

**CHAPTER 75-03-07**  
**IN-HOME CHILD CARE EARLY CHILDHOOD SERVICES**

Section

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**75-03-07-01. Purpose.**

Repealed effective January 1, 2011.

**75-03-07-02. Objective of rules.**

Repealed effective January 1, 2011.

**75-03-07-03. Definitions.**

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02.

**History:** Effective December 1, 1981; amended effective January 1, 2011.

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

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

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

1. An application for a registration document must be submitted to the authorized agent in the county wherein the applicant proposes to provide in-home services. Application must be made in the form and manner prescribed by the department.
2. An applicant for an in-home registration document shall be directly responsible for the care, supervision, and guidance of the child or children in the child or children's home and shall comply with the following standards, certifying in the application that the applicant:
  - a. Is at least eighteen years of age.
  - b. Is physically, cognitively, socially, and emotionally healthy and will use mature judgment when making decisions impacting the quality of child care.
  - c. Shall devote adequate time and attention to the children in the applicant's care and provide an environment that is physically and socially adequate for children.
  - d. Shall participate in specialized training related to child care if provided by or approved by the department, including one hour of training annually on sudden infant death prevention if the in-home provider provides care to infants.
  - e. Shall provide food of sufficient quantity and nutritious quality in accordance with the United States department of agriculture standards which satisfies the dietary needs of the children while in the applicant's care.

- f. Shall provide proper care, supervision, and protection for children in the applicant's care. Supervision means the provider being within sight or hearing range of an infant, toddler, or preschooler at all times so the provider is capable of intervening to protect the health and safety of the child. For the school-age child, it means a provider being available for assistance and care so that the child's health and safety are protected.
  - g. Shall provide for a safe and sanitary environment while children are in care.
  - h. May not use or be under the influence of any illegal drugs or alcoholic beverages while children are in care.
  - i. May not leave children without supervision.
  - j. Shall ensure that discipline is constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint, such as holding. A child may not be subjected to physical harm, fear, or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, or neglect or abuse, to any child is grounds for denial or revocation of an in-home registration.
    - (1) Authority to discipline may not be delegated to children nor may discipline be administered by children.
    - (2) Separation, when used as discipline, must be appropriate to the child's development and circumstances. The child must be in a safe, lighted, well-ventilated room within sight or hearing range of the in-home provider. An in-home provider may not isolate a child in a locked room or closet.
    - (3) A child may not be punished for lapses in toilet training.
    - (4) An in-home provider may not use verbal abuse or make derogatory remarks about a child, or a child's family, race, or religion when addressing the child or in the presence of a child.
    - (5) An in-home provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
    - (6) An in-home provider may not force-feed a child or coerce a child to eat, unless medically prescribed and administered under a medical provider's care.
    - (7) An in-home provider may not use deprivation of meals or snacks as a form of discipline or punishment.
    - (8) An in-home provider may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.
    - (9) An in-home provider may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
    - (10) An in-home provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.
  - k. Shall discuss methods of discipline and child management with the parent or parents.
3. If the physical or mental, cognitive, social, or emotional health capabilities of an in-home applicant or provider appear to be questionable, the department may require the individual to

present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.

4. In-home providers shall ensure safe care for the children receiving services in their care. If a services-required decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by the applicant or in-home provider, that decision has a direct bearing on the applicant's or in-home provider's ability to serve the public in a capacity involving the provision of child care and the application or in-home registration may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant or in-home provider, the applicant or in-home provider shall furnish information, satisfactory to the department, from which the department can determine the applicant's or in-home provider's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of current ability to the applicant or in-home provider and to the director of the regional human service center or the director's designee for consideration and action on the in-home registration document. Each applicant shall complete a department-approved authorization for background check form no later than the first day of employment.

**History:** Effective December 1, 1981; amended effective January 1, 1987; January 1, 2011; April 1, 2016.

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

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

#### **75-03-07-05. Minimum requirements for care of children with special needs.**

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

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

**History:** Effective January 1, 2011.

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

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

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

1. The right to provide early childhood services is dependent upon the applicant's or provider's continuing compliance with the terms of the registration as listed in section 75-03-07-04.
2. A fraudulent or untrue representation is grounds for revocation or denial.
3. a. The applicant or in-home provider may not have been found guilty of, pled guilty to, or pled no contest to:

- (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2 sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 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; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;
  - (2) An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in paragraph 1; or
  - (3) An offense, other than an offense identified in paragraph 1 or 2, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
- b. The department has determined that the offenses enumerated in paragraphs 1 and 2 of subdivision a have a direct bearing on the applicant's or provider's ability to serve the public in a capacity as a provider.
  - c. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. An in-home provider shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. 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.
  5. Review of fingerprint-based criminal history record check results.
    - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
    - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

- c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

**History:** Effective January 1, 2011; amended effective April 1, 2014; April 1, 2016.

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

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

#### **75-03-07-07. Appeals.**

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

**History:** Effective January 1, 2011.

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

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