CHAPTER 50-11
FOSTER CARE HOMES FOR CHILDREN AND ADULTS

50-11-00.1. Definitions.

As used in this chapter:

1. "Agency foster home for adults" means a residential home in which foster care for adults is regularly provided by professional staff trained to provide services to older adults or adults with a disability, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.
2. "Approval" means the approval by the department, upon submission of tribal licensing standards or in the absence of tribal licensing standards compliance with state standards, of a facility located on or near, as identified by the tribe, a recognized Indian reservation in North Dakota, not subject to the jurisdiction of the state of North Dakota for licensing purposes, to allow the facility to receive title IV-E funding.
3. "Authorized agent" means the human service zone, unless another entity is designated by the department.
4. "Department" means the department of human services.
5. "Facility" means a foster home for adults, agency foster home for adults, family foster home for children, supervised independent living program, or qualified residential treatment program for children.
6. "Family foster home for children" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee of the residence to no more than six children, unless the department approves otherwise.
7. "Foster care for adults" means the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour per day basis, in the residential home of a caregiver or agency, to an individual age eighteen or older, who is unable, neglects, or refuses to provide for the individual's own care.
8. "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a family foster home, supervised independent living program, or qualified residential treatment program.
9. "Foster home for adults" means an occupied private residence in which foster care for adults is regularly provided by the owner or lessee of the residence, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.
10. "Identified relative" means:
    a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;
    b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;
    c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or
    d. The child's stepparent.
11. "Qualified residential treatment program" means a licensed or approved residence providing an out-of-home treatment placement for children.
12. "Supervised independent living program" means a licensed or approved setting providing supervision and service delivery to youth transitioning into adulthood.

50-11-01. Foster care for children - License required. (Effective through September 30, 2019)

No person may furnish foster care for children for more than thirty days during a calendar year without first procuring a license to do so from the department. The mandatory provisions of this section requiring licensure do not apply when the care is provided in:

1. The home of a person related to the child by blood or marriage.
2. A home or institution under the management and control of the state or a political subdivision.
3. A home or facility furnishing room and board primarily to accommodate the child's educational or career and technical education needs.

A person providing care under subsection 1 shall submit to a criminal history record investigation as required under section 50-11-06.8.

Foster care for children - License or approval required. (Effective after September 30, 2019)

1. A person may not furnish foster care for children for more than thirty days during a calendar year without first procuring a license or approval to do so from the department. The mandatory provisions of this section requiring licensure or approval do not apply when the care is provided in:
   a. The home of an identified relative.
   b. A home or institution under the management and control of the state or a political subdivision.
   c. A home or facility furnishing room and board primarily to accommodate the child's educational or career and technical education needs.
2. An individual providing care under subdivision a of subsection 1 shall submit to a criminal history record investigation as required under section 50-11-06.8.

50-11-01.1. Family day care home for children defined.

Repealed by S.L. 1975, ch. 444, § 17.

50-11-01.2. Day care center for children defined.

Repealed by S.L. 1975, ch. 444, § 17.

50-11-01.3. Use of public funds.

Repealed by S.L. 1993, ch. 472, § 25.

50-11-01.4. Foster care for adults - License required.

A person may not furnish foster care for adults for more than one adult, or for more than two adults who are related to each other, without first procuring a license to do so from the department. A person may not furnish foster care for an adult if the person has had a license denied or revoked unless the department subsequently issues a license to that person.

50-11-01.5. Fire prevention training.

Before initial licensure and each renewal under this chapter, each foster parent shall complete a course of instruction related to fire prevention and safety. The state fire marshal shall design the course in cooperation with the department of human services. The course must be available on videotape or any equivalent medium as designed by the department. The department of human services shall offer the course throughout the state.

50-11-01.6. Self-declaration form.

The department of human services shall prescribe self-declaration forms to be completed and signed by each foster parent before initial licensure and each renewal under this chapter. The self-declaration forms must include references to smoke detectors, fire extinguishers, fire escape plans, and inspections of appliances, electrical systems, and heating systems.

50-11-02. License granted - Term - Conditions.

1. The department shall grant a license for the operation of a facility receiving persons for foster care, for a period of not more than two years, to reputable and responsible persons upon showing that:
   a. The premises to be used are in fit sanitary condition and properly equipped to provide good care for all persons who may be received;
   b. The persons in active charge of the facility are properly qualified to carry on efficiently the duties required of them;
   c. The facility is likely to be conducted for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all persons cared for in the facility; and
   d. The facility will be maintained according to the standards prescribed for its conduct by the rules of the department.
2. Before licensing or approving a facility providing foster care for children or adults, the department shall seek a criminal history record when required by this chapter. The department shall consider any criminal history record information available at the time a licensing or approval decision is made.
3. The department shall determine, in accordance with rules of the department, whether a license may be issued to a facility that houses or employs any individual who has a criminal record.

50-11-02.1. Conviction not bar to licensure - Exceptions.

Conviction of an offense does not disqualify a person from licensure under this chapter unless the department determines that the offense has a direct bearing upon that person's ability to serve the public as the operator of a facility or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

50-11-02.2. Provisional license.

At the discretion of the department, a provisional license may be issued to an applicant who, or whose facility, fails to conform in all respects to this chapter and the rules of the department. The department may set conditions under which a provisional license may be issued, and may issue such a license for any period of time, not to exceed two years, as the department may deem reasonable or appropriate to the circumstances of the case. The department may not be compelled to issue a provisional license.

50-11-02.3. Moratorium on expansion of residential child care facility or group home bed capacity. (Effective through September 30, 2019)

Notwithstanding sections 50-11-02 and 50-11-09, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any additional bed capacity for a residential child care facility or a group home above the state's gross number of beds licensed as of June 30, 2003.

Maximum qualified residential treatment program bed capacity. (Effective after September 30, 2019)

Notwithstanding sections 50-11-02 and 50-11-09, the department shall determine the maximum number of licensed qualified residential treatment program bed capacity for children based upon a needs assessment conducted by the department.

50-11-02.4. Criminal history record investigation for foster care for adults - Fingerprinting not required.

1. Except as provided in section 50-11-06.9, the department shall secure from any individual employed by, or providing care in, a facility providing foster care for adults and any adult living in the facility, but not being provided care in the facility, identifying information other than fingerprints, that is appropriate to accomplish a statewide criminal history record investigation.

2. Fingerprints need not be taken and a nationwide background check need not be made if an individual:
   a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;
   b. Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or
   c. Is excused from providing fingerprints under rules adopted by the department.
3. The department shall verify that sufficient identifying information has been provided. Upon verification, the department shall submit that information to the bureau of criminal investigation.
4. The bureau of criminal investigation shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
5. The department shall pay the cost of securing any criminal history record information made available under chapter 12-60 and section 50-11-06.8 for foster home for adults. An agency foster home for adults is responsible for the cost of securing any criminal history record information made available under chapter 12-60 and section 50-11-06.8.
6. The department shall consult with the bureau of criminal investigation to determine the identifying information, other than fingerprints, appropriate to accomplish a statewide criminal history record investigation.
7. The department may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.

50-11-03. Department to make rules - Records kept by facility.

A record of all children and adults cared for in any facility licensed under this chapter must be maintained at the facility in the manner and form prescribed by the department. The department shall establish reasonable minimum standards, and shall make such reasonable rules for the conduct of such place as are necessary to carry out the purposes of this chapter.

50-11-03.1. Reduction of number of children in foster care - Goals.

On or before October 1, 1982, and annually thereafter, the department of human services shall attempt to reduce the number of children receiving assistance under title IV-E of the Social Security Act, who have been in foster care for more than twenty-four months, by the following amounts:

1. For the year beginning October 1, 1982, one percent of the number of children, in foster care for more than twenty-four months, and receiving benefits under title IV-A of the Social Security Act from July 1, 1979, through June 30, 1980;
2. For the years beginning October 1, 1983, and ending September 30, 1990, one percent of the maximum number permitted in the previous year; and
3. For all subsequent years, one-half percent of the maximum number permitted in the previous year.

50-11-03.2. Use of public funds.

Public funds for the purchase of foster care for children or adults may be used only in facilities licensed or approved by the department. No person acting on behalf of any state, county, or local governmental entity may arrange for or promote care provided in a facility that does not have a license or approval issued by the department. This section does not apply to any home or institution under the management and control of the state.

50-11-03.3. Department to provide liability coverage to foster homes for children.

1. The department shall provide liability coverage for acts or omissions of foster children placed in the care of foster families. The department may provide this liability coverage through self-insurance.
2. The liability coverage under this section:

a. Must provide coverage for damage to property which is caused by the act of a foster child. This coverage must be for the lesser of the reasonable cost to repair or to replace the damaged property.
b. Is secondary to any other coverage.
c. Except as provided in subdivision d, may not exceed five thousand dollars per claim, with an annual maximum of ten thousand dollars per year per claimant. The coverage under this subsection must include a deductible not to exceed one hundred dollars per claim.
d. In cases in which the property damage per event total exceeds twenty-five thousand dollars, the department may further review the claim. The department may cover twenty-five percent of the remaining property damage after any insurance reimbursement, not to exceed ten thousand dollars.

3. The department may provide for exclusions from liability coverage provided under this section.

50-11-03.4. Immunity for a person providing foster care.

A person providing foster care for children in a licensed or approved facility is immune from civil liability for any act or omission resulting in damage or injury to or by a child in foster care if, at the time of the act or omission, the person providing foster care for children applied the reasonable and prudent parent standard in a manner that protects child safety, while also allowing the child in foster care to experience age or developmentally appropriate activities.

50-11-04. Inspection by the department - Inspection and report by the department or its authorized agent.

The department and its authorized agents at any time may inspect any facility licensed under the provisions of this chapter or with respect to which a license application has been made. The department and its authorized agents shall have full and free access to every part of the facility. The department may require, on a case-by-case basis, prior to or after licensure, that a facility undergo a fire inspection, inspection of the heating system or the electrical system, or any other type of inspection that the department deems necessary to carry out the purposes of this chapter. All records of the facility must be open for the inspection of the department or its authorized agents and they may see and interview all children and adults cared for therein. Upon the request of the department, the department or its authorized agent shall inspect any facility for which a license is applied or issued, and shall report the results of the inspection to the department.

50-11-04.1. Notice.

After each inspection or reinspection, the department shall mail or deliver any correction order or notice of noncompliance to the facility.

50-11-04.2. Correction order - Contents.

Whenever the department determines that the facility is not in compliance with this chapter, or the rules adopted thereunder, a notice of license denial or revocation or a correction order must be issued to the facility. A correction order must cite the statute or rule violated, state the factual basis of the violation, specify the time allowed for correction, and specify the amount of any fiscal sanction to be assessed if the correction order is not complied with in a timely fashion. A correction order may also state a suggested method of correction or require the submission of a corrective action plan by the facility. If a correction order requires the submission of a corrective action plan, it must also specify a date by which the corrective action plan must be submitted. The department shall, by rule, establish a schedule of allowable times for correction of deficiencies.

50-11-04.3. Reinspections.

A facility issued a correction order under section 50-11-04.2 must be inspected at the end of the period allowed for correction. If, upon inspection, it is determined that the facility has not

corrected a violation identified in the correction order, a notice of noncompliance with the correction order must be mailed or sent to the facility. The notice must specify the uncorrected violations and the penalties assessed in accordance with section 50-11-04.5.

50-11-04.4. Fiscal sanctions.

A facility, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions in accordance with a schedule of fiscal sanctions established by rule. The fiscal sanction must be assessed for each day the facility remains out of compliance after the allowable time for the correction of deficiencies ends and must continue until a notice of correction is received by the department in accordance with section 50-11-04.6. No fiscal sanction for a specific violation may exceed twenty-five dollars per day of noncompliance.

50-11-04.5. Accumulation of fiscal sanctions.

A facility must promptly provide written notice to the department when a violation noted in a notice of noncompliance is corrected. Upon receipt of written notice by the department, the daily fiscal sanction assessed for the deficiency must stop accruing. The facility must be promptly reinspected. If, upon reinspection, it is determined that the deficiency has not been corrected, the daily assessment of fiscal sanctions must resume and the amount of fiscal sanctions that otherwise would have accrued during the period prior to resumption must be added to the total assessment due from the facility. The department must mail or deliver a notice of resumption to the facility. Recovery of the resumed fiscal sanction must be stayed if the licensee makes a written request for an administrative hearing in the manner provided for in chapter 28-32, provided that the written request for the hearing is made to the department within ten days after mailing or delivery of the notice of resumption.

50-11-04.6. Recovery of fiscal sanctions - Hearing.

Fiscal sanctions assessed pursuant to this chapter are payable fifteen days after receipt of the notice of noncompliance and at fifteen-day intervals thereafter, as the fiscal sanctions accrue. Recovery of an assessed fiscal sanction must be stayed if the operator makes written request to the department for an administrative hearing within ten days after mailing or delivery of the notice.

50-11-04.7. Disposition of fiscal sanctions.

Any fiscal sanction collected for any violation of this chapter or of rules adopted pursuant to this chapter must be paid into the state treasury for the general fund after the costs of recovering the fiscal sanction are deducted therefrom.

50-11-05. Contents of records not disclosed - Exception.

The records of facilities licensed under this chapter and the records of the department and its authorized agents, pertaining to the children or adults receiving care, are confidential but may be disclosed:

1. In a judicial proceeding;
2. To officers of the law or other legally constituted boards or agencies; or
3. To persons who have a definite interest in the well-being of the adults or children 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.

50-11-06. Facility not to hold itself out as having authority to dispose of child by adoption unless licensed.

No facility licensed under this chapter may be held out as having authority to dispose of any child, advertise children for adoption, or be held out directly or indirectly, as being able to dispose of children, without first being licensed so to do under chapter 50-12.

50-11-06.1. Foster family care home for adults defined.

Repealed by S.L. 1993, ch. 472, § 25.

50-11-06.2. Department to establish standards - Licensing - Inspection - Prosecute violations.

Repealed by S.L. 1993, ch. 472, § 25.

50-11-06.3. License required - Term - Revocation.

Repealed by S.L. 1993, ch. 472, § 25.

50-11-06.4. Contents of license.

Repealed by S.L. 1993, ch. 472, § 25.

50-11-06.5. Records kept by home.

Repealed by S.L. 1993, ch. 472, § 25.

50-11-06.6. Department to furnish information when requested.

1. Whenever requested by any person, organization, corporation, or limited liability company interested in establishing a foster care facility for children or adults, the department shall furnish information concerning the minimum requirements for a facility and concerning the need for a facility in any given community.
2. Any person, organization, corporation, or limited liability company is entitled, upon request, to be advised by the department or its authorized agent regarding the policy, procedure, and intentions of the department or its authorized agent toward placement of children in that person's, organization's, corporation's, or limited liability company's facility if:
   a. The person, organization, corporation, or limited liability company is licensed to provide foster care for children under this chapter and has not received a placement for twelve months or more; or
   b. The person, organization, corporation, or limited liability company is applying for its license to provide foster care for children under this chapter.

50-11-06.7. License approval or denial - Time requirements.

Except as otherwise provided in this section, an application to the department for a license required by this chapter to provide foster care to adults or children must be approved or denied within sixty days of its receipt by the department. The department has an additional forty-five days to grant or deny a license required by this chapter if the department notifies the applicant that the additional time is necessary.

50-11-06.8. Criminal history record investigation - Fingerprinting required. (Effective through September 30, 2019)

1. Each facility providing foster care for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
   a. Any individual employed by, or providing care in, the facility; and
   b. Any adult living in the facility, but not being provided care in the facility.
2. The facility shall assure that information obtained under subsection 1 is provided to the department.
3. Upon receipt of all fingerprints and necessary information relating to a license request, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.

5. Upon request by the operators of a facility, a law enforcement agency shall take fingerprints of persons described in this section if the request is made for purposes of this section.
6. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check for each facility providing foster care for children.
7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.
8. Except as provided in sections 50-11-02.4 and 50-11-06.9, the department shall secure from a law enforcement agency or any other agency authorized to take fingerprints two sets of fingerprints and all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
   a. Any individual employed by, or providing care in, an adult family foster care facility; and
   b. Any adult living in an adult family foster care facility, but not being provided care in the facility.
9. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-11.3-01 and 50-12-03.2.

Criminal history record investigation - Fingerprinting required. (Effective after September 30, 2019)

1. Each facility providing foster care for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
   a. Any individual employed by, or providing care in, the facility; and
   b. Any adult living in the facility, but not being provided care in the facility.
2. Each identified relative, at the request by the department, shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from any adult living in the home of the identified relative.
3. The facility or identified relative shall assure that information obtained under subsections 1 and 2 is provided to the department.
4. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of the state criminal history record information response received from the bureau of criminal investigation to the facility, public agency, or authorized agent making the request.
5. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau of criminal investigation also shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
6. Upon request by the operators of a facility, employees of a facility, or identified relative, a law enforcement agency shall take fingerprints of individuals described in this section if the request is made for purposes of this section.
7. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check for each facility providing foster care for children.
8. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.
9. Except as provided in sections 50-11-02.4 and 50-11-06.9, the department shall secure from a law enforcement agency or any other agency authorized to take fingerprints two sets of fingerprints and all other information necessary to secure state

criminal history record information and a nationwide background check under federal law from:

a. Any individual employed by, or providing care in, an adult family foster care facility; and
b. Any adult living in an adult family foster care facility, but not being provided care in the facility.

10. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-11.3-01 and 50-12-03.2.

50-11-06.9. Criminal history record investigation for foster home for adults - When not required.

A criminal history record investigation may not be required, under section 50-11-06.8 or 50-11-02.4, of a foster home for adults licensed or approved on August 1, 1999, for so long as that home remains continuously licensed or approved.

50-11-06.10. Identified relative - Criminal history record investigation.

1. The department may require an identified relative and any adult living in the home of the identified relative to go through a criminal history record investigation pursuant to section 50-11-06.8.
2. If the department requires a criminal history record investigation pursuant to subsection 1, the department shall consider an identified relative and any adult living in the home of the identified relative as a family foster home for children applicant, family foster home for children provider, or members of the family foster home for children for the purpose of determining the impact of the individual's criminal history record investigation on the individual's ability to provide foster care for children.

50-11-07. Denial or revocation of license.

The department may deny or revoke the license of any facility upon proper showing of any of the following:

1. Any of the conditions set forth in section 50-11-02 as prerequisites for the issuance of the license do not exist.
2. The application contains false or misleading material information or the applicant intentionally withheld material information.
3. The license was issued upon false, misleading, or intentionally withheld material information.
4. An operator, licensee, caregiver, employee, or an agent of the facility has violated a provision of this chapter or any of the rules of the department.
5. An operator, applicant, licensee, caregiver, employee, or agent of the facility has been convicted of an offense determined by the department to have a direct bearing upon the person's ability to serve the public or residents of the facility, or the department determines, following conviction of any other offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

50-11-08. Denial or revocation of license - Hearing - Appeals.

Before any application for a license under the provisions of this chapter is denied or before revocation of any such license takes place, written charges as to the specific reasons therefor, a copy of the statutes and department rules authorizing such action, and notice of the applicant's or licensee's right to a hearing on the matter before the department must be served upon the applicant or licensee. The applicant or licensee must also be notified in writing of the person's right to be represented at such hearing by counsel, to examine all files and documents in the custody of the department regarding the applicant or licensee, to present witnesses at the hearing on behalf of the applicant or licensee and to present documentary evidence, to present testimony and cross-examine adverse witnesses, and the right to an impartial hearing officer. The applicant or licensee has the right to a hearing before the department if the hearing is

requested within twenty days after service of the written charges. The department shall hold the hearing within sixty days after the hearing request unless the applicant or licensee agrees to a later date. At any such hearing, the evidence submitted by the department in support of its denial or revocation of the applicant's or licensee's license must be limited to supporting only those reasons which were given by the department in its original notice of denial or revocation to the applicant or licensee. An applicant or licensee may appeal under the provisions of chapter 28-32 any final decision of the department regarding the application for or issuance of a license required by this chapter.

50-11-09. Appeal from decision of department denying or revoking license.

The applicant for a license to operate a facility or a person whose license for a facility has been revoked may appeal the denial or revocation to the district court. An appeal must be taken in the manner provided in chapter 28-32.

50-11-09.1. District court injunctions.

The department may petition the district court for an injunction to stop or prevent a violation of this chapter or of administrative rules adopted under this chapter.

50-11-10. Penalty.

Any person, whether owner, manager, operator, or representative of any owner, operator, or manager, who violates any of the provisions of this chapter, is guilty of a class B misdemeanor.