

NOTICE OF INTENT TO AMEND
ADMINISTRATIVE RULES RELATING TO
N.D.A.C. CHAPTER 75-03-14
FAMILY FOSTER CARE HOMES

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code chapter 75-03-14 at 3:30 p.m. on Tuesday, September 24, 2013, in Bismarck, N.D. in Room 210, located on the second floor of the Judicial Wing of the State Capitol.

The proposed amendments to N.D. Admin. Code chapter 75-03-14, Family Foster Care Homes, are to ensure compliance with federal enactments.

The proposed changes are as follows:

Section 75-03-14-01 is amended to add a definition of "background" check and to remove redundant language.

Section 75-03-14-02 is amended to clarify language.

Section 75-03-14-03 to refine the requirements for the use of basement sleeping rooms, the requirements for certain doors, and to clarify language.

Section 75-03-14-04 is amended to clarify expectations for a non-foster child living in a family foster home.

Section 75-03-14-04.1 is amended to clarify language and to allow the department to consider an applicant, provider, or household member to be rehabilitated after having been convicted of certain crimes.

Section 75-03-14-05 is amended to clarify language and to identify prohibited forms of punishment for children in foster care.

Section 75-03-14-06 is amended to clarify language.

Section 75-03-14-07 is amended to ensure compliance with background check requirements found in federal law.

Section 75-03-14-08 is amended to be consistent with requirements found in federal law.

Section 75-03-14-09 is created to allow certain provisions of chapter 75-03-14 to be waived for a proposed foster parent who is a relative of the

foster child. This is to ensure compliance with requirements found in federal law.

The proposed amendments are not anticipated to have an impact on the regulated community in excess of \$50,000. No taking of real property is involved in this rulemaking action.

Copies of the proposed rules are available for review at county social services offices and at human service centers. Copies of the proposed rules and the regulatory analysis relating to these rules may be requested by telephoning (701) 328-2311. Written or oral data, views, or arguments may be entered at the hearing or sent to: Rules Administrator, North Dakota Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Dept. 325, Bismarck, ND 58505-0250. Written data, views, or arguments on the proposed rules must be received no later than 5:00 p.m. on Friday, October 4, 2013.

ATTENTION PERSONS WITH DISABILITIES: If you plan to attend the hearing and will need special facilities or assistance relating to a disability, please contact the Department of Human Services at the above telephone number or address at least two weeks prior to the hearing.

Dated this 16th day of August, 2013.

CHAPTER 75-03-14
FAMILY FOSTER CARE ~~HOMESH~~HOME FOR CHILDREN

Section

75-03-14-01	Definitions
75-03-14-02	License
75-03-14-03	Minimum Physical Standards for the <u>Family Foster Home for Children</u>
75-03-14-04	Qualifications of Persons Residing in the <u>Family Foster Home for Children</u>
75-03-14-04.1	Criminal Conviction - Effect on Licensure
75-03-14-05	Operation of the <u>Family Foster Home for Children</u>
75-03-14-06	Permanency Planning Child and Family Team
75-03-14-07	Background Checks Required
75-03-14-08	Fingerprints Excused

75-03-14-01. Definitions. Those definitions set forth in North Dakota Century Code section 50-11-00.1 are applicable to this chapter. ~~In~~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. ~~"Department" means the department of human services~~"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. ~~"Home" means family foster home.~~
4. "Regional center" means the regional human service center.
54. "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.

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 ~~in the manner and forms~~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 ~~in order~~ 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 ~~a one-year period~~.
 4. The department may issue a license ~~may be issued~~ 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 of ~~issuance~~ the license is issued, or at another location for a period not to exceed sixty days, provided that the ~~supervising agency~~ 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 ~~family foster home 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 ~~or applicants are~~ is not in compliance with the regulations prescribed by the department for the operation of a family foster home for children.
 7. ~~In these cases where~~ 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, is located on a recognized Indian reservation in North Dakota, the department shall accept an affidavit from an agent of the tribal child welfare agency or an appropriate tribal officer must be accepted 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 ~~should~~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 ~~shall~~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. ~~Basements may be used for sleeping accommodations for children twelve years of age and older. Basement bedrooms~~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 ~~shall~~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 ~~in such a manner which would~~to permit easy exit. Interior doors ~~should be designed to~~must prevent children from being trapped.

5. Every closet door must be one that can be opened from the inside. ~~Any bathroom~~Bathroom doors must be designed~~installed so that the opening of the door, when locked door can be accomplished, 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 ~~should~~must be tested and approved by the North Dakota state department of health and the report submitted to the ~~licensing agency~~department.
9. The milk supply must be obtained from an ~~approved~~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. ~~All~~The adult in charge of the family foster home shall ensure all deficiencies noted during the inspection ~~must be~~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. ~~They~~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.

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 a foster child, or in an enclosed area when the foster child is present. All foster parents ~~should~~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 ~~problem~~condition. ~~No~~The supervising agency may make no further placements in that family foster home will be made until successful completion of the resident suffering from the condition successfully completes treatment has occurred for the condition. A resident of a family foster home for children, who has a past condition of substance abuse or emotional instability, ~~should~~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.
24. A person ~~residing in~~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 ~~home's~~ resident, documenting criteria used in making the decision, and imposing any restrictions deemed necessary, approves the issuance of a license; and
 - a. The ~~home's~~ resident can demonstrate the successful completion of an appropriate therapy; or
 - b. The ~~home's~~ resident can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.
35. All foster parents, prior to licensing and annually thereafter, ~~must~~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 ~~determined~~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 deemed~~the department determines necessary.

The cost of any physical examinations required pursuant to this subsection is the responsibility of the ~~supervising agency~~authorized agent. The cost of any psychological testing required pursuant to this subsection is the responsibility of the department.

46. 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.
57. ~~A person openly and notoriously living with a person of the opposite sex as a married couple without being married to the other person may not be eligible for licensure~~All foster parents or potential foster parents must demonstrate a working knowledge and comply with the department's approved family foster home for children pre-service training competencies.
8. 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.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

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

1. A family foster ~~care~~home for children applicant, family foster ~~care~~home for children provider, or members of the family foster ~~care~~-home for children must not 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; or 12.1-18, kidnapping; North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 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; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code section 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or

- b. An offense, other than an offense identified in subdivision a, 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 subdivision a of subsection 1 have a direct bearing on ~~the~~an individual's ability to ~~serve the public in a capacity involving the provision of~~provide foster care ~~to~~for children.
- 3. ~~In the case of~~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 ~~the~~an individual has been sufficiently rehabilitated if ~~fifteen~~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. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - a. Acknowledged by the individual; or
 - b. ~~Reported to~~Discovered by the agencyauthorized agent or Department as a result of a background check.

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

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, ~~at any reasonable time,~~ public officials, such as fire and building inspectors, for

the purpose of determining fire and building safety. ~~For the purposes of this subsection, "any reasonable time" means a time mutually convenient to the foster parents and the public official.~~

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 ~~and~~ any time the supervising agency determines that a foster child's health, safety, or welfare require the admittance.
3. The foster parents ~~must~~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 ~~must~~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 parent's 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 ~~a foster child's parent, relative, or guardian~~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, ~~as defined in North Dakota Century Code chapter 50-11.1,~~ into their family foster home for children without the prior approval of the ~~supervising agency~~authorized agency. All changes in the number of persons living in the family foster home for children must be immediately reported to the ~~supervising agency~~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, including:
 - (1) Physically strenuous work or exercise, when used solely as a means of punishment; and
 - (2) Forcing a foster child to maintain an uncomfortable position or continuously repeat physical movements, when used solely as a means of punishment.
 - c. Authority to discipline may not be delegated to or be accomplished by children.
 - ed. Separation, when used as discipline, must be brief and appropriate to the foster child's age and circumstances, and ~~the~~when used to discipline a young foster child, must be within hearing of an adult in a safe, lighted, well-ventilated room. ~~No~~A foster child may not be isolated in a locked room or closet.
 - de. ~~No~~A foster child may not be physically disciplined for lapses in toilet training.
 - ef. Verbal abuse or derogatory remarks about ~~the~~a foster child, the foster child's family, race, religion, or cultural background may not be used ~~or~~and are not permitted.
 - fg. ~~No~~A foster child may not be force fed unless medically prescribed and administered under a physician's care.
 - gh. 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 ~~must~~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 co-chaired by the regional supervisor and the county director or their designee.
2. The supervising agency ~~must~~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 ~~must be determined by the supervising agency and shall document the basis for the determination must be made a part of~~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. ~~In no case may the~~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 of more than thirty days; 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 accepted and rejected. If a person is excused from providing fingerprints, the department ~~may~~shall conduct a ~~statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check~~nationwide name-based criminal history record investigation.

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

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