

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

<p>N.D. Admin. Code Chapters)</p> <p>75-03-14, 75-03-15, and 75-03-16,)</p> <p>Family Foster Home for Children,)</p> <p>Ratesetting for Providers of)</p> <p>Services to Foster Children-Group)</p> <p>Homes and Residential Child Care)</p> <p>Facilities, and Licensing of Group)</p> <p>Homes and Residential Child Care)</p> <p>Facilities and N.D. Admin Code)</p> <p>Chapters 75-03-40 and 75-03-41,)</p> <p>Licensing of Qualified Residential)</p> <p>Treatment Program Providers and)</p> <p>Supervised Independent Living)</p> <p>)</p> <p>(Pages 179-278))</p>	<p><u>REPORT OF THE</u></p> <p><u>DEPT. OF HUMAN SERVICES</u></p> <p>September 4, 2019</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------

.....

For its report, the North Dakota Department of Human Services (Department) states:

1. The proposed amendments to N.D. Admin. Code Chapters 75-03-14, 75-03-15, and 75-03-16, relating to Family Foster Home for Children, Ratesetting for Providers of Services to Foster Children-Group Homes and Residential Child Care Facilities, and Licensing of Group Homes and Residential Child Care Facilities, and the creation of chapters 75-03-40 and 75-03-41, relating to Licensing of Qualified Residential Treatment Program Providers and Supervised Independent Living, are necessary to comply with 2019 House Bill No. 1102.
2. The proposed amendments to N.D. Admin. Code Chapters 75-03-14, 75-03-15, and 75-03-16, relating to Family Foster Home for Children,

Ratesetting for Providers of Services to Foster Children-Group Homes and Residential Child Care Facilities, and Licensing of Group Homes and Residential Child Care Facilities, and the creation of chapters 75-03-40 and 75-03-41, relating to Licensing of Qualified Residential Treatment Program Providers and Supervised Independent Living, are necessary to comply with the passage of the federal Family First Prevention Services Act (P.L. 115-123) as part of the Bipartisan Budget Act of 2018. The proposed rules addresses the Family First Prevention Services Act's new requirements for residential facilities, family foster homes for children, and operations of a supervised independent living program to assist youth in transition.

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 rulemaking. 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. Comments were received at the public hearing held in Bismarck on June 11, 2019. The record was held open until June 21, 2019, to allow written comments to be submitted. Ten individuals attended the public hearing, and one individual provided comments at the hearing. Four additional sets of written comments were received within the comment period and one comment was received shortly after the comment period ended but was considered by the Department. A number of changes were made pursuant to these comments; in particular, input provided in the comments resulted in proposed language in N.D. Admin. Code sections 75-03-40-44, 75-03-40-45, and 75-03-40-46 being significantly amended from the initial proposed Administrative Rules. These sections were amended, pursuant to the comments provided, to establish guidelines for behavior management intervention, emergency safety interventions, and use of special care units. A "Summary of Comments" along with Attachment A 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 \$3,430.16.
6. The proposed rules amend 75-03-14, 75-03-15, and 75-03-16 and create chapters 75-03-40 and 75-03-41. The following specific changes were made:
Section 75-03-14-01 is amended to remove the definition of "adult" and amending the definition of "background check" to include a fingerprint-based criminal history record investigation.
Section 75-03-14-02 is amended to clarify language regarding

licensure of a family foster home for children, to clarify the home study assessment process and approval of temporary locations, and to modify the approval process for a facility located on or near a recognized Indian reservation to allow North Dakota additional options to recruit and retain Native American foster homes.

Section 75-03-14-03 is amended to clarify and modify the minimum physical standards for the foster family home for children.

Section 75-03-14-04 is amended to add additional requirements regarding qualifications of persons residing in the family foster home for children and applicants for licensure.

Section 75-03-14-04.1 is amended to update and clarify language regarding criminal history background check direct bearing offenses.

Section 75-03-14-05 is amended to update language regarding the operation of the family foster home for children including allowing public officials to ensure safety and to add language regarding the prohibition of verbal abuse.

Section 75-03-14-06 is amended to clarify the operation of a child and family team that reviews the permanency plan of a foster child and permanency options for the foster child.

Section 75-03-14-07 is amended to clarify language relating to background checks required of adults residing in the family foster home for children and to create language requiring an annual child abuse and neglect index check of all adults living in the facility.

Section 75-03-15-01 is amended to update definitions, including changing the definition of a "facility" from a "residential child care facility or group home" to a "qualified residential

treatment program”, and to provide a definition of a “qualified residential treatment program” based on the Family First Prevention Services Act and 2019 House Bill No. 1102.

Section 75-03-15-03 is amended to clarify information that must be provided within a daily child census record.

Section 75-03-15-04 is amended to update rate-setting language to remove language stating that a reserved paid bed is counted as an occupied bed, and to add language stating that Department shall continue to pay the established rate of a facility previously licensed as a residential child care facility licensed prior to October 1, 2019, upon the facility’s licensure as a qualified residential treatment program, and that the Department may subsequently adjust the rate in accordance with this section.

Section 75-03-15-07 is amended to update language from “child care workers” to “direct care workers”.

Section 75-03-15-12.1 is amended to specify that existing language in this section regarding start-up costs don’t apply to a facility transitioning from a residential child care facility on October 1, 2019, to a qualified residential treatment program.

Chapter 75-03-16 is being repealed as a result of the Family First Prevention Services Act and 2019 House Bill No. 1102 as the care currently provided in group homes and residential child care facilities will now be provided by qualified residential treatment providers and supervised independent living programs under newly created chapters 75-03-40 and 75-03-41.

Section 75-03-40-01 is created to provide definitions relating to licensing of qualified residential treatment program providers.

Section 75-03-40-02 is created to detail how long a facility

license is effective, as well as its validity. This section also provides licensing procedures for facilities that change ownership and for provisionally licensed facilities.

Section 75-03-40-03 is created to provide requirements for potential applicants and applicants for licensure and establishes the Department response requirements.

Sections 75-03-40-04 and 75-03-40-05 are created to outline the use of correction orders by the Department to correct violations at a facility, and to provide for fiscal sanctions and other actions if a facility remains out of compliance.

Section 75-03-40-06 is created to establish a provisional license process if the facility has failed to comply with applicable standards and regulations.

Section 75-03-40-07 is created to establish a denial and revocation process for failure to meet requirements of chapter 75-03-40 and North Dakota Century Code Chapter 50-11.

Section 75-03-40-08 is created to establish the process for increasing or decreasing residential bed capacity at a facility.

Section 75-03-40-09 is created to require that a facility shall have a policy to ensure proper and efficient procedures in the event the facility closes, notification requirements, and notice that a facility may be subject to fiscal sanctions.

Section 75-03-40-10 is created to outline the components and requirements of a facility's governing body.

Section 75-03-40-11 is created to require that each facility have a written disaster plan to accommodate emergencies and to specify what details must be included in the disaster plan.

Section 75-03-40-12 is created to require that each facility have

a performance and quality improvement plan which advances efficient, effective service delivery, effective management practices, and the achievement of strategic and treatment program goals and outcomes and to specify what details must be included in the performance and quality improvement plan.

Section 75-03-40-13 is created to establish what documents must be included within the individual personnel files of all employees and nonemployees.

Section 75-03-40-14 is created to state that the governing body shall designate a facility administrator and clearly define the responsibilities of the facility administrator. The section also establishes the qualifications and duties of a facility administrator.

Section 75-03-40-15 is created to state that the facility shall clearly define the responsibilities of the clinical director. The section also establishes the qualifications and duties of the clinical director.

Section 75-03-40-16 is created to state that the facility shall clearly define the responsibilities of treatment coordinator employees. The section also establishes the qualifications and duties of a treatment coordinator.

Section 75-03-40-17 is created to state that the facility shall clearly define the responsibilities of a direct care employee. The section also establishes the qualifications and duties of a direct care employee.

Section 75-03-40-18 is created to require the facility to define the duties and responsibilities of a nurse providing services at the facility. Language in the section also requires an onsite nurse to accommodate medical needs.

Section 75-03-40-19 is created to state that the facility shall clearly define the responsibilities of family engagement specialists. The section also outlines the qualifications and duties tasks of a family engagement specialist.

Section 75-03-40-20 is created to allow a facility to contract with service providers for professional services not provided by the facility when necessary for implementation of a resident's treatment plan.

Section 75-03-40-21 is created to establish policies for facilities which use nonemployees. The section establishes that nonemployees may provide services in support of, but not in substitution for, employees.

Section 75-03-40-22 is created to require a facility to identify all employee and nonemployee positions and to require a facility to establish clearly written personnel policies that are required by this section.

Section 75-03-40-23 is created to provide confidentiality protections for facility records concerning residents that have received, are receiving, or seek to receive facility services.

Section 75-03-40-24 is created to require that all facility employees and nonemployees certify to having read state law on reporting of suspected child abuse and neglect, to require the facility to have written policies and procedures requiring employees and nonemployees to report cases of suspected child abuse or neglect, and to require cooperation and notification requirements.

Section 75-03-40-25 is created to provide language regarding criminal history background checks and effect on operation of

facility or employment by facility.

Section 75-03-40-26 is created to require a fingerprint based criminal background check and child abuse and neglect index check for prospective employees and nonemployees and annual child abuse and neglect index check on every employee and nonemployee.

Section 75-03-40-27 is created to provide personnel health requirements for all employees and nonemployees, including requiring an initial health screening, and requiring a facility to develop a policy regarding health requirements for employees and nonemployees.

Section 75-03-40-28 is created to establish the minimum number of employees that must be at the facility at any given time and require the facility to adopt a policy.

Section 75-03-40-29 is created to provide for employee professional development for employees in contact with residents. The section requires all employees in contact with residents to receive at least twenty hours of training annually.

Section 75-03-40-30 is created to outline what records must be included within the resident file and to clarify that the records are confidential unless permitted or required to be disclosed.

Section 75-03-40-31 is created to outline the program and services which are to be provided by the facility, including that the facility shall have the ability to provide resource information for referral sources; education and religious opportunities; normalcy activities offered; and that the facility shall develop policy to allow residents and their families and other stakeholders the ability to submit complaints and grievances to the facility.

Section 75-03-40-32 is created to provide that a facility may operate an optional respite care program with approval of the Department and to outline the procedure the facility shall use if it chooses to operate a respite care program.

Section 75-03-40-33 is created to outline admission criteria, admission policies, and procedures to be used at the facility, including a preadmission review and identification of the prospective resident's primary presenting needs. The section requires that a facility shall have an admissions and discharge committee that shall meet on at least a weekly basis, and which is required to evaluate the needs of a prospective resident before the resident enters the facility. This section also requires initial mental health, suicide risk, and health screenings upon admission of the client.

Section 75-03-40-34 is created to require that all placements of children made from out-of-state must follow the interstate compact on the placement of the children or the interstate compact on juveniles.

Section 75-03-40-35 is created to require that a treatment coordinator employee shall develop a written, individualized treatment plan for each resident, including an initial abbreviated treatment plan immediately upon admission, and a more formal treatment plan to be developed by utilizing the needs assessments and other collateral information within fourteen days of admission. The section outlines the required elements of each treatment plan.

Section 75-03-40-36 is created to require that each resident must have their discharge plan developed immediately upon admission, and that the plan must be reviewed on an ongoing

basis as part of the treatment plan. The section identifies which persons must be involved in discharge planning and what the discharge plan must address. The section also requires that a discharge committee shall review and approve each anticipated discharge thirty days prior to the discharge and shall provide the completed discharge plan to the custodian at least seven days prior to the anticipated discharge.

Section 75-03-40-37 is created to require that the facility shall create a written policy detailing how the facility uses concepts of family-driven, resident-guided care into the overall treatment model, and requires that the facility shall document and provide evidence of the family's ongoing involvement in treatment planning. The section also identifies the types of resident and family engagement strategies which may be used.

Section 75-03-40-38 is created to require that the facility shall have written policies and procedures regarding how the six-month aftercare requirements must be implemented to meet the needs of residents and families.

Section 75-03-40-39 is created to require that the facility shall have written policies and procedures for notification to law enforcement, custodian and parent or guardian, and other appropriate parties if a resident has left without permission or fails to return after leave.

Section 75-03-40-40 is created to require that the facility have written policy for incident and sentinel event reporting and identifies what must be included within documentation of the report.

Section 75-03-40-41 is created to require that a facility shall

develop a suicide prevention plan and identifies components of the plan.

Section 75-03-40-42 is created to require that a facility shall adopt a comprehensive written plan of preventive, routine, and emergency medical care for residents.

Section 75-03-40-43 is created to require that the facility shall adopt comprehensive written policies and procedures for the requirements of medication administration and monitoring of resident self-administration.

Section 75-03-40-44 is created to outline what behavior management intervention practices may or may not be used at the facility and policy requirements. The section identifies a list of items that the facility may not deny to a resident as part of behavior management intervention. The section also outlines the procedure for facilities to use in the application of "time-out".

Section 75-03-40-45 is created to outline the use of emergency safety interventions that may or may not be used at the facility. This section defines terms including "drug used as a restraint", "emergency safety intervention", "emergency safety situation", "personal restraint", and "Tier 1 mental health professional". The section details the education and training that must be provided to employees regarding the use of emergency safety interventions. The section states that restraint and seclusion may only be used when a resident poses an immediate threat of serious violence or serious injury to self or others and must be discontinued when the immediate threat is gone. The section details the types of restraint and seclusion that may be used in an emergency safety situation, and also details the process for orders

for the use of restraint or seclusion in an emergency safety situation. The section also requires monitoring, notification, and post-intervention de-briefings.

Section 75-03-40-46 is created to establish guidelines if a facility decides to use a "special care unit" as a separate secure area of the facility designed as a protective environment in which treatment and services are provided to residents, that is secured by means of a key lock that can prevent residents from leaving at will. The section clarifies that use of such a unit is not seclusion, but rather a fully operational separate space located on the facility's grounds. The facility may not use a special care unit without first obtaining Department approval, and by also meeting other requirements in this section, including the requirement that a facility's use of a special care unit must be part of a behavior management program. The section also requires the facility to have written policies and procedures regarding use of a special care unit, including the requirement that a resident may be placed in a special care unit only if there is written informed consent signed by the resident's custodian, or by an order of a court or other lawful authority.

Section 75-03-40-47 is created to require that the building, grounds, and equipment at the facility shall be required to comply with all state, county, and local building and zoning codes and ordinances, as well as all other relevant regulations. The section requires that the facility must be inspected annually by the local fire department or the state fire marshal's office. This section also outlines other buildings, grounds, and equipment requirements for a facility to comply with.

Section 75-03-40-48 is created to require that the facility shall appoint an employee to be responsible for complying with requirements for healthy and safe food and nutrition practices and outlines the requirements for training and food that will be served at the facility.

Section 75-03-40-49 is created to identify what resident accommodations shall be provided at the facility, including clothing and shoes; appropriate room assignments; personal hygiene items; appropriate household responsibilities; and appropriate recreational activities. This section also requires that facility shall advise residents and their custodian and parent or guardian of the day-to-day rules of the facility.

Section 75-03-40-50 is created to require the facility to develop a comprehensive transportation policy addressing issues, including driver qualifications; maintenance of a list of approved drivers; vehicle capacity and supervision; vehicle operation; and accident reports.

Section 75-03-40-51 is created to provide rules for water safety provisions for residents engaging in aquatic activities.

Section 75-03-40-52 is created to provide that, upon written application and good cause shown, Department may grant a variance regarding a specific provision of this chapter upon such terms as the Department may prescribe, except no variance may permit or authorize a danger to the health or safety of any resident cared for by the facility.

Section 75-03-41-01 is created to provide definitions of "agency", "client", "continued foster care services", "employee", "licensee", "nonemployee", "placement and care agency",

“supervised independent living program”, and “supervised independent living setting” relating to supervised independent living.

Section 75-03-41-02 is created to detail the application procedure for a supervised independent living program license, as well as the renewal process. The section also specifies that a license is in force for a maximum period of two years and is valid only to the agency providing the program oversight for the number of clients indicated on the license.

Section 75-03-41-03 is created to provide that the Department may deny, suspend, or revoke an application or license upon finding that the applicant or agency is not in compliance with licensure requirements, or has made a material misrepresentation to the Department regarding its operations. The section also provides for an appeal to the Department by an applicant or agency whose license has been denied or revoked.

Section 75-03-41-04 is created to outline the use of correction orders by the Department to correct violations at an agency.

Section 75-03-41-05 is created to require that an agency shall have a policy to ensure proper and efficient procedure in the event the agency closes.

Section 75-03-41-06 is created to outline the components and requirements of the governing body.

Section 75-03-41-07 is created to require that during the initial licensure process, the applicant shall demonstrate that it has sufficient income to operate its program and also requires the agency to demonstrate ongoing financial stability during re-licensure. The section also requires that the agency shall annually

submit a budget to the Department and that the agency shall maintain liability insurance.

Section 75-03-41-08 is created to require that each agency shall have a written disaster plan to accommodate emergencies. The section also specifies what details must be included in the disaster plan.

Section 75-03-41-09 is created to provide confidentiality protections for agency records concerning residents that have received, are receiving, or seek to receive agency services.

Section 75-03-41-10 is created to require that each agency shall have a performance and quality improvement plan which advances efficient, effective service delivery, effective management practices, and the achievement of strategic and treatment program goals and outcomes.

Section 75-03-41-11 is created to require the agency to employ staff with sufficient qualifications to perform the necessary functions to operate the programs. The section also requires the agency to comply with minimum employee-to-client ratios.

Section 75-03-41-12 is created to state that the agency shall clearly define the responsibilities of the program administrator. The section also outlines the qualifications and duties of the program administrator.

Section 75-03-41-13 is created to state that the agency shall clearly define the responsibilities of a transition coordinator. The section also identifies the qualifications and duties of a transition coordinator and states that the agency shall have sufficient transition coordinators employed to meet minimum employee-to-client ratios under this chapter.

Section 75-03-41-14 is created to provide requirements regarding nonemployees that work directly with clients, including requiring a fingerprint based criminal background check and child abuse and neglect index check; detailing policy and procedure specific to nonemployees; and requiring nonemployees to be at least two years older than the client.

Section 75-03-41-15 is created to require employee professional development for employees in contact with residents.

Section 75-03-41-16 is created to establish what documents must be included within the individual personnel files of all employees and nonemployees providing services at the agency.

Section 75-03-41-17 is created to require a fingerprint based criminal background check and child abuse and neglect index check for prospective employees and nonemployees with direct contact with clients; to provide for a subsequent background check if the agency or Department determines such a check is needed; and to require the agency to perform an annual child abuse and neglect index check on every employee and nonemployee.

Section 75-03-41-18 is created to provide language regarding criminal history background checks and criminal convictions.

Section 75-03-41-19 is created to require that all agency employees and nonemployees shall certify to having read state law on reporting of suspected child abuse and neglect, and to require the agency to have written policies and procedures requiring employees and nonemployees to report cases of suspected child abuse or neglect.

Section 75-03-41-20 is created to specify what type of

supervised independent living settings may be provided by the agency. The section also provides that the setting must be in compliance with all applicable provisions of state and local laws, ordinances, rules, and regulations concerning health, safety, and nondiscrimination for housing.

Section 75-03-41-21 is created to provide client eligibility requirements for acceptance into the supervised independent living program.

Section 75-03-41-22 is created to provide that an agency shall define in writing, policy and procedures specific to acceptance of a client into the program, including the creation of a program acceptance committee. The section also provides that each client shall receive orientation upon acceptance into the supervised independent living program.

Section 75-03-41-23 is created to outline policy requirements, the program and services which are to be provided by the agency, and expectations of the agency. The section also outlines service components which may be provided to clients, including academic support, budget financial management, career preparation, and other support.

Section 75-03-41-24 is created to require that each client must have their transition plan developed by the agency within thirty days of admission, and that the plan must be developed in collaboration with the client, transition coordinator, and if applicable, the child and family team. The section identifies what documentation must be included in the transition plan.

Section 75-03-41-25 is created to outline client rights and the responsibilities of agency in preserving client rights.

Section 75-03-41-26 is created to outline what records must be included within the client file, and to clarify that the records are confidential, unless permitted or required by law or regulation.

Section 75-03-41-27 is created to require that the agency have written policy for incident and sentinel event reporting.

Section 75-03-41-28 is created to provide that, upon written application and good cause shown, Department may grant a variance regarding a specific provision of this chapter upon such terms as the Department may prescribe, except no variance may permit or authorize a danger to the health or safety of any resident cared for by the agency.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The rule amendments are not 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 less than \$50,000.
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:

Jonathan Alm
Legal Advisory Unit
North Dakota Department of Human Services
August 30, 2019