

**CHAPTER 75-03-14**  
**FAMILY FOSTER HOME FOR CHILDREN**

Section

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**75-03-14-01. Definitions.**

Those definitions set forth in North Dakota Century Code section 50-11-00.1 are applicable to this chapter. Additionally, in this chapter, unless the context or subject matter requires otherwise:

1. "Background check" means a fingerprint-based criminal history record investigation inclusive of a child abuse and neglect index check in each state or tribal jurisdiction that the individual has resided in the previous five years.
2. "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.
3. "Supervising agency" means the human service zone, division of juvenile services, or tribe having care, custody, and control of the foster child as ordered by a court of competent jurisdiction or the designee of that agency or person.

**History:** Effective December 1, 1984; amended effective January 1, 2014; April 1, 2016; October 1, 2019; July 1, 2020.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-00.1, 50-11-06.8

**75-03-14-02. License.**

1. Application for a family foster home for children license must be made as prescribed by the department.
2. The family foster home for children licensing process requires completion and documentation of the following items, which must be received by the department for the application to be considered complete:
  - a. Application form;
  - b. Compliance with fire and safety requirements;
  - c. Reference letters;
  - d. Medical history self-declaration;
  - e. Background check;

- f. Home visits; and
  - g. Home study assessment, including interviews with each member of the household as determined age appropriate.
3. The license is issued to the applicant for a specific number of children, a specified age group of the children, and the sex of the child or children. The duration of the license is not to exceed one year.
  4. The department may issue a license with stated limitations, restrictions, and conditions.
  5. The license is not transferable and is valid only for the physical location of the family foster home for children at the time the license is issued, or at another location as approved by the department, provided that the authorized agent performs an onsite visit within seven days of the move, and thereafter approves the temporary location.
  6. After reviewing an individual's application for licensure, the department may deny a license:
    - a. If the application contains fraudulent information, an untrue representation, or is incomplete;
    - b. If the family foster home for children is in an unsanitary condition;
    - c. If the family foster home for children is not properly equipped to provide for the health and safety of the children served; or
    - d. If the applicant is not in compliance with the regulations prescribed by the department for the operation of a family foster home for children.
  7. If the facility located on or near, as defined by the tribe, a recognized Indian reservation in this state is identified as a family foster home for children, and is not subject to the jurisdiction of the state of North Dakota for family foster home for children licensing purposes, the department shall accept an affidavit from an agent of the tribal child welfare agency or an appropriate tribal officer in lieu of completing the licensing procedure. The department shall issue an approval of the foster home for children if the affidavit represents the following:
    - a. A home study of the family foster home for children was completed by the tribe's child welfare agency or tribal council; and
    - b. The prospective family foster home for children is in compliance with the standards adopted by the tribe for family licensing; or
    - c. The prospective family foster home for children is in compliance with the standards required by North Dakota Century Code section 50-11-02.

**History:** Effective December 1, 1984; amended effective April 1, 2004; January 1, 2014; October 1, 2019.

**General Authority:** NDCC 50-11-03

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

**75-03-14-03. Minimum physical standards for the family foster home for children.**

1. The family foster home for children must be a dwelling, mobile home, housing unit, or apartment occupied by an individual or a single family.
2. The family foster home for children must have an operational telecommunications device, and residents of the home must have access to it to make immediate contact with authorities in emergencies.

3.
  - a. The family foster home for children must have adequate sleeping rooms to accommodate the size of the household, including an individual bed and bedding for each foster child to sleep comfortably.
  - b. All sleeping rooms must have an accessible window to exit and to allow for proper light and ventilation and appropriate fire alarms or smoke detectors as recommended by the local fire department, state fire marshal, or local building codes.
  - c. Basement sleeping rooms must be equipped with more than one exit. Foster children in basement sleeping rooms must be able to demonstrate their ability to depart from all exits.
  - d. Co-sleeping or bed sharing with a foster child is prohibited.
4. Exterior doors must be maintained to permit easy exit.
5. Interior doors must prevent children from being trapped.
6. Every closet door must be one that can be opened from the inside. Bathroom doors must be installed so the door, when locked, may be opened from the outside in an emergency.
7. The family foster home for children and premises must be clean, neat, and free from hazards that jeopardize health and safety. The family foster home for children shall engage in proper trash disposal and be free from rodent and insect infestation.
8. Firearms must be kept in locked storage or trigger locks must be used, and ammunition must be kept separate from firearms.
9. The family foster home for children must be equipped with adequate light, heat, ventilation, and plumbing for safe and comfortable occupancy. The family foster home for children shall have a properly operating sink, refrigerator, stove, and oven in the kitchen and at least one sink, toilet, and bathtub or shower in the bathroom.
10. The family foster home for children and grounds must be in compliance with any applicable state and local zoning requirements.
11. The water supply must be from an approved municipal water system where available. Where a municipal system is not available, a water sample must pass the approved drinking water standard bacteriological water analysis testing. The family foster home for children shall obtain results from an environmental protection agency approved laboratory for testing through licensing with the department of environmental quality. In addition, the family foster home for children shall ensure the water temperature is monitored for safety.
12. The milk supply consumed in the family foster home for children must be obtained from a department-approved source.
13. If required by the department, the family foster home for children must satisfactorily complete a fire inspection by the local fire inspector or, in the absence of a local fire inspector, the state fire marshal. The family foster home for children shall ensure all deficiencies noted during the inspection are remedied.
14. The family foster home for children must be equipped with the approved Underwriters' Laboratories fire extinguishers, smoke detectors, and smoke alarms as recommended by the local fire inspector, state fire marshal, or building code. The fire extinguishers, smoke detectors, and smoke alarms must be in working condition at all times. In an apartment building, the fire extinguisher, smoke detectors, and smoke alarms must be inside the apartment unit.

15. The family foster home for children shall have reliable, legal, and safe transportation available to transport children in placement.
16. The family foster home for children shall be equipped with a carbon monoxide detector.
17. The family foster home for children shall develop a written emergency preparedness plan, maintain and post a list of emergency contacts, including poison control, and have first aid supplies on hand while a foster child is in placement.
18. The family foster home for children shall properly store medications, alcohol, poisonous materials, cleaning supplies, and other hazardous materials to prevent access to children, as appropriate for age and development of the children in placement.
19. Pets belonging to the foster family must be properly vaccinated as per veterinary guidelines.
20. Swimming pools in the ground or an aboveground pool with a depth of four feet or greater must have a barrier on all sides to minimize unsupervised access. The barrier must be equipped with a safety lock. If the pool cannot be drained, the swimming pool must have a working pump and filtering system. The pool area must have a life saving device available in the event of an emergency. This standard does not apply to a small wading pool.
21. Hot tubs on the premises of a foster home for children must have safety code covers that are locked when not in use.

**History:** Effective December 1, 1984; amended effective July 1, 1993; April 1, 2004; January 1, 2014; April 1, 2016; October 1, 2019.

**General Authority:** NDCC 50-11-03

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

#### **75-03-14-04. Qualifications of persons residing in the family foster home for children.**

1. An applicant for licensure must:
  - (a) Be age twenty-one years or greater;
  - (b) Be financially stable with reasonable income or resources available to the home to properly care for children; and
  - (c) Have functional literacy, demonstrating their ability to read licensing policy, handbook, child care plans, and medication labels.
2. A person residing in the family foster home for children, except a foster child or ward of the court, may not exhibit symptoms of substance abuse or emotional instability that inhibit their ability to care for children.
3. No person may smoke or vape in the family foster home for children, in circumstances which present a hazard to the health of the foster child, or in an enclosed area when the foster child is present. All foster parents must be aware of the potential hazards of smoking in the presence of children, particularly infants and children with respiratory or allergic sensitivity.
4. If symptoms of substance abuse or emotional instability that inhibit the ability to care for children occur in a family foster home for children at a time when a foster child is in placement, every effort should be made to keep the placement intact if the household member is seeking treatment. The supervising agency may make no further placements in that family foster home for children until the household member successfully completes treatment. If a household member has symptoms of substance abuse or emotional instability, the household member

may have had no incidents which inhibited their ability to care for children for a period of at least twelve months prior to an applicant obtaining licensure.

5. A member of the household, except a foster child, may not have been the subject of a child abuse or neglect assessment where a services-required decision was made unless the department, after making appropriate consultation with persons qualified to evaluate the capabilities of the household member, documenting criteria used in making the decision, and imposing any restrictions deemed necessary, approves the issuance of a license; and
  - a. The household member has followed the recommendations of the child protection team; or
  - b. The household member can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.
6. Prior to the department approving a license, the applicant shall submit the results of a physical examination dated within twelve months of the date of application. All foster parents, annually thereafter, shall submit a declaration of good health, including all residents of the family foster home for children, except any foster child, in a manner and form required by the department. The authorized agent is the payer of last resort whenever any other benefit or source of third-party payment is available for the cost of any physical examinations required pursuant to this subsection. Any foster parent continuously licensed prior to October 1, 2019, is exempt from having to submit a declaration of good health.
7. The department may require proof of immunizations for all residents living in the family foster home for children, except any foster child. It is recommended all members of the household be up to date on immunizations as recommended by a health care professional, unless the immunization is contrary to the person's health as documented by a licensed health care professional or the person provides written documentation that immunizations are against the person's religious, philosophical, or moral beliefs.
8. The department may require foster parents specializing in the care of medically fragile infants and children to receive specific vaccines if the needs of the child require such precaution, such as influenza or pertussis.
9. The department may require psychological testing of any resident of the family foster home for children as determined necessary. The cost of any psychological testing required pursuant to this subsection is the responsibility of the department.
10. Physical disabilities or age of foster parents do not affect licensing of the family foster home for children provided that the applicant can show that these factors do not significantly inhibit the ability of the foster parents to efficiently carry on the duties required of them.
11. All foster parents or potential parents must demonstrate a working knowledge and comply with the department's approved family foster home for children preservice training competencies.
12. All foster parents or potential parents must demonstrate a working knowledge of the reasonable and prudent parent standard by allowing foster children the opportunity to participate in developmentally and age appropriate activities. All foster parents must engage in the reasonable and prudent parent standard.
13. Fire safety training is required annually.

**History:** Effective December 1, 1984; amended effective April 1, 2004; July 1, 2006; January 1, 2014; April 1, 2016; October 1, 2019; July 1, 2020.

**General Authority:** NDCC 50-11-03, 50-11-03.4

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

**75-03-14-04.1. Criminal conviction - Effect on licensure.**

1. A family foster home for children applicant, family foster home for children provider, or adult members residing in the family foster home for children must not be 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 12.1-41, Uniform Act on Prevention of and Remedies for 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; 12.1-20-12.3, sexual extortion; 12.1-20-07, sexual assault; 12.1-21-01, arson; 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; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of child; or 14-09-22.1, neglect of 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 a 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 charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on an individual's ability to provide foster care for children.
3. If the offense is 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 an individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction. 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 authorized agent or department as a result of a background check.

**History:** Effective April 1, 2004; amended effective January 1, 2014; April 1, 2016; October 1, 2019.

**General Authority:** NDCC 50-11-03

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

**75-03-14-05. Operation of the family foster home for children.**

1. The foster parents shall allow public officials to enter the family foster home for children as determined necessary by the public official to ensure safety.
2. The foster parents shall allow entry to the family foster home for children, at any reasonable time, personnel of the supervising agency. For the purposes of this subsection, "any reasonable time" means a time mutually convenient to the foster parents and the supervising agency's personnel or any time the supervising agency determines that a foster child's health, safety, or welfare require the admittance.
3. The foster parents shall cooperate with the supervising agency in that agency's efforts to develop plans for the child, implement those plans, and meet the needs of the child and the child's family. The foster parents shall cooperate with the supervising agency in developing plans for the child to visit with the child's parents or guardian. If the foster parents agree, and it is appropriate, these visits may take place in the family foster home for children. Visits between the foster child and the child's parents or guardian must be arranged within a plan approved by the agency, foster child where appropriate, foster parents, and the foster child's parents or guardian. The foster parents do not have to allow entry to any individual who has been using alcohol, drugs, or any other intoxicating substance, or who attempts a visit in a manner that is not in accordance with the approved visitation plan.
4. The foster parents may not accept other foster children or special education boarding care children, foreign exchange students, or children for supplemental parental care into their family foster home for children without the prior approval of the authorized agent. All changes in the number of persons living in the foster home must be immediately reported to the authorized agent.
5. When a foster child is placed in substitute care during the absence of the foster parents, prior approval of the substitute care must be given by the supervising agency. Prior approval is not required for short periods of substitute care such as a portion of one day. A foster child may not be removed from this state without the prior approval of the supervising agency.
6. The foster parents must make opportunities available for a foster child to attend religious ceremonies chosen by the foster child, or that child's parents, within the community in which the foster family resides. The foster parents must respect and not interfere with the religious belief of the foster child and the foster child's family.
7. Discipline must be constructive or educational in nature and may include diversion, separation from problem situation, talk with the foster child about the situation, praise for appropriate behavior, and gentle physical restraint such as holding.
  - a. No foster child may be kicked, bitten, punched, spanked, shaken, pinched, roughly handled, or struck with an inanimate object by foster parents or any other resident living in the family foster home for children.
  - b. Cruel and unusual punishments are prohibited.
  - c. Authority to discipline may not be delegated to or be accomplished by children.

- d. Separation, when used as discipline, must be brief and appropriate to the foster child's age and circumstances, and when used to discipline a foster child, must be within hearing of an adult in a safe, lighted, well-ventilated room. A foster child may not be isolated in a locked room or closet.
  - e. A foster child may not be physically disciplined for lapses in toilet training.
  - f. Verbal abuse or derogatory remarks about a foster child, the foster child's family, race, religion, sexual orientation, gender identity, or cultural background may not be used and are not permitted.
  - g. A foster child may not be force fed unless medically prescribed and administered under a physician's care.
  - h. Deprivation of means, including food, clothing, shelter, hygiene, and medical care, may not be used as a form of discipline.
- 8. All information given to the foster parents by the supervising agency or the foster child's family concerning the foster child must remain confidential and may not be disclosed to any person without prior approval of the supervising agency.
  - 9. All family foster care for children maintenance payments must be used to meet the needs of the foster child.

**History:** Effective December 1, 1984; amended effective April 1, 2004; January 1, 2014; October 1, 2019.

**General Authority:** NDCC 50-11-03

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

**75-03-14-06. Child and family team meeting.**

- 1. Every foster child shall have a permanency plan reviewed by a child and family team that meets not less than once each quarter in which the human service zone, division of juvenile services, or tribe acts as a supervising agency to the foster child.
- 2. The supervising agency shall invite the foster child's parents, the foster parents, and the guardian ad litem to participate in the child and family team for the foster child unless good cause exists to exclude any person from the planning meeting. The supervising agency shall determine the good cause basis and shall document the basis in the foster child's file.
- 3. The foster parents shall participate in the child and family team meetings for the foster child. The foster parents shall cooperate in carrying out the objectives and goals of the plan for the foster child in their care. Foster parents may be considered, but are not guaranteed, to be a permanency option for the child. Foster parents shall sign an acknowledgment that federal law establishes a permanency preference for a relative of the foster child.
- 4. The foster parents, when requested by the supervising agency or the juvenile court, shall provide information concerning the foster child and the child's family.
- 5. The foster parents and the supervising agency, working in cooperation, must attempt to maintain and improve the relationships between the foster child and the child's family whenever appropriate and possible. The foster parents may not attempt to diminish the relationship between the foster child and the child's parents or between the supervising agency and the foster child.

**History:** Effective December 1, 1984; amended effective April 1, 2004; July 1, 2006; January 1, 2014; October 1, 2019; July 1, 2020.



**General Authority:** NDCC 50-11-03

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

**75-03-14-07. Background checks required.**

Background checks are required for all adults residing in the family foster home for children:

1. Prior to initial licensure or approval to provide a family foster home for children;
2. If there is a lapse of license or approved status of the family foster home for children; or
3. In the case of a foster parent grandfathered in as of August 1, 1999, or after the initial background check was completed, whenever a licensed or approved foster care parent or other adult living in the family foster home for children is known to have been involved in, charged with, or convicted of an offense.
4. Annually, a child abuse and neglect index check must be completed as part of the licensing renewal process.

**History:** Effective April 1, 2004; amended effective January 1, 2014; October 1, 2019.

**General Authority:** NDCC 50-11-03

**Law Implemented:** NDCC 50-11-02, 50-11-06.8

**75-03-14-08. Fingerprints excused.**

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 April 1, 2004; amended effective January 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-11-03

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

**75-03-14-09. Relative licensing waiver.**

Upon written application and good cause shown to the satisfaction of the department, the department may grant a waiver from a provision of this chapter to a family foster home for children if the proposed foster parents are relatives of a foster child. No waiver may be issued if it would result in a danger to the health and safety of any foster child cared for by the foster child's relatives in the family foster home for children. The department shall prescribe the terms of the waiver. A refusal to grant or revoke a waiver is not subject to appeal.

**History:** Effective January 1, 2014.

**General Authority:** NDCC 50-11-03

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