return the licensee's board-issued license certificate, written in calligraphy, to the board office.
 - c. A license that expired under this section may be reinstated under section 111-02-04-03.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-09

111-02-04-02. Term of license.

- 1. An original license is effective after:

- a. The board notifies the applicant in writing that the applicant has been approved for licensure;
 - b. The applicant has paid the original license fee in subsection 4 of section 111-02-04-01; and
 - c. The board assigns a license number to the applicant.
2. An original license granted by the board is valid for a two- year period beginning with the effective date in subsection 1 and ending on December thirty-first of the biennial year in which the license was initially granted. For example, an original license granted on May 6, 2008, is valid from May 6, 2008, to December 31, 2010. A subsequent renewal license is valid for a two-year period ending on December thirty-first, and shall prorate the fees per month which are not covered in the original license fee. For example, an original license which was granted on May 6, 2008, expires on December 31, 2010. The months not covered by the original license fees are seven, from May through December. The license must be renewed for a two-year period according to the procedures in section 111-02-04-01.
 3. A licensed marriage and family therapist or an associate marriage and family therapist must display the therapist's license and evidence of current renewal in a conspicuous place in the therapist's office or place of business or employment. Evidence of current renewal will be provided by the board upon renewal of the license. A duplicate license shall be issued to a licensee after the licensee requests a duplicate license from the board and the fee is paid.

History: Effective July 1, 2010.

General Authority: NDCC 43-32-02, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-09

111-02-04-03. Reinstatement of license.

1. A license that has expired under subsection 5 of section 111-02-04-01 may be reinstated if:
 - a. No fact, circumstance, or condition exists which, if the license were reinstated, would justify its revocation or suspension;
 - b. The former licensee verifies that the former licensee has not engaged in the practice of marriage and family therapy in this state or any other jurisdiction, or used a title denoting marriage and family therapist since expiration of the license unless licensed by another jurisdiction. The verification must be accompanied by an affirmation that the statement is true and correct to the best knowledge and belief of the former licensee;

- c. The former licensee submits to the board a completed application for reinstatement on a form provided by the board;
 - d. The former licensee pays the late fee specified in subsection 4 of section 111-02-04-01;
 - e. The former licensee includes with the application for reinstatement a letter stating the reasons for applying for reinstatement; and
 - f. The former licensee complies with the applicable provisions of subsections 2 and 3.
- 2. A former licensee whose license expired under subsection 5 of section 111-02-04-01 less than five years previous to the application for reinstatement must:
 - a. Submit evidence of meeting the continuing education requirements that would have applied to the former licensee if the license had not expired; and
 - b. Pay the late fee specified in subsection 4 of section 111-02-04-01, for each of the years between the date the license expired and the date the former licensee submits a reinstatement application.
- 3. A former licensee whose license expired under subsection 5 of section 111-02-04-01 five years or more before the application for reinstatement must:
 - a. Retake the written examination required for licensure of marriage and family therapists given by the board according to section 111-02-03-02;
 - b. Submit evidence of meeting the continuing education requirements that would have applied to the former licensee if the license had not expired; and
 - c. Pay the late fee specified in subsection 4 of section 111-02-04-01 for each of the five years immediately preceding application for reinstatement.
- 4. A former licensee who has engaged in the practice of marriage and family therapy in this state or used a title denoting marriage and family therapist since the date of expiration of the license is subject to denial of reinstatement or disciplinary action at the time of reinstatement. Nothing in this subsection precludes the board from seeking injunctive relief under applicable law for the unauthorized practice of marriage and family therapy or from referring the matter to criminal law enforcement officials.

5. Upon reinstatement, the licensee shall be assigned the same license number which the licensee was assigned before expiration of the license.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

111-02-04-04. Voluntary termination of license. A license may be terminated at any time upon written request by the licensee to the board, unless a complaint is pending against the licensee. If a complaint is pending against a licensee, a license may not be voluntarily terminated until any indicated action relative to the complaint is concluded. The board must receive the request to terminate before expiration of the license for failure to renew under subsection 5 of section 111-02-04-01. A licensee who has voluntarily terminated the license may be relicensed by complying with the requirements for reinstatement of an expired license in section 111-02-04-03, except that payment of the renewal fees shall not be required.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

111-02-04-05. Emeritus license status.

1. A marriage and family therapist duly licensed to practice marriage and family therapy in the state under North Dakota Century Code chapter 43-53, who has reached the age of sixty-two and is retired from the active practice of marriage and family therapy, may apply to the board for emeritus status:
 - a. By indicating on the licensee's renewal form or by petitioning the board in writing; and
 - b. By indicating the licensee has not been the subject of disciplinary action resulting in the suspension, revocation, qualification, condition, or restriction to practice marriage and family therapy.
2. A licensee who has emeritus status shall not engage in marriage and family therapy practice or practice as a mental health professional as defined in North Dakota Century Code title 43.
3. Continuing education requirements are not applicable to emeritus status.
4. In the exceptional case that a marriage and family therapist issued an emeritus license should wish to resume practice, the board

shall reactivate the license according to the procedure in section 111-02-04-03.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

