

**BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL**

N.D. Admin. Code Chapter)	<u>REPORT OF THE</u>
75-03-21.1 Licensing of)	<u>DEPT. OF HUMAN SERVICES</u>
Agency Foster Homes for Adults)	
)	December 3, 2019
(Pages 169-193))	
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For its report, the North Dakota Department of Human Services (Department) states:

1. The proposed creation of N.D. Admin. Code Chapter 75-03-21.1, relating to Licensing of Agency Foster Homes for Adults, is necessary to comply with 2019 House Bill No. 1099.
2. These rules are not related to changes in a federal statute or regulation.
3. The Department uses direct and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The Department uses a basic mailing list for each rulemaking project that includes the county social service board directors, the regional human service centers, Legal Services offices in North Dakota, all persons who have asked to be on the basic list, and internal circulation within the Department. Additionally, the Department constructs relevant mailing lists for specific rulemaking. The Department also places public announcements in all county newspapers advising generally of the content of the rulemaking, of over 50 locations throughout the state where the proposed rulemaking documents may be reviewed, and

stating the location, date, and time of the public hearing.

The Department conducts public hearings on all substantive rule-making. Oral comments are recorded. Oral comments, as well as any written comments that have been received, are summarized and presented to the Department's executive director, together with any response to the comments that may seem appropriate and a re-drafted rule incorporating any changes occasioned by the comments and the Attorney General's review.

4. A public hearing on the proposed rules was held in Bismarck on September 13, 2019. The record was held open until 5:00 PM on, September 23, 2019, to allow written comments to be submitted. No one attended or provided comments at the public hearing. No written comments were received within the comment period. The "Summary of Comments" is attached to this report.
5. The cost of giving public notice, holding a hearing, and the cost (not including staff time) of developing and adopting the rules was \$2446.72
6. The proposed rules create chapter 75-03-21.1. The following specific provisions were created:

Section 75-03-21.1-01 is created to define key terms in this chapter relating to the licensing of agency foster homes for adults.

Section 75-03-21.1-02 is created to establish an application process for licensure to operate as an agency foster home for adults. The section lists the information required to complete an application, including required safety, sanitation, and fire inspections and reports, criminal background checks, and other relevant information.

Section 75-03-21.1-03 is created to establish criteria regarding the issuance of a license, including how long the license is valid, that the

license is nontransferable, and that the license is valid only for the agency named and the premises on the license. The section also establishes alternative criteria allowing for an affidavit from authorities on a recognized Indian reservation or military base to be used instead of the licensing procedure in this chapter.

Section 75-03-21.1-04 is created to establish the criteria under which a single or multiple license may be issued under this chapter.

Section 75-03-21.1-05 is created to establish the process for notification and service of the Department's intent to grant, deny, or revoke a license. This section also clarifies that the applicant or provider has twenty days after being served with a denial or revocation notice to appeal.

Section 75-03-21.1-06 is created to establish that licenses issued under this chapter must be called either an "unrestricted license" or "provisional license".

Section 75-03-21.1-07 is created to establish the criteria under which a provisional license may be issued to a new agency or an agency with an acceptable plan of correction. The section also covers how the Department shall terminate a provisional license and issue an unrestricted license when requirements have been met; and establishes the process for issuance of a notice of denial or revocation of provisional license as well as appeal of a denial or revocation.

Section 75-03-21.1-08 is created to state that a license must be displayed in an area readily seen by the public.

Section 75-03-21.1-09 is created to restrict the purchase of service or securing funds for an unlicensed entity.

Section 75-03-21.1-10 is created to require the Department to notify unlicensed entities providing services subject to licensure that

these activities are subject to licensure and requires the person who received notification to provide a completed application to the Department within thirty days of that notice to comply.

Section 75-03-21.1-11 is created to state that the Department adopts and makes a part of rules under this chapter the current standards used for accreditation by the council on quality and leadership.

Section 75-03-21.1-12 is created to require that services provided under this chapter must be identified and licensed by either the title of "residential habilitation services" or "community support services".

Section 75-03-21.1-13 is created to establish requirements for the facility, including structural integrity, safety features, air temperature, and telecommunication devices.

Section 75-03-21.1-14 is created to establish requirements for facility design, including overall size, living and activity space, and accessibility.

Section 75-03-21.1-15 is created to establish requirements for facility location, including being an appropriate distance away from hazardous areas and existing group homes or day services facilities licensed by the Department, and being within residential neighborhoods with access to appropriate community and shopping facilities.

Section 75-03-21.1-16 is created to establish requirements for facility bedrooms.

Section 75-03-21.1-17 is created to establish requirements for facility kitchens.

Section 75-03-21.1-18 is created to establish requirements for facility bathrooms.

Section 75-03-21.1-19 is created to establish requirements for facility laundry space.

Section 75-03-21.1-20 is created to establish requirements for facility use of space to allow residents to personalize their portion of living units.

Section 75-03-21.1-21 is created to establish requirements for the facility water supply, including requiring that the facility be located in areas where public or private water supplies approved by the Department of Environmental Quality are available.

Section 75-03-21.1-22 is created to establish requirements for the facility sewage disposal, including requiring that the facility be located in areas where public or private sewage disposal systems approved by the Department of Environmental Quality are available.

Section 75-03-21.1-23 is created to require that an agency have written plans and procedures for various emergencies.

Section 75-03-21.1-24 is created to establish insurance and bond requirements for agencies.

Section 75-03-21.1-25 is created to allow the Department to grant a variance to an agency upon written application and good cause shown.

Section 75-03-21.1-26 is created to establish requirements for applicant's buildings, including requiring written reports from an authorized fire inspector, requiring written statements from political subdivision officials that buildings comply with zoning requirements, and requiring floor plans for existing and proposed new structures.

Section 75-03-21.1-27 is created to require that applicants meet applicable safety codes. The section also permits the Department to grant a variance from safety codes under limited circumstances.

Section 75-03-21.1-28 is created to establish requirements for

safety and inspections. The section also establishes that any fees are the responsibility of the applicant or agency, and that any deficiencies noted within an inspection must be corrected within sixty days.

Section 75-03-21.1-29 is created to establish qualifications for direct service provider employees, including that: the individual is eighteen or older; has physical and mental health necessary to provide care; can communicate in English; has successfully completed background checks; and has successfully completed certain basic training requirements. The section also requires that the employee shall also provide evidence of competence in various generally accepted procedures for routine care of residents.

Section 75-03-21.1-30 is created to list the medical professionals who may verify that a direct service employee is competent to perform the various routine care procedures that are listed under section 75-03-21.1-29. The section also outlines the ways that direct service provider employees can demonstrate their competency.

Section 75-03-21.1-31 is created to establish general practice requirements for providers including: allowing access to the Department for inspection and providing various notices and accountings to the Department; reporting illness; protecting confidentiality of information; protecting property of the resident in possession of the facility; protecting resident from abuse, neglect, or financial exploitation; and other key basic requirements pertaining to operation of the facility.

Section 75-03-21.1-32 is created to require an agency to implement policies and procedures to assure that critical incidents involving alleged abuse, neglect, exploitation, and use of restraint are immediately reported.

Section 75-03-21.1-33 is created to affirm the right of the Department, or the appropriate human service zone, to enter applicant's or agency's buildings and access records.

Section 75-03-21.1-34 is created to affirm the right of authorized representatives of the Department to inspect applicant's records.

Section 75-03-21.1-35 is created to provide that any applicant or agency which denies the Department or human service zone access to a facility or its records shall have its license revoked or its application denied.

Section 75-03-21.1-36 is created to establish the effect of certain criminal convictions on licensure and operation of a facility regarding the individual's ability to be employed by, or providing care in, the facility and any adult living in the facility, but not being providing care in the facility. This section also establishes when an individual is deemed sufficiently rehabilitated.

Section 75-03-21.1-37 is created to require each member of the governing body of the applicant or agency, the chief executive officer, and individuals who receive or disburse funds on behalf of the governing body, to disclose to the Department any criminal offenses they have been found guilty of, or pled guilty or no contest to. This section also requires the applicant or agency to disclose to the Department the names, type of offenses and details of the offense, and position and duties of employees and volunteers within the organization who have committed criminal offenses, to the Department.

Section 75-03-21.1-38 is created to establish requirements for meals and nutrition at the facility.

Section 75-03-21.1-39 is created to require that the provider shall

furnish each resident, or their legal representative, and the Department, with a signed copy of the of the provider's lease or rental agreement prior to the resident entering the facility, and requires that a copy signed by the resident or their legal representative and provider be kept in the resident's records. The section also clarifies that the lease or rental agreement must also detail the eviction and appeals process, any restrictions on the use of alcohol or tobacco in the facility, and the billing procedure used at the facility.

Section 75-03-21.1-40 is created to outline the various guarantees and assurances an applicant must submit to the Department when applying, as well as evidence in support of those guarantees and assurances.

Section 75-03-21.1-41 is created to outline the procedures the provider shall use when terminating care of a resident when care is no longer required or when the provider is no longer qualified to provide the care needed by the resident.

Section 75-03-21.1-42 is created to allow the Department to revoke or deny a license for any one reason permitted under law, or for a combination of reasons. The section also establishes an agency's right to continue to operate after notice of revocation, unless the license expires.

Section 75-03-21.1-43 is created to establish when a notice of revocation or a notice of denial of a license may be provided to a person.

Section 75-03-21.1-44 is created to provide that an agency or applicant whose license has been revoked or whose license application has been denied may not reapply, without the written permission of the Department, until a final determination has been made with

respect to the denial or revocation.

Section 75-03-21.1-45 is created to establish the time periods allowed for correction of deficiencies identified in a correction order. The section allows the Department to grant an extension for up to one-half the original allowable time upon demonstration of need by the agency that the need for an extension is created by circumstances beyond the control of the agency, and that agency has diligently pursued correction of the deficiency.

Section 75-03-21.1-46 is created to identify the assessed fiscal sanctions to be assessed against an agency for failure to comply with the contents of a correction order.

Section 75-03-21.1-47 is created to identify the records that must be kept and maintained for each resident in the facility.

Section 75-03-21.1-48 is created to require that an agency shall maintain program records, fiscal records, and supporting documentation. This section also requires an agency to retain a copy of these records for forty-two months from the last date of service, unless an audit requires a longer retention period. This section also provides that the Department has a right to withhold a payment for services or to suspend or terminate Medicaid enrollment if the agency has failed to abide by terms of performance.

Section 75-03-21.1-49 is created to require that the Department conduct facility visits at time of licensure, license renewal, or upon evidence of noncompliance.

Section 75-03-21.1-50 is created to outline what sections of this chapter are satisfied by licensed developmental disability residential habilitation providers.

7. No written requests for regulatory analysis have been filed by the

Governor or by any agency. The rule amendments are expected to have an impact on the regulated community in excess of \$50,000. A regulatory analysis was prepared and is attached to this report.

8. A small entity regulatory analysis and small entity economic impact statement were prepared and are attached to this report.
9. The anticipated fiscal impact resulting from implementation of the proposed amendments is \$163,750 (total funds) and \$0 (general funds). Money follows the person rebalancing funds will be used to cover the cost of the Council on Quality and Leadership certification for the residential habilitation and community support services providers.
10. A constitutional takings assessment was prepared and is attached to this report.
11. These rules were not adopted as emergency (interim final) rules.

Prepared by:

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November 29, 2019