

CHAPTER 75-03-16
LICENSING OF GROUP HOMES AND RESIDENTIAL CHILD CARE FACILITIES

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75-03-16-01. Definitions.

As used in this chapter:

1. "Custodian" means a person, other than a parent or guardian, who stands in loco parentis to a child in placement or a person to whom legal custody of the child has been given by order.
2. "Department" means the North Dakota department of human services.
3. "Employee" means an individual compensated by the facility to work in a part-time, full-time, intermittent, or seasonal capacity for the facility. This definition is not inclusive to contracted service providers who come onsite to conduct trainings, treatment groups, individual therapy, or other program services.
4. "Facility" means a residential child care facility providing foster care to thirteen or more unrelated children or group home providing foster care regularly to at least four and no more than twelve unrelated children.
5. "Nonemployee" means an individual who is not compensated by the facility, such as a volunteer or student intern.

6. "Out-based program" means a sequence of planned activities designed to provide therapeutic outdoor physical, environmental educational, athletic, or other activities which:
 - a. Involve physical and psychological challenges;
 - b. Are designed to:
 - (1) Stimulate competence and personal growth;
 - (2) Expand individual capabilities;
 - (3) Develop self-confidence and insight; or
 - (4) Improve interpersonal skills and relationships; and
 - c. Take place in a setting of twenty-four-hour participant supervision.
7. "Overnight hours" means from eleven p.m. until seven a.m.
8. "Participant" means a child participating in an out-based program.
9. "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child participating in extracurricular, enrichment, cultural, and social activities.
10. "Solo activity" means an experience in which an individual cares for himself or herself in a solitary setting away from others, but under employee supervision.
11. "Utilization review" means a process that applies established criteria to evaluate the services provided in terms of cost-effectiveness, necessity, and effective use of resources.

History: Effective July 1, 1987; amended effective January 1, 1995; March 1, 1999; April 1, 2014; July 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-02. Effect of license.

1. A facility license is in force and effect for the period stated thereon, not to exceed two years, is nontransferable, and is valid only on the premises and for the number of children indicated on the license.
2. For a licensed facility that changes its programming philosophy or ownership, or a provisionally licensed facility upon issuance of an unrestricted license:
 - a. The initial period of licensure is one year;
 - b. The license may be renewed for a second one-year period if the facility successfully completes a program review and certifies compliance with all other licensing rules and requirements;
 - c. The license may be renewed for a third one-year period if the facility successfully completes a licensing study; and
 - d. Thereafter, the facility or home may be eligible for a two-year license.
3. The department may, in its sole discretion, issue a license without inspecting a facility's buildings, grounds, and equipment, if the department finds that:

- a. The facility was inspected and complied with the provisions of this chapter and of North Dakota Century Code chapter 50-11 regarding buildings, grounds, and equipment in the preceding year; and
- b. The facility is otherwise eligible to receive a license.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-01, 50-11-02

75-03-16-02.1. Application for license.

1. An application for a facility license must be submitted to the department. Application must be made in the form and manner prescribed by the department. The department may require such information or documentation, or both, as it deems necessary or appropriate.
2. For purposes of time limits for approval or denial, an application is received by the department when all required information and documents have been received by the department. The department shall notify an applicant if an application is incomplete.
3. The department may declare an application withdrawn if an applicant fails to submit all required documentation within sixty days of notification of incompleteness.

History: Effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-01, 50-11-02, 50-11-03

75-03-16-02.2. Provisional license.

1. A provisional license must:
 - a. Prominently state that the facility has failed to comply with applicable standards and regulations of the department;
 - b. State that the items of noncompliance are set forth on a document available upon request from the facility's operator or supervisor; and
 - c. Expire at a set date not to exceed one year from the date of issuance.
2. The department shall exchange a provisional license for an unrestricted license, which bears the exchange date, upon the facility's demonstration of compliance, satisfactory to the department, with all applicable standards and regulations.
3. A provisional license may be issued only to an applicant who has acknowledged, in writing, the factual and legal basis for the violation.
4. Any provisional license must be accompanied by a written statement of violation signed by the director of the division of children and family services, or the department's designee.
5. Subject to the exceptions contained in this section, a provisional license entitles its holder to all the rights and privileges afforded the holder of an unrestricted license.

History: Effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02.2

75-03-16-02.3. Correction orders.

1. The following time periods are allowed for correction of violations of North Dakota Century Code chapter 50-11 or this chapter:
 - a. For a violation that requires an inspection by a state fire marshal or local fire department authorized pursuant to section 75-03-16-29, five days;
 - b. For a violation that requires substantial remodeling, construction, or change to a building, sixty days; and
 - c. For all other violations, twenty days.
2. The department may require immediate correction of a violation that threatens the life or safety of a child in placement.
3. All time periods under this section commence on the third day after the department mails notice of the correction order to the facility.
4. Upon written request by the facility and upon showing need for an extension created by circumstances beyond the control of the facility and that the facility has diligently pursued correction of the violation, the department may grant extensions of time to correct violations.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-02.4. Fiscal sanctions.

1. The department shall assess the following fiscal sanctions for each day that a facility remains out of compliance with a correction order after expiration of the time for correction of deficiencies:
 - a. For violations that endanger the health or safety of children in placement, a maximum of twenty-five dollars per day;
 - b. For violations of minimum employee requirements, a maximum of twenty-five dollars per day;
 - c. For violations of the prohibitions contained in section 75-03-16-26, a maximum of twenty-five dollars per day; and
 - d. For all other violations, a maximum of ten dollars per day.
2. The levy of a fiscal sanction does not preclude the department's pursuit of other actions, including provisional licensure, injunction, and license revocation.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-02.5. Denial or revocation of license or endorsement.

1. A facility license or an endorsement to operate an out-based program may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11-02, 50-11-07, and 50-11-08.

2. A facility whose application for license or an endorsement has been denied or revoked may submit a new application no sooner than one hundred eighty days after the date of denial or revocation. A facility is bound by the denial or revocation of a predecessor facility's application or endorsement, unless the facility shows substantial change in the facility's administration, statement of purpose, and program.

History: Effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-02.6. Residential bed conversion.

1. A facility may not increase or decrease bed capacity without approval of the department.
2. To qualify for an increase, a facility must:
 - a. Be in compliance with this chapter;
 - b. Submit a plan for the use of its beds; and
 - c. Submit a projected twelve-month budget based on predictable funds for the forthcoming year of operation as required by subsection 3 of section 75-03-16-04.
3. The department shall review the facility's request and may approve or deny the request considering the programming need for the beds and the number of beds available.

History: Effective April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 25-03.2-03.1

75-03-16-03. Organization and administration.

1. Each facility must have a governing body that is responsible for the operation, policies, activities, and practice of the facility. For purposes of this chapter:
 - a. If the facility is owned by a corporation, the board of directors of the corporation is the governing body;
 - b. If the facility is owned by a partnership, the partners are the governing body;
 - c. If the facility is owned by a sole proprietor, the proprietor is the governing body;
 - d. If the facility is owned by a limited liability company, the board of governors is the governing body; and
 - e. If the facility is owned by a tribe or the department of public instruction, the facility shall appoint a governing body.
2. All partnerships and sole proprietorships must have an advisory committee consisting of no less than five members who are not relatives of the proprietor or any partner. The advisory committee shall meet at least once a year.
3. Each facility shall provide the department with an updated list of all the names and addresses of the members of the governing body and any advisory committee within thirty days of any membership change.
4. The governing body shall:
 - a. Adopt a written statement of the purpose and philosophy of the facility.

- b. Adopt written policies for the facility regarding administration, personnel, nondiscrimination, buildings and grounds, and program services.
- c. Adopt written policies for the facility regarding the procedures to be followed in the event the facility closes. The policies must indicate that the governing body will:
 - (1) Provide the department with at least sixty days' written notice that the facility will be closing.
 - (2) Provide the custodian, parent, or guardian of the children in placement with at least thirty days' written notice that the facility will be closing.
 - (3) Provide for an appropriate North Dakota depository to maintain the facility's case, fiscal, employee and nonemployee records.
 - (4) Provide for the retention of all fiscal records for a period of seven years following account settlement.
- 5. The facility shall submit copies of all required policies to the department with the application for license and shall maintain all required policies at the facility or other designated location within the state of North Dakota.
- 6. All statements and policies required by this chapter must be in writing.
- 7. Each facility shall identify to the department all employee and nonemployee positions, using the titles and duties described in this chapter. For purposes of internal operations, a facility may use any definition or title for its positions. All employees and nonemployees must be capable of performing assigned duties.
- 8. Each facility shall carry general comprehensive liability insurance.
- 9. Representatives of the facility shall meet with the department at least annually to discuss the facility operations, programming, and any other pertinent issues that concern the needs of children in placement.

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-04. Financial records and reports.

- 1. If a facility is owned by a corporation, the certificate of incorporation must be available for viewing at the facility or other designated location within the state of North Dakota.
- 2. The facility shall maintain complete financial records regarding the facility. The financial books must be audited annually by a certified or licensed public accountant. The facility shall submit a copy of the accountant's most recent annual report with the facility's license application. The facility shall make the annual audit report available for viewing at the facility or other designated location within the state of North Dakota.
- 3. A facility shall submit a projected twelve-month budget based on predictable funds for the forthcoming year of operation. A new facility must have funds or documentation of available credit sufficient to meet the operating costs for the first twelve months. If a facility applies for a change in licensed capacity, it shall submit a projected budget reflecting the changed capacity.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-05. Employee and nonemployee files.

1. The facility shall maintain an individual file on each employee. The file must include:
 - a. The application for employment including a record of previous employment and the applicant's statement in answer to the question, "Have you been convicted of a crime?";
 - b. Annual performance evaluations;
 - c. Annual professional development and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation;
 - d. The following required training certificates:
 - (1) First-aid training;
 - (2) Cardiopulmonary resuscitation and automated external defibrillator; and
 - (3) Nonviolent crisis intervention;
 - e. Evidence of the employee having read the law requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures;
 - f. Results of background checks for criminal conviction record, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
 - g. Any other evaluation or background check deemed necessary by the administrator of the facility; and
 - h. Documentation of the status of any required license or qualification for the position or tasks assigned to the employee.
2. The facility shall maintain an individual file on each nonemployee. The file must include:
 - a. Personal identification information;
 - b. Results of background checks for criminal conviction record, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
 - c. Description of duties;
 - d. Orientation and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation; and
 - e. Evidence of the nonemployee having read the law requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures.
3. The facility shall adopt a policy regarding the retention of employee and nonemployee files.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-06. Facility administrator.

The governing body of the facility shall designate an administrator for the facility.

1. The governing body of the facility shall clearly define, in writing, the responsibilities of the facility administrator. If the facility is licensed for ten or more children, it shall employ a full-time administrator onsite or in close proximity. A facility may not employ an administrator less than half time.
2. The administrator must have a bachelor's degree in business administration, social work, or a related behavior field, from an accredited college or university.
3. The administrator shall assure that adequate supervision is provided to all employees and nonemployees working in the facility.
4. The administrator shall designate at least one employee, with respect to any child in placement, who is authorized to apply the reasonable and prudent parent standard to decisions involving the participation of the child in age or developmentally appropriate activities. The designated employee must receive department-approved training on how to use and apply the reasonable and prudent parent standard.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-07. Program director.

The facility shall hire or designate a program director for the facility.

1. The facility shall clearly define, in writing, the responsibilities of the program director. The duties of the program director must be devoted to the provision of social services. If supervisory duties are assigned, the program director may only supervise employees involved in treatment activities.
2. The program director must meet at least one of the following standards:
 - a. A licensed, certified social worker (MSW) with at least one year of clinical experience;
 - b. A doctor of philosophy or master of science degreed psychologist with at least one year of clinical experience;
 - c. A licensed addiction counselor who has a bachelor of arts degree in a social or behavioral science with at least three years of clinical experience;
 - d. An individual possessing a master's degree in a clinical discipline, such as a behavioral science with a clinical focus, with at least two years of supervised clinical experience; or
 - e. An individual possessing a bachelor's degree in social work with at least three years' clinical experience in a licensed facility.

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-08. Social service employees.

The facility shall hire or designate social service employees.

1. A facility must have sufficient social service employees to meet minimum employee-to-child ratios required by this chapter.

2. The facility shall clearly define, in writing, the duties and responsibilities of the social service employees.
3. A social service employee responsible for the supervision of other employees or nonemployees must be allowed sufficient time to perform supervision tasks.
4. A social service employee must have, at a minimum, a bachelor's degree in social work or a related field and must be licensed as required by that field of practice.
5. A social service employee's time must be devoted to the provision of social services.
6. If the facility holds itself out as furnishing or using a specific treatment method, the professional development and training records must document that the employee has had appropriate training to provide the specific training method.
7. A social service employee must have achieved the competencies necessary to implement any item of care or service which the employee is designated to perform in the individualized plan of care of a child in placement.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-09. Social service employee supervision.

1. The program director or assigned social service supervisor shall provide and document a minimum of one hour of individual supervision per week for each social service employee.
2. Each full-time social service supervisor may not supervise more than six social service employees, treatment employees, or direct care supervisors. Social service supervisors may not supervise other positions.
3. The facility shall document annual training for supervisors to maintain and improve competence in the supervisory role and in facility social service practices.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-10. Direct care employees.

1. A facility must have on duty at all times sufficient direct care employees to meet the minimum employee-to-child ratios required by this chapter.
2. The facility shall clearly define, in writing, the duties and responsibilities of the direct care employees.
3. All direct care employees must be twenty-one years of age or older.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-10.1. Nursing services.

1. A residential child care facility shall provide for a licensed nurse to accommodate the medical needs of children in placement onsite.

2. The residential child care facility shall clearly define, in writing, the duties and responsibilities of the licensed nurse which must be within the scope of nursing practice.

History: Effective April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-11. Nonemployees.

1. A facility which uses nonemployees shall:
 - a. Develop and provide a copy of a description of duties and specified responsibilities;
 - b. Designate an employee to supervise and evaluate nonemployees; and
 - c. Develop a plan for the orientation and training of nonemployees to include the philosophy of the facility and the needs of the children in placement and their families.
2. Nonemployees may provide services in support of, but not in substitution for, employees. Nonemployees may not be counted as an employee for purposes of employee-to-child ratio requirements imposed by this chapter.
3. Nonemployees shall create records of incidents that occur during their presence at the facility to the same extent that employees are required to create such records.
4. Nonemployees shall follow subsections 2 and 4 of section 75-03-16-12.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-12. Employment policies.

A facility must have clearly written employment policies. The facility shall make the policies available to each employee. The policies must include:

1. An annual professional training and development plan for all employee positions;
2. Procedures for reporting suspected child abuse and neglect;
3. Procedures for employee evaluation, disciplinary actions, and terminations;
4. Zero tolerance policies, which must include zero tolerance for sexual abuse and sexual harassment by employees to others in the facility;
5. Procedures for employee grievances;
6. Evaluation procedures which include a written evaluation following the probationary period for new employees and at least annually thereafter; and
7. A plan for review of the personnel policies and practices with employee participation at least once every three years, or more often as necessary. The facility shall document policy reviews, revisions, and employee participants in writing.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-12.1. Criminal conviction - Effect on operation of facility or employment by facility.

1. A facility operator may not be, and a facility may not employ, in any capacity that involves or permits contact between the employee and any child cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; 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; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 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 offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.
 - (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, has elapsed.
 - (2) 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 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 individual's ability to serve the public in a capacity involving the provision of foster care to children.
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 charge or conviction. The department may not be compelled to make such determination.
4. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.
5. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - a. Common knowledge in the community;
 - b. Acknowledged by the individual; or

- c. Discovered by the facility, authorized agent, or department as result of a background check.
- 6. A facility shall establish written policies and engage in practices that conform to those policies, to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.
- 7. A facility shall establish written policies specific to how the facility will proceed if a current employee or nonemployee is known to have been found guilty of, pled guilty to, or pled no contest to an offense.
- 8. 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 nationwide name-based 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 March 1, 1999; amended effective April 1, 2004; April 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-12.2. Employee and nonemployee background checks.

- 1. A facility shall make an offer of employment to a prospective employee or an offer of placement to a nonemployee conditional upon the individual's consent to and the results of background checks concerning:
 - a. Criminal conviction record; and
 - b. Child abuse or neglect record.
- 2. While background check results are in pending status, a facility may choose to provide training and orientation to a prospective employee or nonemployee while waiting for the results. However, until the approved background check results are placed in the employee's or nonemployee's file, the prospective employee or nonemployee may not have contact with children in placement at any time.
- 3. If a prospective employee or nonemployee is in a position requiring the transportation of children in placement or the need to drive an approved facility vehicle, the facility shall complete an initial department of transportation driving record check for that employee or nonemployee. A facility shall develop a policy to determine how often a driving record check will be required. In addition, the facility shall identify procedures to follow if an employee or nonemployee approved to transport children in placement subsequently commits a driving violation.
- 4. If a prospective employee has previously been employed by one or more facilities, the facility shall request a reference from all previous facility employers regarding the existence of any determination or incident of reported child abuse or neglect in which the prospective employee is the perpetrator subject.
- 5. A facility shall submit proper paperwork to the department year for the department to perform an annual child abuse and neglect index check on every facility employee and nonemployee. The facility shall place a copy of the results in each employee or nonemployee file.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-12.3. Employee and nonemployee health requirements.

1. All employees and nonemployees must be capable of performing assigned tasks.
2. All employees shall undergo an initial health screening performed by or under the supervision of a physician not more than one year prior to or thirty days after employment to verify good physical health to work in the facility. The professional performing the screening shall sign a report indicating the presence of any health condition that would create a hazard to others in the facility.
3. All employees and nonemployees shall undergo an initial test for tuberculosis.
4. Unless effective measures are taken to prevent transmission, each facility shall develop a policy addressing that an employee or nonemployee suffering from a serious communicable disease must be isolated from other employees, nonemployees, and children in placement who have not been infected.
5. The facility shall collect and maintain information obtained under this section regarding the medical condition or history of any employee or nonemployee on forms and in medical files which are kept separate from the employee or nonemployee files. Medical information of employees and nonemployees must be treated as a confidential medical record available only to the employee, the nonemployee, the facility, or official regulating authorities, including the department.
6. The facility shall develop a policy regarding health requirements for employees and nonemployee, including how often health screenings and tuberculosis testing will be required by the facility.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-13. Minimum employee requirements.

1. For purposes of this section:
 - a. "Reside" means to sleep and keep personal effects; and
 - b. "Structure" means a building that is or may be free standing. The existence of a walkway, tunnel, or other connecting device on, above, or below ground is not effective to make one structure from two or more component structures.
2. For purposes of this section, social service, program director, and administrator positions are expressed in full-time equivalents.
3. Each facility shall adopt a policy declaring employee coverage for overnight hours in the facility.
4. Each facility shall comply with the following minimum employee-to-child ratio requirements for social service employees, program director, nurse, and administrator:
 - a. One social service employee and a half-time administrator for a facility providing services for one to nine children;
 - b. No less than one social service employee for each twelve children, one program director, and one administrator for a facility providing services for ten or more children;

- c. A residential child care facility shall provide onsite nursing services to accommodate the medical needs of children in placement; and
 - d. A facility shall notify the department, in writing, if the minimum employee-to-child ratios are not met based on position vacancies. An interim plan to cover the position duties must be approved by the department.
5. During awake hours each facility shall have no less than one direct care employee on duty for each six children present in the facility.
6. During overnight hours each facility shall have:
 - a. Awake direct care employees;
 - b. No less than one direct care employee on duty for each twelve children present in the facility; and
 - c. A policy that includes a requirement that an employee will check on children in placement during overnight hours at a minimum of every thirty minutes.
7. During overnight hours each facility structure in which children reside must meet the employee-to-child ratio requirements.
8. A facility which operates more than one structure in which children reside shall count the children in all structures collectively for purposes of determining the number of children for which the facility provides services, the need to employ a program director, the required number of social service employees, and to determine the appropriate employee-to-child ratios.
9. Educational program employees may not be counted as direct care employees, social service employees, an administrator, or a program director during any time educational services are provided.

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-14. Employee professional development.

1. Each facility shall ensure that all employees in contact with children in placement receive at least twenty hours of annual training to assist in the overall quality of care provided to children in placement.
2. Required training to prepare employees to meet the needs of the children served includes:
 - a. Certified first aid;
 - b. Certified cardiopulmonary resuscitation and automated external defibrillator training;
 - c. Certified nonviolent crisis intervention training;
 - d. Child abuse and neglect mandated report training;
 - e. Training addressing children's emotional needs; and
 - f. Suicide prevention training.
3. A certified instructor shall provide classroom, hands-on training for nonviolent crisis intervention, first aid, cardiopulmonary resuscitation, and automated external defibrillator. A

certificate must be provided to each employee or nonemployee demonstrating their competencies in the specific training area. A copy of the certificate must be placed in the employee or nonemployee file.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-15. Child abuse and neglect.

1. All facility employees and nonemployees shall certify having read the law requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures.
2. Each facility shall adopt written policies and procedures requiring employees and nonemployees to report cases of suspected child abuse or neglect. The procedures must include the following statement:

All facility employees and nonemployees will comply with North Dakota Century Code chapter 50-25.1, child abuse and neglect. Therefore, it is the policy of this facility that if any employee or nonemployee who knows or reasonably suspects that a child in placement whose health or welfare has been, or appears to have been, harmed as a result of abuse, neglect, or sexual molestation, that employee or nonemployee shall immediately report this information to the department.

Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment and referral of the employee or nonemployee to the office of the state's attorney for investigation of possible criminal violation.

3. The facility's policies and procedures must describe:
 - a. To whom a report is made;
 - b. When a report must be made;
 - c. The contents of the report;
 - d. The responsibility of each individual in the reporting chain; and
 - e. The status and discipline of an employee or nonemployee who fails to report suspected child abuse or neglect.
4. The facility shall cooperate fully with the department throughout the course of any investigation of any allegation of child abuse or neglect made concerning care furnished to a child in placement. The facility shall, at a minimum, provide the investigators or reviewers with all documents and records available to the facility and reasonably relevant to the investigation and permit confidential interviews with employees, nonemployees, and children in placement. Internal facility interviews and investigations are not permitted to occur concurrent with a department or law enforcement investigation.
5. The facility shall notify the department licensing administrator, in writing, of the corrective action the facility has taken or plans to take to comply with the recommendations based on an "indicated" finding. The facility must respond within thirty days of receiving written notification of the finding.

6. A facility shall establish written policies specific to how the facility will proceed when a current employee or nonemployee is known to be:
 - a. Involved in any capacity in a reported incident of institutional child abuse or neglect; or
 - b. The subject of a services-required decision in a child abuse or neglect report that occurred outside of the facility.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-25.1-03

75-03-16-16. Preadmission, admission, and discharge.

1. A facility shall adopt written preadmission, admission, and discharge policies including age, sex, and characteristics of children eligible for admission.
2. A facility must have an admission committee and a discharge committee. The committees may have the same members.
 - a. The admission and discharge committees may include the program director, a social service employee, a direct care employee, and such additional members as the facility determines appropriate.
 - b. The program director or a social service employee shall chair each committee.
3. No child may be denied admission on the basis of race, color, creed, religion, or national origin.
4. Preadmission procedures.
 - a. The admission committee shall screen applications and decide which children are admitted to the facility for care. The admission committee shall make admissions decisions within thirty days of the receipt of sufficient information or a completed application.
 - b. To determine if it is appropriate to admit a child, the facility shall develop a policy requiring:
 - (1) The child's social and family history;
 - (2) The child's educational records including a copy of the school district notification, previous and current individual education plans, if any, and the name of the responsible school district;
 - (3) A psychiatric or psychological history, if indicated;
 - (4) A medical history, physical, and examination records;
 - (5) The terms and methods of payment for the child's maintenance, clothing, personal allowance, medical care, and other expenses;
 - (6) The name, address, and telephone number of the custodian, parent, or guardian, if any, and copies of the documents which establish the authority of the legal custodian or guardianship; and
 - (7) The written authorization from the custodian, parent, or guardian to obtain necessary medical treatment.

- c. A facility may admit a child without first securing all required information if:
 - (1) The facility has secured substantially all required information, has documented diligent efforts to secure all required information, and the facility has determined that admission is appropriate; or
 - (2) The child's circumstances require immediate placement and the facility has preliminarily determined that admission is appropriate.
 - d. A child admitted under paragraph 2 of subdivision c may be admitted only on condition that the referring agency provides, or arranges for provision of, substantially all required information within thirty days of the child's admission.
 - e. If a private placement is made by a parent or guardian, rather than a court-appointed custodian, the parent or guardian making the placement is the referring agency.
 - f. If a child is not admitted, the facility shall indicate to the referring agency the reason the child was not admitted.
5. Admission procedures. The facility shall:
- a. Develop an intake screening process to determine the treatment needs for the child in placement;
 - b. Request documentation of the services the family of a child in placement will receive in the home community while the child is receiving services in the facility; and
 - c. Request quarterly child and family team meeting progress reports from the referring agency.
6. Discharge procedures
- a. Prior to discharging a child in placement, the facility and the referring agency shall plan for the needs of the child, including preparation of a discharge report. The discharge report must include:
 - (1) A facility progress report of the child, including an outline of appropriate steps the child and family, if appropriate, can engage in to maintain placement out of facility care;
 - (2) The reason for discharge;
 - (3) The immediate and future services recommended for the child and the child's family, if appropriate, to remain successful;
 - (4) A statement regarding the potential need for the child to return to the facility, if needed in the future;
 - (5) The facility's reason for not involving the family in discharge planning, if the family has not been included under subdivisions a and c; and
 - b. The facility shall adopt a policy addressing the circumstances under which a child in placement may be discharged on an emergency basis. If a child in placement is discharged on an emergency basis, the facility shall immediately inform the custodian, parent, or guardian of a child in placement.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

75-03-16-17. Case plan.

1. A social service employee shall develop a written, individualized plan of care for each child in placement within thirty days of admission to the facility. The case plan must:
 - a. Be reviewed by the facility, if a plan was developed by another agency prior to admission, to determine the relevancy to the current needs of the child and the child's family;
 - b. Document that the facility has made reasonable efforts to gather information from employees within the facility, the referring agency, custodian, parents, or guardians, courts, schools, or any other appropriate individuals or agencies;
 - c. Be based on a thorough assessment of the situation and circumstances of the child and the child's family's needs, strengths, and weaknesses;
 - d. Delineate the individual or entity responsible for providing any item of care or service required;
 - e. Document an estimated projected length of stay; and
 - f. Be reviewed for appropriateness and effectiveness at least every thirty days by the responsible social service employee. Changes and modifications must be made and documented in writing as needed, but no less than quarterly.
2. The written, individualized plan of care for a child in placement must include a description of the services that will be provided by:
 - a. The facility to the child;
 - b. The facility to the child's family;
 - c. Community providers to the child;
 - d. Community providers to the family in the family's home community; and
 - e. The facility as a formal plan for visitation from the custodian, parent, or guardian to the facility and opportunities for the child to engage in home visits.
3. The written, individualized plan of care must include an indication of who will provide primary case management and service, and the child in placement's signature or the signed statement of the facility's social service employee that the plan of care was explained to the child and the child refused to sign the plan of care.
4. If a facility engages in electronic data entry and case filing, the facility shall develop policy to manage this process. The policy must include the electronic medical records process, procedures for internal network security, employee access, and management of facility data, backup systems, and how the facility will engage in electronic file sharing with custodians, parents, and guardians.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-18. Interstate compact on the placement of children.

1. All placements of children made from any state which is a member of the interstate compact on the placement of children or the interstate compact on juveniles must be made in compliance with the appropriate compact. It is the responsibility of the facility to ensure that, prior to the placement in the facility, all necessary procedures pursuant to the interstate compact on the placement of children or the interstate compact on juveniles have been completed.
2. All placements from any state which has not adopted the interstate compact on the placement of children or the interstate compact on juveniles shall comply with all North Dakota laws and regulations prior to the arrival of a child into a facility.
3. Before admitting a child placed by any individual or entity that is not a court with jurisdiction in North Dakota, or an individual residing in North Dakota, a facility shall make arrangements with the placing authority sufficient to assure a lawful return of the child to the sending state without regard to the circumstance under which the child is discharged.

History: Effective July 1, 1987; amended effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 14-13, 27-22

75-03-16-19. Law enforcement notification.

A facility shall notify law enforcement officials immediately after it is confirmed that the whereabouts of the child in placement are unknown. The facility shall notify the child's custodian, parent, or guardian within twelve hours after the child's whereabouts become unknown. When the child is found, the facility shall report the child's return immediately to the law enforcement officials and the child's custodian, parent, or guardian.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-01

Law Implemented: NDCC 50-11-02

75-03-16-19.1. Sentinel event reporting.

1. Facilities shall immediately notify the child's custodian, parent, or guardian and the human service center regional child welfare supervisor of a sentinel event.
2. A sentinel event is an unexpected occurrence involving death or serious physical or psychological injury that is not related to the natural course of a child in placement's illness or underlying condition, including any process variation for which a recurrence would carry a significant chance of a serious adverse outcome. Serious injury includes inappropriate sexual contact.

History: Effective April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-19.2. Suicide prevention.

The facility shall develop a suicide prevention plan that addresses several key components, including:

1. Employee training;
2. Initial and ongoing child assessments;

3. Levels of supervision for children in placement;
4. Intervention options;
5. Facility communication, notification, and referral procedures;
6. Reporting and documentation; and
7. Sentinel event debriefing procedures.

History: Effective April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-20. Programs and services.

1. The facility shall adopt a written program plan which must:
 - a. Include a description of the facility's plan for the provision of services required in this chapter, as well as assessment and evaluation procedures to be used in program planning and delivery; and
 - b. Clearly state which services are provided directly by the facility and which services must be provided in cooperation with community resources such as public or private schools, and other appropriate agencies.
2. The facility shall provide information to referral sources, upon written request, which must include:
 - a. Identification of what the facility provides to a child in placement;
 - b. Characteristics of children appropriate for referral and admission to the facility;
 - c. The process by which the facility intends to achieve its goals;
 - d. Treatment orientation of the facility; and
 - e. Information required with the referral.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-21. Case file.

Within thirty days after placement, the facility shall establish and maintain a case file for each child in placement receiving care in the facility. This file must include:

1. The child's full name, birthdate, and other identifying information;
2. A current court order establishing the facility's authority to accept and care for any child welfare placement. If a private placement is made, the facility shall include a signed care agreement or contract in the child's case file;
3. An explanation of custody and legal responsibility for consent to any medical care;
4. An explanation of responsibility for payments for care and services;
5. An explanation of ongoing services;

6. An explanation of services provided to the family by the facility as well as services the family is receiving in their home community in accordance with section 75-03-16-17;
7. Projected plan for discharge;
8. Child and family team meeting quarterly reports or equivalent documentation created by the custodian of the child in placement, if applicable;
9. A copy of the appropriate interstate compact forms, if applicable;
10. A copy of the written individualized plan of care prepared by the facility;
11. Copies of periodic, but not less than quarterly, written reports to the custodian, parent, or guardian of children in placement, developed by the facility's social service employee; and
12. Documentation that the program director, administrator, or utilization review committee has reviewed each case file every thirty days.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-22. Religious opportunities.

The facility will make a reasonable effort to make opportunities available for the children to attend religious ceremonies within the area in which the facility is located, giving appropriate consideration to any requests by the child and the child's parents. The facility shall respect the religious beliefs of the child and the child's family.

History: Effective July 1, 1987; amended effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-23. Medical care.

1. The facility shall adopt a comprehensive written plan of preventive, routine, and emergency medical care including first aid, dental care, and administration of prescription and nonprescription medicine.
2. The facility shall maintain first-aid supplies, including the red cross first-aid manual, in quantities and locations so that they are reasonably accessible at all times.
3. The facility shall have policies governing the use of psychotropic medications. The custodian, parent, or guardian of a child in placement must each be informed of benefits, risks, side effects, and potential effects of psychotropic medications prescribed for the child. Written consent from the legal custodian must be obtained for the use of the medication and must be placed in the child's file. When a psychotropic medication is prescribed or discontinued for a child in placement, the child's medication regime must be reviewed by a psychiatrist or medical doctor as determined medically necessary by the prescribing professional.
4. A record must be kept of prescription and nonprescription medication dispensed to children in placement, including the physician's medication order, the time, means, and frequency of administration, and the individual administering such medication.
5. All prescription and nonprescription medicines must be labeled and stored in a locked storage compartment at the facility and during transport. Medication requiring refrigeration must be properly stored and locked at the proper temperature.

6. Unless effective measures are taken to prevent transmission, any child suffering from a serious communicable disease must be isolated from other children who have not been infected.

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-24. Food and nutrition.

1. Food must be in wholesome condition, free from spoilage, filth, or contamination and must be safe for human consumption. Food in damaged containers or with expired freshness dating is not considered safe for human consumption.
2. The facility shall ensure that the nutritional requirements of the children in placement are met. The facility shall serve nutritionally balanced meals each day. Special diets must be prepared for those children medically requiring them.
3. Except for garden produce, all homegrown food, poultry, meat, eggs, and milk must be from an approved source as determined by the state or local health authorities. The facility shall document the approval of state or local health authorities.
4. No home-canned foods may be served.
5. Frozen homegrown food products may be served if maintained in compliance with standards prescribed by the state department of health for food and beverage establishments.
6. The facility shall provide refrigeration for perishable food and shall maintain perishable food in accordance with standards prescribed by the state department of health for food and beverage establishments.
7. Employees, nonemployees, and children in placement helping to prepare food shall wash their hands before handling food, and as often as necessary to keep them clean, and shall use effective hair restraints to prevent contamination of food and food contact surfaces.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-25. Children's needs.

1. A facility shall arrange for children in placement to have a personal supply of clean, well-fitting clothing and shoes for both indoor and outdoor wear and appropriate for the season.
2. A facility shall assign jobs and household responsibility for children in placement in a manner that does not conflict with the educational schedule or physical health of the children or preclude the children's opportunity for socialization activities.
3. Participation in recreational and social activities must be on the basis of the individualized needs and goals of each child in placement.
4. The facility shall advise all children in placement and their custodians, parents, or guardians, in writing, of the day-to-day rules of the facility. The facility shall adopt day-to-day rules which create the least restrictive environment, consistent with the needs of children in placement.
5. The facility shall advise children in placement and their custodians, parents, or guardians, in writing, of the process used by facility employees to complete a search of children or their belongings when returning to the facility from offsite outings, events, school, or home visits.

The facility shall inform children in placement of the reason searches will be conducted, the protocol for conducting searches, and any disciplinary action a facility will take if contraband items are identified during a search.

6. The facility shall provide children in placement a bed with a clean mattress and clean bedding. The facility shall provide blankets to each child as temperatures make necessary. Sheets and bedding must be changed when soiled, and no less often than weekly. In addition, the facility shall make room assignments to best meet the needs and vulnerabilities of children in placement. The facility shall assess room assignments on an ongoing basis to minimize potential risk to children in placement.
7. The facility shall provide children in placement personal hygiene and toilet articles, including washcloths and towels which must be changed when soiled, and no less often than weekly.
8. A facility shall ensure that privacy is assured when custodians, guardians, or family members visit children in placement. The facility shall record any reason for restricting communications or visits between a child and the child's custodians, guardians, or family members in the child's case file.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-26. Discipline.

Discipline must be constructive or educational in nature. Discipline may include diversion, separation from a problem situation, discussion with the child in placement about the situation, praise for appropriate behavior, and gentle, physical restraint such as holding. A facility shall adopt and implement written policies for discipline and behavior management which include:

1. Only employees of the facility may prescribe, administer, or supervise the discipline of children in placement.
2. Children in placement may not be slapped, punched, spanked, shaken, pinched, roughly handled, struck with an object, or otherwise receive any inappropriate physical treatment.
3. Authority to discipline may not be delegated to or be accomplished by other children.
4. Children in placement may not be locked in any room or other enclosure.
5. Physical restraint or separation from the general facility population may be used only:
 - a. As a necessary complement to positive programming designed to strengthen desirable and adaptive behavior; and
 - b. To prevent immediate harm to children in placement and others.
6. Separation from the general facility population means that a child is removed from peers or programming to regroup when the child's behavior is escalated.
 - a. Separation from the general facility population, when used as discipline, must be brief and appropriate. The child must be in a safe, lighted, well-ventilated room and be observed continuously by an employee. When a child's behavior has deescalated, but the child needs additional separation, an employee shall observe the child and document the observation at least every fifteen minutes until the child is ready to return to the general facility population.

- b. The isolation of a child in a locked area for the purpose of modifying behavior is not permitted at any time.
7. Verbal abuse or derogatory remarks about children in placement, the child's family, religion, or cultural background may not be used or permitted.
8. Neither physical restraints nor separation from the general facility population may be used for punishment, for convenience, or as a substitute for programming. Except as permitted under section 75-03-16-26.2, mechanical forms of physical restraints may not be used.
9. Cruel and unusual punishments are prohibited.
10. Children in placement may not be deprived of any of the following as a means of discipline:
 - a. A place to sleep with a pillow and bedclothes;
 - b. Meals;
 - c. Clean clothes;
 - d. Personal or telephone visits with the child's custodian, parent, or guardian;
 - e. Time necessary for personal hygiene;
 - f. Minimum exercise;
 - g. Receipt and sending of mail;
 - h. Access to toilet and water facilities, as needed;
 - i. Voluntary attendance at a religious service or religious counseling;
 - j. Clean and sanitary living conditions;
 - k. Medication; and
 - l. Sleep.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-26.1. Use of separation from general facility population or physical restraint.

Each time a child in placement is separated from the general facility population or physically restrained, the event must be documented, filed in the case file of the child in placement within twenty-four hours, and entered in the central record maintained by the facility within seventy-two hours. Documentation must include:

1. The date and time of use;
2. The number of times separation or restraint was used and the duration of each use;
3. A complete description of the type of separation or restraint used;
4. The names of employees who applied the restraint;
5. A complete description of the injuries sustained by children or employees involved and the medical treatment provided; and

6. Documentation that information concerning the incident was communicated to the child's custodian, parent, or guardian.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-26.2. Use of mechanical restraints - Limitations.

Notwithstanding the provisions of section 75-03-16-26, a facility may use permissible mechanical restraints to contain the behavior of children in placement in transit from the facility if children in placement have clearly indicated the intent to inflict serious physical injury upon themselves or others and the facility is unable to get assistance from law enforcement.

1. Permissible mechanical restraints consist solely of handcuffs and foot cuffs which may be used only when children in placement are transported from the facility by vehicle.
2. The term "mechanical restraint" does not include seatbelts, shoulder harnesses, or wheelchair locks used in vehicular transportation.
3. The facility shall provide the department with a list of employees trained to use mechanical restraints prior to the institution of a transportation mechanical restraint program. Training for use of mechanical restraint devices must be documented in the professional development and training record.
4. A facility shall inform referring agencies that the facility may use mechanical restraints as a behavior containment measure in transporting children in placement from the facility.
5. A facility shall report each incident of any use of mechanical restraints to the department within three days. The report must include the affidavit of the employee applying the mechanical restraint that sets forth:
 - a. A statement that the use of mechanical restraints was a last resort measure and all less restrictive measures failed;
 - b. The less restrictive restraint measures tried as alternatives to mechanical restraints;
 - c. The name of the law enforcement unit called, the time that law enforcement was called and was unable to respond, and the time of transport; and
 - d. The name of the employee applying the mechanical restraints and a statement that the employee using the mechanical restraints has been properly trained.

History: Effective March 1, 1999; amended effective July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-27. Confidentiality.

1. For purposes of this section, "persons who have a definite interest in the well-being of children in placement" include:
 - a. The child's custodian, parent, or guardian, except to the extent the parental rights have been removed or limited by court order;
 - b. The referring agency that placed a child in the facility; and

- c. An individual or entity identified as a provider of services, located in the home community of the family of the child in placement, for the purposes of reunification.
2. Except as otherwise provided in this section, facility records concerning children in placement that have received, are receiving, or seek to receive facility services must be safeguarded and may be made available only:
 - a. To employees and nonemployees of the facility, to the extent reasonably necessary for the performance of their duties;
 - b. To persons authorized by a custodian, parent, or guardian who may lawfully review a child's records, to review or receive copies of that child's records;
 - c. In a judicial proceeding;
 - d. To officers of the law or other legally constituted boards and agencies; or
 - e. To persons who have a definite interest in the well-being of the children in placement concerned, who are in a position to serve their interests, and who need to know the contents of the records in order to assure their well-being and interests.
3. A facility may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any child in placement or member of the immediate family of a child in placement, without first securing the written consent of the custodian, parent, or guardian of the child in placement, or the written consent of an adult who was a former resident of the facility.
 - a. Written consent must be informative, including full disclosure of how the image or information will be used, including any future use, and must specifically identify the image or information which may be disclosed by reference to dates, locations, and other event-specific information. Consent documents which do not identify a specific event are invalid to confer consent for fundraising, publicity, or illustrative purposes;
 - b. The facility must inform the person signing that the individual is free to either grant or refuse to grant consent;
 - c. The facility must provide a seven-day waiting period during which the consent can be withdrawn by the signing party; and
 - d. The consent must be time-limited. Open-ended consents are not valid. The written consent must apply to an event that occurs no later than one year from the date the consent was signed.

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2004; July 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-06-15, 50-11-02, 50-11-05

75-03-16-28. Education.

Any primary or secondary program offered by a facility must be in compliance with standards established by the department of public instruction. The facility shall ensure that all children who receive care in the facility comply with all state school attendance laws.

History: Effective July 1, 1987; amended effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-28.1. Water safety.

1. For purposes of this section, "aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, or water slides.
2. The facility shall determine the swimming ability of each child prior to the child engaging in an aquatic activity.
3. The facility may not permit any child to participate in an aquatic activity requiring higher skills than the child's swimming classification, except during formal instruction.
4. The facility may not permit children to engage in an aquatic activity without adult supervision at all times.
5. The facility shall adopt and enforce a method to account for each child's whereabouts during aquatic activities, such as a buddy system.
6. The facility shall provide and maintain lifesaving equipment during all aquatic activities. The facility shall maintain all lifesaving equipment in good repair and shall maintain documentation of equipment maintenance. All equipment must be immediately accessible in case of an emergency. At a minimum, the following equipment must be furnished:
 - a. A whistle or other audible signal device;
 - b. A first-aid kit;
 - c. A ring buoy, rescue tube, lifejacket, or other appropriate flotation device with a rope attached which is of sufficient length for the area in which it may be used; and
 - d. A reaching pole.
7. The facility shall require that all activity participants wear personal flotation devices during all boating activities, including water skiing, tubing, and rafting.
8. Prior to any travel in any watercraft, the facility shall provide instruction in boarding, debarking, self-rescue in capsize or swamping situations, and the use of personal flotation devices.
9. Water activities are prohibited in waters the facility knows or should know in the exercise of reasonable care to contain health-threatening levels of pollutants.
10. The requirements of this section apply to activities wherever the activities take place. Where activities take place off of the facility premises, the facility need not provide facility-owned lifesaving equipment, if equipment which meets the requirements of this section is provided by another entity.

History: Effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-29. Buildings, grounds, and equipment.

1. A facility shall comply with all state, county, and local building and zoning codes and ordinances as well as all applicable state, county, and local safety, sanitation laws, codes, and ordinances.
2. A facility must be inspected annually by the local fire department or the state fire marshal's office. A facility shall correct any deficiencies found during these inspections. The facility shall keep a written report of the annual inspection and provide a copy to the department.

3. All chimneys, flues, and vent attachments to combustion-type devices must be structurally sound, appropriate to the unit or units attached to them, and cleaned and maintained as necessary to provide safe operation. The heating system of each facility, including chimneys and flues, must be inspected at least once each year by a qualified individual.
4. There shall be at least one 2A 10BC fire extinguisher on each floor and in or immediately adjacent to the kitchen, incinerator, and combustion-type heating units. Additional fire extinguishers must be provided so it is never necessary to travel more than seventy-five feet [22.86 meters] to an extinguisher. Fire extinguishers must be mounted on a wall or a post where they are clearly visible and at a readily accessible height. All required fire extinguishers must be checked once a year and serviced as needed. Each fire extinguisher must have a tag or label securely attached indicating the month and year the maintenance check was performed last and identifying the individual who performed the service.
5. The facility shall provide the following smoke detectors:
 - a. One unit for each bedroom hallway;
 - b. One unit at the top of each interior stairway; and
 - c. One unit for each room with a furnace or other heat source.
6. Battery-operated smoke detectors must signal when the battery is exhausted or missing, and be tested at least once a month.
7. A facility shall have written plans and procedures for meeting disasters and emergencies.
 - a. Employees must know all plans and procedures for meeting disasters and emergencies.
 - b. The facility shall advise children in placement of all emergency and evacuation procedures upon admission to the facility. These procedures shall be reviewed every month, including the performance and documentation of fire evacuation drills.
 - c. The facility shall have telephones centrally located and readily available for use in each living unit of the facility. Emergency numbers including the fire department, police, hospital, physician, and ambulance must be written and posted by each telephone. There must be telephone service in all buildings housing children in placement.
 - d. There must be at least two independent exits from every floor. The exits must be located so that children in placement can exit from each floor in two separate directions, without going through a furnace room, storage room, or other hazardous area.
 - e. Flashlights must be available for emergency purposes.
8. Any vehicle used by a facility for the transportation of children in placement, employees, or nonemployees must be licensed in accordance with the laws of North Dakota and must be maintained and periodically inspected to ensure its safe operating condition.
 - a. Vehicles used to transport children in placement must be covered by liability insurance.
 - b. The number of persons in a vehicle used to transport children in placement may not exceed the number of available seats. All individuals shall wear seatbelts in vehicles that are equipped with seatbelts.
 - c. Any operator of any vehicle shall hold a valid driver's license of the appropriate class from the operator's jurisdiction of residence.

9. All buildings must be equipped with furnishings suitable to needs of the children in placement. Recreational space and equipment must be safe, functional, and available for all children in placement.
10. The facility shall have one centrally located living room for the informal use of children in placement.
11. The facility shall have a dining room area large enough to accommodate the number of individuals who normally are served.
12. A facility shall provide space and privacy for individual interviewing and counseling sessions. This space must be separate and apart from rooms used for ongoing program activities.
13. A facility shall have bedroom accommodations for the children in placement.
 - a. The facility shall have at least one bedroom for each four children in placement.
 - b. The facility may not permit nonambulatory children in placement to sleep above or below the ground floor.
 - c. There must be no more than one child in placement per bed. Triple bunks may not be used.
 - d. No child in placement six years of age or older may share a bedroom with a child in placement of the opposite sex.
 - e. All bedrooms must have at least one window which opens to the outside.
 - f. No sleeping room may be in an unfinished attic, hallway, or other room not normally used for sleeping purposes.
 - g. A basement which has over half its outside walls below grade and no door opening directly to the outside may not be used for bedrooms.
 - h. Furnishings must be safe, attractive, easy to maintain, and selected for suitability to the age and development of the children in placement.
 - i. A facility shall have sufficient individual storage areas to accommodate children in placement's clothing and other personal belongings.
14. A facility shall have one complete bathroom for each six children in placement. A complete bathroom includes toilet, washbasin, and a tub or shower.
 - a. All bathroom facilities must be indoors, equipped with hot and cold running water, and kept clean.
 - b. When bathroom units contain more than one toilet, tub, or shower, each must be in a separate compartment.
 - c. The facility shall provide bathrooms with nonslip surfaces in showers or tubs.
15. Facilities shall ensure that kitchen equipment and area meet the standards prescribed by the state department of health for food and beverage establishments. Compliance with these standards must be documented annually and inspection documentation shall be provided to the department.
 - a. Food storage space must be clean and containers must be covered and stored off the floor.

- b. Dishes, cups, and drinking glasses used by the children in placement must be free of chips, cracks, and other defects, and must be sanitized after every use by a washing process, sanitization solution, and air-drying or commercial dishwasher.
 - c. Kitchen floors must be reasonably impervious to water, slip-resistant, and maintained in a clean and dry condition.
16. Laundry facilities must be located in an area separate from areas occupied by children in placement. Space for sorting, drying, and ironing must be made available to children in placement who are capable of handling personal laundry.
 17. The water supply of a facility must be from an approved municipal system where available. Where a municipal system is not available, the facility shall obtain approval for the water supply from the state department of health. Each water outlet accessible to children in placement must be supplied with safe and potable water.
 18. All agricultural chemicals, pesticides, and other poisons must be stored in a locked cabinet.
 19. Firearms are prohibited in program or living areas of a facility premises. Firearms kept at any other location on the facility premises must be stored in a locked and secure area.
 20. A facility shall have a quiet area to be used for studying and furnished for that purpose.
 21. All rooms in a facility must have adequate lights, heat, and ventilation. All baths and toilet rooms must have a window which opens to the outside or exhaust ventilation.
 22. Buildings and grounds of a facility must be maintained in a clean, comfortable, sanitary, and safe condition.
 - a. The facility may not be located within three hundred feet [91.44 meters] of an aboveground storage tank containing flammable liquids used in connection with a bulk storage or other similar hazards.
 - b. The grounds must be attractive, well-kept, and spacious enough to accommodate recreational areas that take into consideration the age and interest levels of children in placement.
 - c. Rooms, exterior walls, exterior doors, skylights, and windows must be weathertight and watertight.
 - d. Stairways, porches, and elevated walks and ramps must have structurally sound and safe handrails.
 - e. Buildings must be free of unabated asbestos.
 - f. Lead paint may not be used within a building or on the exterior, grounds, or recreational equipment.
 23. Any nonhousing buildings located on the facility property must be locked when not in use by facility employees, nonemployees, or children in placement. Children in placement must be supervised by an employee when entering a nonhousing building.
 24. All pet inoculations must comply with the local and state requirements.
 25. A facility must immediately notify the custodian, parent, or guardian and the department of a fire or other disaster which endangers or requires the removal of children for reasons of health and safety.

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2014.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-30. Variance.

Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance from the provision of this chapter upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of any child cared for by the facility and no variance may be granted except at the discretion of the department. A refusal to grant a variance is not subject to appeal.

History: Effective July 1, 1987; amended effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-31. Outcomes data collection.

The department may require a facility to engage in data management practices to collect and report outcomes every six months. Data collection efforts will offer facilities a continuous improvement process that measures and monitors the safety, well-being, and service delivery provided to children in placement. Facilities must have written policy to identify a plan to implement, collect, and measure outcomes data requirements. Facilities must respond to the identified data outcomes needing improvement by developing and implementing one or more facility improvement plans.

History: Effective April 1, 2014; amended effective April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-32. Normalcy activities.

Each facility shall document the child's normalcy activities and share the information with the child's custodian, parent, or guardian. Each facility shall create a written policy detailing:

1. The employee job description related to carrying out the duties of the reasonable and prudent parent standard;
2. The variety of normalcy activities offered to children in placement; and
3. Procedures identifying supervision, transportation, and offsite activity emergency responses.

History: Effective April 1, 2016.

General Authority: NDCC 50-11-03.4

Law Implemented: NDCC 50-11-02

75-03-16-33. [Reserved]

75-03-16-34. [Reserved]

75-03-16-35. [Reserved]

75-03-16-36. [Reserved]

75-03-16-37. [Reserved]

75-03-16-38. [Reserved]

75-03-16-39. [Reserved]

75-03-16-40. [Reserved]

75-03-16-41. Other rules applicable to out-based programs.

1. All provisions of this chapter apply to out-based programs unless expressly specified to the contrary or unless specifically superseded by sections applicable only to out-based programs.
2. Sections 75-03-16-41 through 75-03-16-70 apply only to facilities which operate an out-based program.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-42. Participation by foster children in out-based programs - Time limits.

1. A facility may not permit children in foster care to participate in any out-based program other than one operated by a facility that holds a valid endorsement issued pursuant to this chapter.
2. A participant may not spend more than forty-five consecutive days in an out-based program expedition. A participant may not spend more than sixty total days in an out-based program in any calendar year.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-43. Eligibility for endorsement to operate out-based program - Effect of endorsement.

1. An application for an endorsement to operate an out-based program may be made only by a group home or residential child care facility currently licensed under this chapter, and which has been licensed and has actually had children in care for at least one year prior to the date the application for endorsement is received by the department.
2. An endorsement to operate an out-based program may be issued only if:
 - a. The facility declares in its written statement of purpose and philosophy that the out-based program is an integral component of the facility's total program; and
 - b. The facility operates the program without subcontracting or otherwise using another entity to supply staff services, physical facilities, or equipment.
3. An applicant shall submit an application on the forms and in the manner prescribed by the department.
4. The department shall issue an endorsement to operate an out-based program upon a finding that an applicant has complied with the provisions of this chapter. The endorsement must be made in writing in a manner prescribed by the department.
5. An endorsement to operate an out-based program is in force and effect for a period of one year, or until the expiration of the facility's license to operate a group home or residential child

care facility, whichever is shorter. If the facility's license to operate a group home or residential child care facility is revoked, the endorsement is also revoked as of the date and time of the license revocation.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-44. Contents of application for endorsement.

A facility that seeks to operate an out-based program shall submit to the department a proposed program description consisting of the following information, with supporting documentation as indicated:

1. Specifically identified program objectives and activities;
2. Criteria and procedures for admission of participants to the program;
3. A description of the number and types of individuals to be served, including age, sex, and significant emotional or behavior characteristics;
4. Criteria for assigning participants to a program or grouping them within a program, including age, sex, or other characteristics;
5. The number and qualifications of staff responsible for providing program services, including identification of the person responsible for administering the program;
6. The degree and method of family involvement in the program;
7. Other professional services available to participants, such as psychological or psychiatric services, if any;
8. The extent to which services stated to be available are in fact available, including number of staff available to provide the service and time the service is available;
9. Statement of policies regarding supervision of participants and behavior management policies and techniques;
10. Emergency and safety procedures; and
11. A description of staff training to be provided as required by this chapter, including subject matter and time devoted to staff training.

The department may require other information or documentation as it deems necessary or appropriate.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-45. Effect of single serious violation.

Due to the difficulty of monitoring out-based programs and the inherent dangers of the wilderness, a single violation of health or safety standards, as established by this chapter, which creates a serious threat to human life or well-being, may result in any of the following:

1. Immediate revocation of the facility's out-based program endorsement;
2. Immediate revocation of the facility's license to provide foster care;
3. Removal of participants; or

4. Removal of children in foster care.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-46. Out-based program activities.

1. Activities must be led by staff who have demonstrated proficiency in the skills required for the activity, as determined by the facility's governing body and expressed in written policy and procedure.
2. Activities must be conducted in such a manner as to minimize any adverse effect on the environment.
3. Activities requiring or involving firearms are prohibited. No individual may possess a firearm during any out-based program activity.
4. Airborne activities, including bungee jumping, hang gliding, and parachuting are prohibited.
5. A facility may not allow children or staff to participate in any test of new products by a manufacturer or other entity.
6. Activities must be graduated in the level of difficulty and matched to the level of skills or capabilities of the participants. The facility shall ensure that techniques and skills are taught progressively.
7. An activity's pace must be set according to the capabilities of the least able or fit member of the group, take into account previous illness or injury, and be designed to prevent the occurrence of accidents or illness.
8. A facility may not conduct any out-based program activity which has not been disclosed to the department in the facility's application for an endorsement.

History: Effective January 1, 1995; amended effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-47. Voluntary participation.

1. A facility may not physically force any child to participate in an out-based program, but may require a child to attend an orientation by means of lecture, video, or other description of the program designed to assist the child in overcoming fear or to foster an interest in participation.
2. A facility shall provide safe escort back to the facility for any participant who leaves a program at a location away from the facility. The facility may provide safe escort elsewhere, as appropriate, to meet the personal treatment needs of the participant.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-48. Administration and organization for out-based programs.

1. The facility shall maintain a current organization chart showing the administrative structure, including the lines of authority. The facility shall provide the chart to the department upon request.

2. Any substantial change of program purpose, philosophy, or policies regarding personnel, admission, or program services may be made only upon thirty days' advance notice to the department and upon departmental approval.
3. The facility shall notify the department within ten days of any change in the identity of the out-based program field director.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-49. Out-based program admission - Policies on discharge.

1. Eligibility to participate in a facility's out-based program is limited to children who are residents in the facility and who belong to the population for whom the facility is licensed to provide foster care. Activities for children under age thirteen must be adapted to be age appropriate.
2. Notwithstanding any admission criteria established by a facility, participants in an out-based program shall have a physical exam within one hundred twenty days prior to commencement of the program. Documentation of the exam shall be made on a form provided by the facility, signed by a licensed medical professional, and submitted to the facility prior to commencement of participation. The physical exam form must clearly state a description of the physical demands and environment of the program and require a statement of any limitations on a child's participation in the program.
3. Potential participants who have a history of chronic psychological disorders shall undergo a psychological evaluation by a licensed clinical psychologist within ninety days prior to the commencement of a program. Documentation of the evaluation must be made on a form provided by the facility, signed by the evaluator, and submitted to the facility prior to commencement of participation. The evaluation form shall clearly state a description of the physical demands and environment of the program and require a statement of any limitations on a child's participation in the program.
4. The facility shall adopt written policies describing the circumstances under which a participant may withdraw or may be discharged from a program prior to the termination of the program.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-50. Out-based program orientation.

1. Prior to the start of out-based program activities, the facility shall describe to the participant the nature of the program's activities. The facility shall explain the anticipated benefits of the program, describe in an age-appropriate manner the potential risks of activities undertaken in the program, and explain precautions taken to minimize risks. The facility shall document the date and content of orientation in the participant's record. The facility shall make reasonable efforts to describe the nature of program activities to the participant's parent or legal custodian.
2. The facility shall provide to each participant and the participant's parent or legal custodian a written statement of policies governing the care of participants, including rules governing conduct in the field and other discipline policies. The statement must clearly enumerate maximum consequences for violation of the rules. The participant shall sign an acknowledgment that the participant has received the written statement and been informed of its content. If the participant refuses to sign, a representative of the facility may sign the statement, in which case the participant's refusal to sign must be noted on the statement.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-51. Case plan.

For each participant in an out-based program, the facility shall maintain in the participant's case plan documentation of:

1. Any restrictions placed on the participant's communication with family or others during the program, including mail;
2. A plan for staff reporting on the participant's status to the parent or legal custodian;
3. The intended likely benefits to the individual participant, based on the individual's needs;
4. The means by which the program will promote transference of learning by the individual participant to life after the program; and
5. A copy of the court order which establishes the authority of the legal custodian, in cases where such an order has been entered.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-52. Records of participation in out-based program.

1. A facility shall establish and maintain a record of each child who participates in an out-based program. The record must include the:
 - a. Participant's acknowledgment that the participant was given a written statement of program policies, including discipline;
 - b. Licensed health professional's report on physical exam for admission to program;
 - c. Report on psychological evaluation, if any;
 - d. Documentation by staff that participant and parent or custodian were given orientation as to the anticipated benefits, risks, and precautions of program activities;
 - e. Dates of participation in program; and
 - f. A copy of any documentation made as a result of any incident for which this chapter requires a written report or documentation of an oral report.
2. The records shall be maintained for a minimum of six years after the child's participation in the program.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-53. Mail to and from participants in out-based programs.

1. Incoming mail must be delivered in as prompt a manner as location and circumstances allow.
2. Unless contraindicated for treatment purposes, a facility may not withhold, read, censor, or otherwise restrict incoming mail from parents, custodians, or legal representatives of a

participant. A facility may restrict other incoming mail only upon written instruction of the participant's parent or legal custodian, except in case of emergency.

3. A facility may require that all incoming mail be opened in the presence of staff. Participants are entitled to be present when incoming mail is opened. The facility may not allow participants to take possession of illegal or otherwise prohibited items.
4. A facility may not read, censor, or otherwise restrict outgoing mail to a participant's parent, legal guardian, or legal representative. A facility may restrict other outgoing mail only upon written instruction by the participant's parent or legal custodian.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-54. Discipline and behavior management for out-based programs.

1. The provisions of this section apply to out-based programs in addition to any other provisions of this chapter regarding discipline or behavior management.
2. The facility shall adopt written policies for discipline and behavior management, including definitions of inappropriate behaviors of participants and acceptable staff responses to inappropriate behaviors.
3. The facility shall give all program staff training in behavior management, including review of facility policies, annually or more often as appropriate.
4. No staff member may use or permit the use of any method to control the behavior of participants which a reasonable person would find humiliating, frightening, demeaning, or punitive. Staff may not require extreme physical activities by participants as a method to control behavior. Staff may not deny participants food, clothing, shelter, rest, medical care, prescribed therapeutic activities, or contacts with family or legal representatives as a means to control behavior.
5. Staff may require participants to engage in activities necessary to the health and safety of the group. A participant may bring a grievance based on required participation after the program is completed.
6. If a participant refuses food, clothing, shelter, rest, medical care, prescribed therapeutic activities, contacts with family or legal representatives, or other services, staff shall document the refusal in the daily log and in additional places as the facility deems appropriate.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-55. Health and medical care - Consent to medical care.

1. A facility operating an out-based program shall adopt a comprehensive written plan of preventive, routine, emergency, and followup health and medical care for all participants. The plan must include policies and procedures designed to prevent infectious and communicable diseases and to address acclimatization of participants and staff.
2. All participants shall have access at all times to a staff member trained to administer first aid and cardiopulmonary resuscitation.

3. Staff shall provide first-aid treatment, including first aid for injury, allergic reactions, disease, and venomous bites.
4. The facility shall provide first-aid kits during all field activities. Kits must include sufficient supplies appropriate for the activity, location, and environment in which they may be used.
5. The facility shall secure medical treatment by qualified medical personnel as needed for all participants, staff, and volunteers as promptly as circumstances allow.
6. Mobile program expedition groups shall bring executed medical treatment consent forms for all staff and participants on the expedition.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-56. Out-based program staff - Participant ratio.

1. In a program with both male and female participant, there shall be at least one female staff member and one male staff member notwithstanding any other requirements for staff-to-participant ratios set forth in this chapter.
2. The facility shall provide sufficient staff to meet participant needs under the prevailing conditions of program activities. In any event, all programs shall have at least two staff members on duty at all times. There shall be at least one staff member for every five participants.
3. An expedition group may not exceed fifteen people, including staff, participants, interns, and volunteers.
4. The facility shall identify all skills required by the program's activities and shall identify the staff member who has demonstrated proficiency in that skill. Staff who accompany participants in the field must include at least one staff member who has demonstrated proficiency in each skill required for the program's activities.
5. All staff accompanying participants in the field shall have training as required by this chapter and be at least twenty-one years of age.
6. The facility shall maintain documentation of any demonstration of proficiency required by this section in its personnel files.
7. A facility which operates an out-based program of more than fourteen consecutive days' duration shall provide the opportunity for participant contact with social service staff a minimum of once every fourteen days. Additional opportunities for contact must be provided on the basis of individual need.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-57. Staff, interns, and volunteers for out-based programs.

1. Each program shall designate a staff member as "field director" who coordinates field operations and supervises field staff. The field director shall be at least twenty-five years of age and shall have a minimum of thirty semester or forty-five quarter hours education in recreational therapy or related field, or one year of out-based program field experience.

2. A program may have interns who are individuals learning program practices while completing education requirements. Interns must be supervised by program staff.
3. A program may have volunteers. Volunteers must be directly supervised by program staff at all times.
4. Staff shall meet all applicable local, state, and federal regulations and professional licensing requirements.
5. All field staff, interns, and volunteers shall have an annual physical examination by a qualified licensed medical professional. The facility shall maintain documentation of the physical examination in its personnel files.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-58. Staff training for out-based programs.

1. The facility shall provide initial staff training consisting of an academic curriculum and practicum or field training.
2. The initial staff training and field course training shall be provided by qualified individuals and shall include instruction in the following topics:
 - a. Water, food, and shelter procurement, preparation, and conservation;
 - b. Low impact wilderness expedition and environmental conservation skills and procedures;
 - c. Instruction in safety procedures and safe equipment use;
 - d. Instruction in emergency procedures;
 - e. Sanitation procedures;
 - f. Specialty instruction as required;
 - g. Navigation skills, including map and compass use, contour, and celestial navigation;
 - h. Counseling, teaching, and supervising participants;
 - i. Report writing, including development and maintenance of logs and journals;
 - j. Federal, state, and local regulations as applicable to the program activity, such as department of human services, bureau of land management, United States forest service, national parks service, North Dakota state game and fish department regulations; and
 - k. All written policies a facility is required to adopt under this chapter.
3. All out-based program staff must be recertified annually in cardiopulmonary resuscitation and standard first aid.
4. The facility shall maintain documentation of all staff training in its personnel files.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-59. Operation of out-based programs outside North Dakota.

1. All mobile program expeditions must originate and terminate in North Dakota. All orientation, emergency instruction, and other activities required under this chapter to take place prior to the program must occur in North Dakota. A facility may not permit participants to join an expedition without receiving orientation, emergency, and other preprogram instruction in North Dakota as required under this chapter. A facility may not permit participants to join an expedition after the expedition leaves North Dakota. A facility may not discharge or otherwise separate participants from a program expedition outside North Dakota except in case of emergency, or as provided by the participant's case plan.
2. Out-based programs may not take participants outside the territory of the United States without prior written authorization by the legal custodian.
3. Out-based programs shall follow the standards established by this chapter wherever program activities take place. The facility is responsible for meeting any additional standards imposed by a jurisdiction in which an activity takes place.
4. A facility shall communicate, to the extent required by law, with regulatory agencies in jurisdictions, including county, state and federal, other than North Dakota in which program activities take place.
5. A facility may not take participants outside North Dakota for more than thirty consecutive days.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-60. Daily schedule and log.

1. The facility shall approve and maintain a written description of program activities, including a daily schedule.
2. Field staff shall maintain a common, signed, daily log in a bound volume with preprinted page numbers and lined pages. The log must contain information on accidents, injuries, medications, behavioral problems, and all unusual occurrences. All log entries must be recorded in permanent ink with no lines skipped. The facility shall keep the log as a permanent record.
3. For mobile programs, staff shall record in the log travel times and miles traveled in addition to other information required by this chapter.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-61. Emergency and safety procedures - Communications.

1. The facility shall establish a written emergency plan for responding to potential natural, manmade, and health emergencies, including flood, avalanche, fire, severe weather, loss of water or food supplies, intruders, and lost participants or staff. The plan must include:
 - a. Designation of authority and staff assignments;
 - b. Plan for evacuation, including transportation and relocation of participants when necessary and evacuation of injured persons; and
 - c. Supervision of participants after evacuation or relocation.

2. All out-based programs shall provide firefighting equipment appropriate to the location and nature of program activities and shall maintain all such equipment in good repair. At a minimum, such equipment must include a shovel and water receptacle.
3. The facility shall give all program participants training in fire prevention, fire safety, and precautions in case of severe weather. The facility shall give safety training in additional areas as may be applicable to program activities including dehydration, frostbite, heat exhaustion, hyperthermia, hypothermia, poisoning from plants or animals, snow blindness, and drowning.
4. Any mobile program expedition group shall maintain the capability of contacting the facility at all times by means of a system that includes, at a minimum, reliable two-way radio or telephone communication devices plus a backup means of contact in the event of radio or telephone failure. An expedition group may substitute the capability of contacting a sheriff's office or other emergency response entity only upon prior approval by the department.
5. A mobile program expedition group shall contact the facility by radio, telephone, or other verbal means at least once every forty-eight hours.

History: Effective January 1, 1995; amended effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-62. Transportation for out-based programs.

1. The facility shall adopt written policies for the transportation of participants in an out-based program.
2. Any vehicle used to transport out-based program participants or staff must be equipped with flares, flashlight, jack, spare tire, and fire extinguisher. Any vessel used for water transport of out-based program participants must be equipped with flares, flashlights, fire extinguishers, and personal flotation devices for all passengers.
3. When transporting one or more program participants, two staff members shall be present at all times, at least one of whom shall be of the same sex as the participant, except in case of emergency.
4. All passengers shall wear seatbelts in vehicles so equipped at all times while the vehicle is moving.

History: Effective January 1, 1995; amended effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-63. Mobile program travel plan - Predeparture procedures.

1. Prior to the departure of a mobile program expedition group, the facility shall develop a travel plan which includes an itinerary and a preestablished check-in time. The facility shall keep a copy of the travel plan at the facility.
2. For mobile programs, the facility shall file a copy of the program's itinerary with the sheriff of every county in which program activities take place.
3. The facility shall initiate its preestablished emergency and safety plan as provided for in section 75-03-16-61 upon the failure of a traveling group to check in on time.
4. The travel plan must:
 - a. Include a map of all activity areas;

- b. Identify appropriate sources or locations of water, food, laundry facilities, bathing, and liquid and solid waste and garbage disposal;
 - c. Provide daily periodic rest stops and opportunities for relaxation, exercise, and personal time;
 - d. Provide that vehicle travel not exceed five consecutive days of eight or more hours without a minimum of one intervening nontravel day, except in case of emergency travel; and
 - e. Specify routes to be traveled, including daily mileage, dates and times of departure and arrival, location of overnight stops, and planned activities.
5. Prior to departure, all participants and staff shall receive instruction in the proper and safe use of vehicles and equipment, in safety and emergency procedures, and in transportation to emergency facilities.
 6. When a program's itinerary includes use of land regulated by a public agency, the facility shall comply with all regulations of the public agency, including the obtaining of permits.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-64. Out-based program participants' clothing and personal needs.

1. Participants shall have their own clothing, which shall meet the participant's needs and be of proper size.
2. Clothing shall be suited to the existing climate and seasonal conditions. Participants shall have regular clean clothing changes at least twice weekly.
3. Each participant shall be provided adequate protective equipment to afford reasonable insulation from insects, effects of weather, and irritating plant life. Equipment must include, as conditions require, rain gear, footwear, insect repellent, and sun screen. Staff shall ensure appropriate usage of protective equipment by participants.
4. Participants shall be allowed reasonable personal grooming items and supplies, including feminine hygiene supplies, which the participant may keep in the participant's personal possession.
5. Each participant shall have time during each day for the purpose of rest and reflection.
6. If program activities cause a participant to be absent from regular schooling more than fourteen days in a school year, the facility shall provide the means to continue the participant's individual education plan during the program.

History: Effective January 1, 1995; amended effective March 1, 1999.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-65. Out-based program toilet facilities - Bathing.

1. When program activities are conducted away from a permanent site, the facility shall provide instruction in sanitary practices that respect individual privacy as well as health and environmental concerns.
2. The following requirements apply to permanent program sites:

- a. The program shall provide outdoor toilet facilities that allow for individual privacy. Toilet facilities shall be constructed, located, and maintained in compliance with any existing codes or health regulations, and in any event so as to prevent any nuisance, noxious odors, or public health hazard.
- b. Toilets, outhouses, and portable toilets must be cleaned and disinfected at least daily. Portable toilets must be emptied daily in an approved dump station.
- c. Handwashing facilities must be located adjacent to the toilet area and must be separate and apart from sinks and areas used for food preparation and dishwashing. Soap and handdrying devices must be made available.
- d. The facility shall provide at least one warm shower or warm water for full body sponge bath to each participant no less than every other day.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-66. Water and nutritional requirements for out-based programs.

1. The facility shall make available a minimum of six quarts [5.68 liters] of potable water per day per person for drinking, personal hygiene, and cooking, plus one additional quart for each five miles [8.05 kilometers] hiked.
2. The facility shall make available to all participants a means for electrolyte replacement.
3. All water from natural sources shall be treated for sanitation to eliminate health hazards.
4. The facility shall maintain a written menu describing food supplied to the participants to ensure that the nutritional requirements of each participant are met by means of balanced meals. The menu must adjust to meet increased dietary needs as exercise or weather conditions dictate.
5. A facility may use foraging as a program activity if the facility provides nonforaged food in compliance with nutritional requirements stated in this chapter. Forage items may not be included in determining whether nutritional requirements are being met. A facility may not use fasting as a program activity.
6. Food storage practices must meet standards established by state or local health authorities.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-67. Program and campsites - Permits - Sleeping shelters and equipment.

1. The facility shall conduct out-based programs on sites appropriate to the participants' health, safety, case plans, and program goals.
2. Campsites must be located on land that is drained sufficiently for participant health and safety. Campsites may not be located in a riverbed or desert washes, or other areas where flash flooding may occur.
3. Any tent or other shelter used for sleeping and living purposes, which remains in one location for more than two weeks, must have a floor that is smooth, in clean condition, and in good repair.

4. All tents, tepees, or other sleeping shelters made of cloth must be fire retardant, of the fiber-impregnated flame retardant variety. A facility may not use plastic sleeping enclosures of any type.
5. Sleeping shelters must be easily cleanable and in good repair, must be put up and maintained in safe condition, and must afford adequate protection against inclement weather.
6. Tents or other temporary shelters must provide sleeping space of not less than fifteen square feet [1.39 square meters] per person.
7. A facility may not permit campfires or open flames of any type in or within forty feet [12.19 meters] of any sleeping shelter. Tent heaters may be used only if they are of a type intended for use in tents and are adequately vented.
8. The facility may not permit smoking within any sleeping shelter.
9. Sleeping shelters must have an unobstructed exit at all times.
10. Sleeping equipment must be clean, nontoxic, and fire retardant.
11. Sleeping equipment must provide reasonable insulation from cold and dampness. The facility shall provide insulation from the ground such as a waterproof ground cloth or air or foam mattress in addition to sleeping bag or blankets.
12. All sleeping equipment must be laundered, drycleaned, or otherwise sanitized between assignment to different participants or staff. All sleeping equipment must be aired at least once every two days and laundered, drycleaned, or sanitized at least once every thirty days of use. Cleaning of sleep equipment must not affect the equipment's fire retardant features.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-68. Sanitation for out-based programs.

1. When program activities are conducted away from a permanent site, the facility shall provide for solid and liquid waste disposal in a manner which promotes health and minimizes impact on the environment.
2. Personal hygiene supplies must be made of biodegradable materials.
3. At permanent sites, garbage and rubbish must be stored securely in durable, noncombustible, leakproof, nonabsorbent containers covered with tight-fitting lids. Containers must be lined with a waterproof liner or thoroughly cleaned after each emptying. Garbage and rubbish storage must be away from living and sleeping areas. Solid wastes must be disposed of regularly in an approved sanitary landfill or similar disposal facility.
4. The facility shall provide for the timely control of insects and rodents in a safe manner which avoids harmful effects to human beings and to the environment.
5. If any temporary shelter for animals, corral, tie-rail, or hitching post is used, it must be located more than fifty feet [15.24 meters] from any area where food is prepared, cooked, or served. Preventive measures such as insect repellent and daily removal of manure must be used to prevent such a location from becoming an attraction for or breeding place for flies or other insects.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-69. Hiking and backpacking.

1. Hiking shall not exceed the physical capability of the weakest member of the group. Hiking is prohibited when conditions pose a threat to the health of the participants. Staff shall monitor hikers at frequent regular intervals when the outdoor temperature is ninety-five degrees Fahrenheit [35 degrees Celsius] or higher, or is minus ten degrees Fahrenheit [-23.33 degrees Celsius] or lower, and shall adjust activities accordingly to ensure each participant's health and safety.
2. The facility shall furnish a frame backpack to participants when the weight to be carried by any participant exceeds twenty percent of the participant's body weight. The facility may not require participants to carry a load that is excessive given the participant's experience and the terrain, duration, and environmental conditions of the trip.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-70. Solo activities.

1. Solo activities may not exceed seventy-two consecutive hours' duration, exclusive of preparation time.
2. Only individuals in good physical and mental condition and who are able to care for themselves without assistance, which has been determined prior to the individual's departure from the facility as provided for in subsections 2 and 3 of section 75-03-16-49, may participate in solo activities.
3. Prior to any solo activity, the facility shall instruct participants in safety and emergency procedures and in the boundaries of the solo activity location.
4. The facility shall furnish each solo activity participant with the following equipment and supplies: whistle, shelter, water, and food as required by this chapter; and at least one change of clothing appropriate to weather conditions.
5. Solo activities are prohibited in areas containing moving water with a strong current.
6. Staff shall observe a solo activity participant at least every two hours during the solo activity. Staff shall adjust the duration of proximity of supervision to the participant's needs, the terrain, and environmental conditions. Staff must be available for sight or sound contact by the participant at all times.

History: Effective January 1, 1995.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03