

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

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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. "Adult" means a person twenty-one years of age or older.
2. "Background check" means a child protection services check in each state that the individual has resided in the previous five years and a criminal history record investigation.
3. "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.
4. "Regional center" means the regional human service center.
5. "Supervising agency" means the agency or person 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.

**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 license must be made as prescribed by the department.
2. The family foster home 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 assessment.
3. The license is issued 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 for a period not to exceed sixty days, 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 home of a Native American family located on 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 if the affidavit represents the following:
    - a. An investigation 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 required by North Dakota Century Code section 50-11-02.

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

**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 must have available to it some means to make immediate contact with authorities in emergencies.
3.
  - a. The family foster home for children must have sleeping rooms adequate for the foster care family and the foster children.
  - b. All sleeping rooms must be outside rooms and have ample window space for light and ventilation.

- c. Basement sleeping rooms must be equipped with the appropriate fire alarms and smoke detectors as recommended by the local fire department or state fire marshal. A basement which will be used for the care of foster children must be equipped with more than one exit. One exit may be an accessible window. Children in basement sleeping rooms must be able to demonstrate their ability to depart from all exits.
- 4. Exterior doors must be maintained to permit easy exit. Interior doors must prevent children from being trapped.
- 5. 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.
- 6. The house and premises must be clean, neat, and free from hazards that jeopardize health and safety. Firearms must be kept in locked storage or trigger locks must be used, and ammunition must be kept separate from firearms.
- 7. The family foster home for children must be equipped with adequate light, heat, ventilation, and plumbing for safe and comfortable occupancy. The house and grounds must be in compliance with any applicable state and local zoning requirements.
- 8. Any source other than an approved municipal water supply must be tested annually for compliance for approved drinking water standards. The sample must be sent to the North Dakota department of health or a United States environmental protection agency approved laboratory for testing and approval. The results must be submitted to the department.
- 9. The milk supply must be obtained from a department-approved source.
- 10. 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 adult in charge of the family foster home shall ensure all deficiencies noted during the inspection are remedied.
- 11. 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 or state fire marshal. 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.

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

**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. A person residing in the family foster home for children, except a foster child or ward of the court, may not have a present condition of substance abuse or emotional instability.
- 2. No person may smoke 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.
- 3. If a condition of substance abuse or emotional instability occurs 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 resident of the family foster home for children who is suffering from substance abuse or emotional instability is seeking treatment for the condition. The

supervising agency may make no further placements in that family foster home until the resident suffering from the condition successfully completes treatment for the condition. A resident of a family foster home for children, who has a past condition of substance abuse or emotional instability, may have had no incidents of substance abuse or emotional instability for a period of at least twelve months prior to an applicant obtaining licensure.

4. A resident of the family foster home for children, 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 director or foster care supervisor of the regional center, after making appropriate consultation with persons qualified to evaluate the capabilities of the resident, documenting criteria used in making the decision, and imposing any restrictions deemed necessary, approves the issuance of a license; and
  - a. The resident can demonstrate the successful completion of an appropriate therapy; or
  - b. The resident can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.
5. All foster parents, prior to licensing and 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 department may require a physical examination or psychological testing of any resident of the family foster home for children as the department determines necessary. The cost of any physical examinations required pursuant to this subsection is the responsibility of the authorized agent. The cost of any psychological testing required pursuant to this subsection is the responsibility of the department.
6. 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.
7. 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.
8. 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.
9. Initial and annual fire safety training hours will not be counted toward the minimum number of training hours required for initial or annual licensing.

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

**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 members of 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 12.1-40, 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; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or 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 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.

**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 admit to the family foster home for children, public officials, such as fire and building inspectors, for the purpose of determining fire and building safety.

2. The foster parents shall admit 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 need not admit 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, or accept children for supplemental parental care into their family foster home for children without the prior approval of the authorized agency. All changes in the number of persons living in the foster home must be immediately reported to the authorized agency.
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 adult 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, 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 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.

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

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

**75-03-14-06. Permanency planning child and family team.**

- 1. Every county social service board shall have a county permanency planning child and family team that meets not less than once each quarter in which the county social service board acts as a supervising agency to any foster child. If the county social service board acts as supervising agency for five or more children in foster care, the county permanency planning child and family team must meet at least once each month. The permanency planning child and family team will be cochaired by the regional supervisor and the county director or their designee.
- 2. The supervising agency shall invite the foster child's parents, the foster parents, and the guardian ad litem to participate in the permanency planning 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 permanency planning child and family team 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.
- 4. The foster parents, when requested by the supervising agency or the juvenile court, shall provide requested 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 supervising agency staff and the foster child.

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

**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 living in the family foster home for children:

- 1. Prior to initial family foster home for children licensure or approval;
- 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.

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

**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