

CHAPTER 75-03-40
LICENSING OF QUALIFIED RESIDENTIAL TREATMENT PROGRAM PROVIDERS

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SECTION 1. Subsection 7 of section 75-03-40-01 is amended as follows:

7. "Contracted service providers" means ~~a person~~ an individual or entity under contract or agreement with the facility to provide services and supports to residents.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-00.1, 50-11-03

SECTION 2. Section 75-03-40-03 is amended as follows:

75-03-40-03. Application for license.

1. Applicants must be accredited and in good standing with one of the department-approved national accreditation bodies.
2. A person may not apply for a license to operate a facility under this chapter until the department has reviewed the need for the additional residential placement resources. To enable the department to make a determination of need for a new qualified residential treatment program facility, the potential applicant shall submit an initial request for application, including the following documentation and information to the department:
 - a. A detailed plan for the operation of the proposed qualified residential treatment program which includes:
 - (1) The number, sex, and age range of the residents to be served;
 - (2) The needs or disabilities of residents to be served;
 - (3) The employee staffing, including a list of full-time and part-time positions by job titles and description;
 - (4) A description of the proposed program and treatment goals;

- (5) A proposed budget; and
 - (6) The location of the facility and a drawing of the layout of the physical plant.
 - b. A detailed written description of the methodology and findings that document the reasons why the unserved children under subsection 2 may not be served satisfactorily in a less restrictive setting.
 - c. Data to support that existing qualified residential treatment program placement resources are not adequate to meet the needs of children who require the type or types of care, are North Dakota residents, and require the treatment services the applicant proposes to provide.
3. Upon receipt of initial request for application, the department shall:
 - a. Review the potential applicant's information and may ask for additional materials or information necessary for evaluation of need purposes;
 - b. Respond in writing within ninety days of receipt of all required information from the potential applicant;
 - c. Send written notice of determination of need. The notice must state the specific reason for the determination. If the department determines there is need for additional qualified residential treatment program beds, the notice must be accompanied by an authorization for the person to apply for a license to operate a new qualified residential treatment program; and
 - d. Inform the potential applicant of what is required to move forward with the application process.
4. An application for a facility license must be submitted to the department annually in the form and manner prescribed by the department, which shall initiate an annual onsite visit.
5. The applicant shall carry general comprehensive liability insurance.
6. For purposes of time limits for approval or denial, an application is received by the department when all required information and documents have been received by the department. The department shall notify an applicant if an application is incomplete.

7. The department may declare an application withdrawn if an applicant fails to submit all required documentation within sixty days of notification.
- ~~8. An applicant currently holding a residential child care facilities license is exempt from compliance with subsection 2.~~

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-01, 50-11-02, 50-11-03

SECTION 3. Section 75-03-40-10 is amended as follows:

75-03-40-10. Governance.

1. Each facility shall have a governing body responsible for the operation, policies, activities, practice, and overall operations of the facility. The governing body shall:
 - a. Be composed of at least five members. A list of the names and contact information of members of the governing body must be maintained and submitted to the department annually. Each board member annually shall disclose conflicts of interest. Members of the board may not be family or have conflicts of interest with the facility administrator or employees with budget or accounting duties;
 - b. Meet at least every six months;
 - c. Maintain records of the governing body's meetings;
 - d. Develop and review policies for member selection and rotation;
 - e. Ensure each member understands the facility operation and program goals;
 - f. Ensure the facility is funded, housed, staffed, and equipped in a manner required for the provision of services;
 - g. Provide the most recent fiscal year-end financial records to the department for payment purposes, upon request;
 - h. Ensure the facility has an active strategic plan with a schedule to review annually;
 - i. Employ a qualified facility administrator and delegate responsibility to that facility administrator for the administration of the facility;

- j. Evaluate the performance of the facility administrator at least annually;
 - k. Adopt a written statement of the purpose and philosophy of the facility; and
 - l. Adopt written policies for the facility regarding administration, personnel, buildings, grounds, and program services. Personnel policies for the recruitment and retention of employees necessary to operate the facility must indicate expectations of ~~employees and nonemployees~~personnel, detail job descriptions for each position, and ensure a process to review policies and procedures with employee participation at least every three years.
2. All statements and policies required by this chapter must be in writing to demonstrate the intent of the standards are integrated into facility practice. The facility policy must be up to date.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 4. Section 75-03-40-11 is amended as follows:

75-03-40-11. Disaster plan.

A facility shall have a written disaster plan to accommodate emergencies. The disaster plan must allow the department or custodial agency to identify, locate, and ensure continuity of services to residents who are displaced or adversely affected by a disaster. The disaster plan must address how to accommodate accessibility needs for all residents and ~~staff~~personnel. The facility shall ensure the disaster plan specifies:

- 1. Where ~~employees, nonemployees,~~personnel and residents would go in an evacuation, including one location in the nearby area and one location out of the area;
- 2. Contact information inclusive of phone numbers and electronic mail addresses for facility administration;
- 3. A list of items the facility will take if evacuated, including any demographic and emergency contact information for each resident and medication and medical equipment to meet the needs of residents;
- 4. The process the facility will use to inform the department and each resident's custodian and parent or guardian if the resident is displaced or adversely affected by a disaster;

5. Employee training on the disaster plan must detail procedures for meeting disaster emergencies. The review of the disaster plan must occur with employees on an annual basis to ensure it is current, accurate, and employees understand their role. The facility shall document the annual review and provide the documentation to the department upon request;
6. Resident training on the disaster plan ensuring awareness of all emergency and evacuation procedures upon admission to the facility. These procedures must be reviewed upon intake into the facility and every quarter. Resident training must include the performance and documentation of fire evacuation drills;
7. The facility has telephones centrally located and readily available for use in each living unit of the facility. Emergency numbers must be written and posted by each telephone;
8. There must be at least two independent exits from every floor. The exits must be located so that residents can exit from each floor in two separate directions, without going through a furnace room, storage room, or other hazardous area; and
9. Flashlights must be available for emergency purposes.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC ~~50-1150-11-03~~

Law Implemented: NDCC ~~50-1150-11-03~~

SECTION 5. Section 75-03-40-13 is amended as follows:

75-03-40-13. Personnel files.

1. The facility shall maintain an individual file on each employee. The file must include:
 - a. File inventory detailing first and last date of employment, reason employment ended, training totals per year, and performance evaluation dates-~~due~~;
 - b. The application for employment including a record of previous employment;
 - c. A job description specifying the employee's roles and responsibilities;
 - d. A statement signed by the employee acknowledging the confidentiality policy;

- e. Documentation of information obtained from an employee's references if previously employed at another residential facility;
 - f. Annual performance evaluations;
 - g. Professional development and training records consisting of the name of presenter, date of presentation, topic of presentation, and length of presentation. The following training must be completed and required training certificates placed in the employee file:
 - (1) First-aid training;
 - (2) Cardiopulmonary resuscitation and automated external defibrillator; and
 - (3) Nonviolent crisis intervention;
 - h. Evidence of the employee having read and received a copy of the law and facility procedures requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, initially upon hire and annually thereafter;
 - i. Results of fingerprint-based criminal background checks, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
 - j. Any other evaluation or background check deemed necessary by the facility administrator of the facility; ~~and~~
 - k. Verification of any required license or qualification for the position or tasks assigned to the employee; and
 - l. A copy of a valid driver's license, if applicable.
2. The facility shall maintain an individual file on each nonemployee. The file must include:
- a. Personal identification information;
 - b. Results of fingerprint-based criminal background checks, motor vehicle operator's license record, as applicable, and child abuse or neglect record;
 - c. Description of duties;

- d. Orientation and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation; ~~and~~
 - e. Evidence of the nonemployee having read and received a copy of the law and facility procedures requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, initially upon hire and annually thereafter; and
 - f. A statement signed by the nonemployee acknowledging the confidentiality policy.
3. The facility shall adopt a policy regarding the retention of ~~employee and nonemployee~~ personnel files.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 6. Section 75-03-40-14 is amended as follows:

75-03-40-14. Facility administrator.

The governing body of the facility shall designate a facility administrator for the facility.

- 1. The governing body of the facility shall clearly define, in writing, the responsibilities of the facility administrator. If the facility is licensed for ten or more residents, the facility shall employ a full-time onsite facility administrator. A facility may not employ a facility administrator less than half-time.
- 2. The facility administrator must have a bachelor's degree in business or public administration, social work, behavioral science, or a human services field and have four years of related work experience in administration ~~or must be an individual otherwise qualified and employed as a residential child care facility administrator prior to October 1, 2019.~~
- 3. The facility administrator shall assure adequate supervision is provided to all ~~employees and nonemployees~~ personnel working or placed in the facility.
- 4. The facility administrator shall designate and provide evidence of the designation in the employee's file, at least one employee authorized to apply the reasonable and prudent parent standard. The designated employee shall receive training on how to use and apply the reasonable and prudent parent standard.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 7. Section 75-03-40-15 is amended as follows:

75-03-40-15. Clinical director.

1. The facility shall clearly define, in writing, the responsibilities of the clinical director. The duties of the clinical director must be devoted to the provision of clinical services.
2. The clinical director must have a master's degree in a behavioral science field and must be licensed as required by the field of practice, with three years of work experience in a clinical setting, have experience working with children in need of treatment, and provide evidence of supervisory knowledge and skills, ~~or must be an individual otherwise qualified and employed as a residential child care facility program director prior to October 1, 2019.~~

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 8. Section 75-03-40-16 is amended as follows:

75-03-40-16. Treatment coordinator.

1. The facility clearly shall define, in writing, the responsibilities of the treatment coordinator employees. The duties of a treatment coordinator employee must be devoted to the coordination of treatment services and overall case management of treatment planning for residents. A treatment coordinator employee must have achieved the competencies necessary to implement an individualized care plan for each resident.
2. The treatment coordinator employee must have a bachelor's degree in a behavioral science field and must be licensed as required by the field of practice, and two years previous paid or unpaid work experience with children or families or be an individual otherwise qualified ~~and employed as a residential child care facility social service employee prior to October 1, 2019.~~
3. A facility shall have sufficient treatment coordinator employees employed to meet minimum employee-to-resident ratios required by this chapter.

4. A treatment coordinator employee ~~is~~ may be responsible for the supervision of other ~~employees or nonemployees~~ personnel and must be allowed reasonable time to perform supervision tasks.
5. The professional development and training records must document the treatment coordinator employee has had appropriate training to coordinate treatment services and trauma informed care.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 9. Section 75-03-40-17 is amended as follows:

75-03-40-17. Direct care employees.

1. The facility clearly shall define, in writing, the duties and responsibilities of the direct care employees.
2. All direct care employees must:
 - a. Be at least twenty-one years of age;
 - b. Have a high school diploma or equivalent; or
 - c. Have at least one year of experience working with children or families. If a prospective direct care employee does not have one year of experience working with children or families, the facility may choose to hire, but then shall provide shadowing and supervision to the direct care employee for up to one year or until the direct care employee has successfully completed all required training noted in section 75-03-40-29; ~~or~~
 - d. ~~An individual otherwise qualified and employed as a residential child care facility direct care employee prior to October 1, 2019.~~
3. ~~A direct care employee shall complete mental health technician certification.~~
4. ~~A direct care employee supervising other direct care employees must have a bachelor's degree in a behavioral science field or two years~~ one year previous work experience with children or families.
5. 4. A facility always shall have direct care employees working to meet the minimum employee-to-resident ratios required by this chapter.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 10. Section 75-03-40-19 is amended as follows:

75-03-40-19. Family engagement specialist.

1. The facility clearly shall define, in writing, the responsibilities of family engagement specialists. The duties of the family engagement specialist must be devoted to the provision of family engagement and aftercare service supports to best meet the needs of the resident and the resident's family custodian, parent, or guardian. The family engagement specialist shall maintain ongoing contact with the resident's family custodian, parent, or guardian as a liaison to the resident's treatment in the facility and postdischarge aftercare planning. Tasks may include:
 - a. Communicating with the resident's family custodian, parent, or guardian throughout the week while placed in the facility, in efforts to update the family resident's custodian, parent, or guardian on the resident's day, treatment progress, strengths, and challenges;
 - b. Offering support to the treatment coordinator ~~employee~~ and the resident's treatment plan planning, while placed in the facility; and
 - c. Providing ~~or~~ and coordinating aftercare services and supports which may include making referrals and scheduling appointments;
 - d. Preparing the aftercare plan;
 - e. Communicating with the aftercare client and custodian, parent, or guardian at least twice per month or more often as needed;
 - f. Planning for crisis management and support to the aftercare client and their family; and
 - g. Engaging with community providers to ensure continuity of services documented in the aftercare plan.
2. A family engagement specialist must have achieved the competencies necessary to implement family engagement strategies while the resident is in placement and coordinate an aftercare plan for no less than six months postdischarge.
3. The family engagement specialists must have a bachelor's degree ~~in a behavioral science field and must be licensed as required by the field of practice, and two years previous paid or unpaid work experience with children or families or be an individual otherwise qualified and employed as a residential child care facility social service employee prior to October 1,~~

~~2019. A higher degree may substitute for years of experience or the prospective family engagement specialist shall achieve the certification in either peer or family support or a high school diploma and have at least four years of experience working with children and families and have the competencies required by the facility to engage with children and families.~~

4. A facility shall have sufficient family engagement specialists to meet the needs of the residents and ~~family~~their parent or guardian during placement and for no less than six months postdischarge.
5. The professional development and training records must document the family engagement specialist has had appropriate training to coordinate treatment services, including family engagement and trauma informed treatment.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 11. Section 75-03-40-22 is amended as follows:

75-03-40-22. Personnel policies.

The facility shall identify to the department all ~~employee and nonemployee~~personnel positions, using the titles and duties described in this chapter. For purposes of internal operations, a facility may use any definition or title for its positions. All ~~employees and nonemployees~~personnel must be capable of performing assigned duties. The facility shall have clearly written personnel policies for employees and when applicable, nonemployees. The facility shall make the policies available to ~~each employee and nonemployee~~all personnel. The policies must include:

1. An annual professional training and development plan for all positions;
2. Procedures for reporting suspected child abuse and neglect;
3. Procedures detailing employee supervision and the number of employees one supervisor can supervise. The facility shall require and document annual training for supervisors to maintain and improve competence in the supervisory role and in facility treatment practices;
4. Procedures for employee annual written evaluation;
5. Procedures for ~~employee and nonemployee~~personnel disciplinary actions and terminations;
6. Procedures for storing personal belongings which may include car keys, cell phones, and ~~employee or nonemployee~~personnel medication while on duty;

7. Procedures for personnel grievances;
8. Each facility shall implement policy and procedure to address:
 - a. Zero tolerance policies, which must include zero tolerance for sexual abuse and sexual harassment by ~~employees~~—and ~~nonemployees~~personnel to others in the facility;
 - b. Nondiscrimination against ~~an employee or nonemployee~~all personnel; and
 - c. Steps taken when ~~an employee or nonemployee~~personnel violates policy, procedures, or licensing standards that affects the mental or physical well-being of a resident; and
9. A plan for review of the personnel policies and practices with employee participation at least once every three years, or more often as necessary. The facility shall document policy reviews, revisions, and employee participants in writing.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 12. Section 75-03-40-23 is amended as follows:

75-03-40-23. Confidentiality.

1. For purposes of this section, "persons who have a definite interest in the well-being of the residents" include:
 - a. The resident's custodian, parent, or guardian, except to the extent the parental rights have been terminated or limited by court order;
 - b. The referring agency that placed a resident in the facility; and
 - c. An individual or entity identified as a provider of services, as determined by the department, located in the home community of the ~~resident's family~~resident, for the purposes of reunification.
2. Except as otherwise provided in this section, facility records concerning residents who have received, are receiving, or seek to receive facility services must be safeguarded and may be made available only:
 - a. To ~~employees and nonemployees~~personnel of the facility, to the extent reasonably necessary for the performance of their duties;

- b. To persons authorized by a custodian, parent, or guardian who may lawfully review a resident's records, to review or receive copies of that resident's records;
 - c. In a judicial proceeding;
 - d. As required by law;
 - e. To officers of the law or other legally constituted boards and agencies; or
 - e.f. To persons who have a definite interest in the well-being of the residents concerned, who are in a position to serve their interests, and who need to know the contents of the records to assure their well-being and interests.
3. A facility may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any current resident or former resident receiving aftercare services or the family of the resident, without first securing the written consent of the custodian and parent or guardian of the resident, or the written consent of an adult who was a former resident of the facility. The facility shall:
- a. Ensure the written consent is informative, including full disclosure of how the image or information will be used, including any future use, and specifically must identify the image or information that may be disclosed by reference to dates, locations, and other event-specific information;
 - b. Inform the ~~person~~individual signing that the individual is free to either grant or refuse to grant consent;
 - c. Provide a seven-day waiting period during which the consent may be withdrawn by the signing party; and
 - d. Ensure the consent is time-limited. The written consent must apply to an event that occurs no later than one year from the date the consent was signed.
4. A facility shall disclose its records to the department as requested.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-06-15, 50-11-02, 50-11-05

SECTION 13. Section 75-03-40-24 is amended as follows:

75-03-40-24. Child abuse and neglect.

1. Upon hire and annually thereafter, all ~~employees~~—and ~~nonemployees~~personnel shall certify having read the law requiring the reporting of suspected child abuse and neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the facility's written child abuse and neglect procedures.
2. Each facility shall adopt written policies and procedures requiring ~~employees and nonemployees~~personnel to report cases of suspected child abuse or neglect. The procedures must include the following statement: "All ~~employees and nonemployees~~personnel will comply with North Dakota Century Code Chapter 50-25.1, child abuse and neglect. Therefore, it is the policy of this facility that if any ~~employee or nonemployee~~personnel who knows or reasonably suspects that a current resident or former resident receiving aftercare services whose health or welfare has been, or appears to have been, harmed as a result of abuse or neglect, that ~~employee or nonemployee~~personnel immediately shall report this information to the department. Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment or placement of ~~nonemployee~~personnel and referral of the ~~employee~~—or ~~nonemployee~~personnel to the office of the state's attorney for investigation of possible criminal violation."
3. The facility's policies and procedures must describe:
 - a. To whom a report is made;
 - b. When a report must be made;
 - c. The contents of the report;
 - d. The responsibility of each individual in the reporting chain;
 - e. The status and discipline of an ~~employee or nonemployee~~personnel who fails to report suspected child abuse or neglect; and
 - f. The status of the ~~employee or nonemployee~~personnel while the report is being assessed; if they are the subject of the report.
4. The facility shall cooperate fully with the department throughout the course of any assessment of any allegation of child abuse or neglect made concerning care furnished to a resident. The facility, at a minimum, shall provide the assessors with all documents and records available to the

facility and reasonably relevant to the assessment and permit confidential interviews with ~~employees, nonemployees,~~personnel and residents. Internal facility interviews and investigations are not permitted to occur concurrent with a department assessment or law enforcement investigation.

5. In the case of an indicated determination, the facility shall notify the department licensing administrator, in writing, of the corrective action the facility has taken, or plans to take, to comply with any resulting recommendations from the state child protection team. The facility shall make assurances that revised facility practice will reduce the risk of the incident reoccurring. The facility shall respond within thirty days of receiving written notification of the determination.
6. A facility shall establish written policies specific to how the facility will proceed when a current or former ~~employee or nonemployee~~personnel is known to be:
 - a. Involved in any capacity in a reported incident of institutional child abuse or neglect;
 - b. Involved in any capacity in a reported incident of suspected child abuse or neglect; or
 - c. The subject in a child abuse or neglect report that occurred outside of the facility, where the subject has been confirmed to have abused or neglected a child.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-25.1-03

SECTION 14. Section 75-03-40-25 is amended as follows:

75-03-40-25. ~~Criminal~~Background checks and criminal conviction - Effect on operation of facility or employment by facility.

1. The department requires an initial fingerprint-based criminal background check for all personnel with direct contact with residents. Subsequent fingerprint-based background checks are not required for personnel maintaining continuous employment at the facility, unless the department determines a need exists to conduct a subsequent investigation.
2. The department requires a child abuse and neglect index check as part of the initial fingerprint-based background check. An annual child abuse and neglect index check must be completed and placed in the personnel file.

3. A facility administrator may not be, and a facility may not employ or place, in any capacity that involves or permits contact between ~~an employee or nonemployee personnel~~ and any resident cared for by the facility, an individual who is 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~~ 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or 19-03.1, Uniform Controlled Substance Act, if class A, B, or C felony under that chapter; 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; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; ~~12.1-20-12.3, sexual extortion;~~ 12.1-22-01, robbery; if a class A or B felony under section 2 of that section; ~~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; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of child; or 14-09-22.1, neglect of 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 the individual has not been sufficiently rehabilitated.
 - (1) The department may 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 subsequent charge or conviction,~~ for all other criminal convictions 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 conviction, is prima facie evidence of sufficient rehabilitation.

- 2.4. The department has determined the offenses enumerated in subdivisions a and b of subsection 4~~3~~ have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of care to children.
- 3.5. In the case of ~~a misdemeanor simple assault~~offenses described in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-22-01, robbery, if a class C felony; or 12.1-31-07.1, exploitation of an eligible adult – penalty, if a class B felony under subdivision c of subsection 2 of that section or a class B felony under subdivision d of subsection 2 of that section; or chapter 19-03.1, Uniform Controlled Substance Act, if a class A, B, or C felony; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine 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 charge or conviction for all other criminal convictions~~. The department may not be compelled to make such determination.
- 4.6. 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.
- 5.7. 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 verified by source documents;
 - b. Acknowledged by the individual; or
 - c. Discovered by the facility, authorized agent, or department as a result of a background check.
- 6.8. The department has authority to request a fingerprint-based criminal background check whenever personnel of the facility are known to have been involved in, charged with, or convicted of an offense.
9. Review of fingerprint-based criminal background check results.
- a. If an individual disputes the accuracy or completeness of the information contained in the fingerprint-based criminal background 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 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.

c. 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.

d. 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.

e. The final decision of the review panel may not be appealed.

10. The facility shall make an offer of employment to an employee conditional upon the individual's consent to complete required background checks. While awaiting the results of the required background check, the facility may choose to provide training and orientation to an employee. However, until the completed and approved required background check results are placed in the employee file, the employee may only have supervised interaction with residents.

11. The department may excuse personnel from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If personnel are excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the personnel lived during the eleven years preceding the signed authorization for the background check.

12. A facility shall establish written policies and engage in practices that conform to those policies to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.

~~7-13.~~ A facility shall establish written policies specific to how the facility shall proceed if ~~a current employee or nonemployee~~ personnel is known to have been found guilty of, pled guilty to, or pled no contest to an offense.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-06.8

SECTION 15. Section 75-03-40-26 is repealed:

75-03-40-26. Background checks.

[Repealed effective April 1, 2024]

- ~~1. The facility shall require a fingerprint-based criminal background check and child abuse and neglect index check be completed for each employee and nonemployee.~~
- ~~2. The facility shall make an offer of employment to an employee or an offer of placement to a nonemployee conditional upon the individual's consent to complete required background checks. While awaiting the results of the required background check, a facility may choose to provide training and orientation to an employee or nonemployee. However, until the approved background check results are placed in the employee or nonemployee file, the employee or nonemployee only may have supervised interaction with residents.~~
- ~~3. The facility shall submit proper paperwork for the department to perform an annual child abuse and neglect index check on every employee and nonemployee. The facility shall place a copy of the results in each employee or nonemployee file.~~
- ~~4. 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. The facility previously licensed as a residential child care facility until September 30, 2019, may use the current employee's or nonemployee's fingerprint-based criminal background check results in the personnel file previously completed by the residential child care facility to comply with this section.~~

History: Effective October 1, 2019.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-06.8

SECTION 16. Section 75-03-40-27 is amended as follows:

75-03-40-27. Personnel health requirements.

1. All ~~employees and nonemployees~~personnel must be capable of performing assigned tasks.

2. All employees shall undergo an initial health screening, performed by or under the supervision of a physician not more than one year prior to or thirty days after employment to verify good physical health to work in the facility. The professional performing the screening shall sign a report indicating the presence of any health condition that would create a hazard to others in the facility.
3. All ~~employees and nonemployees~~personnel shall undergo an initial test or screening for tuberculosis, within thirty days after employment or placement, and test results placed in ~~employee and nonemployee~~personnel files within thirty days of employment.
4. Unless effective measures are taken to prevent transmission, each facility shall develop a policy addressing that an ~~employee or nonemployee~~personnel suffering from a serious communicable disease must be isolated from other ~~employees, nonemployees,~~personnel and residents who have not been infected.
5. The facility shall develop a policy regarding health requirements for ~~employees and nonemployees~~personnel, including how often health screenings and tuberculosis testing will be required by the facility following the initial screening requirements.
6. The facility shall develop a policy requiring all ~~employees and nonemployees~~personnel to have the ability to carry out their assigned functions and duties. ~~Employees or nonemployees~~Personnel whose condition gives reasonable concern for safety of residents may not be in contact with residents in placement.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 17. Section 75-03-40-28 is amended as follows:

75-03-40-28. Minimum employee requirements.

1. For purposes of this section:
 - a. "Reside" means to sleep and keep personal belongings; and
 - b. "Structure" means a building that is or may be free standing. The existence of a walkway, tunnel, or other connecting device on, above, or below ground is not effective to make one structure from two or more component structures.

2. Each facility shall adopt a policy specific to employee coverage for facility operations, including holidays, weekends, on-call clinical team rotations, daytime and overnight hours. Policy must address:
 - a. Designated employees required for the facility on-call clinical team;
 - b. Number of qualified employees onsite to sufficiently meet the needs of residents and respond to emergency situations;
 - c. Evaluation of the number of employees necessary to meet the age, developmental level, length of treatment, and the service needs of the resident population;
 - d. Ability to ensure the safety of all residents and allow adequate space to properly separate residents based on the needs of the facility populations served;
 - e. Ability to schedule same gender or cross gender supervision if indicated by resident treatment needs; and
 - e.f. Employees hired specific to the onsite educational program may not be counted as direct care employees, treatment coordinator employee, family engagement specialist, facility administrator, or a clinical director during any time educational services are provided.
3. Each facility that operates more than one structure in which residents reside shall count the total number of residents admitted to the facility, residing in all structures collectively for purposes of determining the required number of clinical and treatment employees to meet employee-to-resident ratios.
4. Each facility shall comply with the following minimum employee-to-resident ratio requirements:
 - a. A rotating on-call clinical team must be available twenty-four hours a day, seven days a week to meet the needs of resident emergency and crisis situations. The on-call clinical team must include at a minimum one nurse and one clinical employee;
 - b. No less than one half-time facility administrator for a facility providing treatment for up to nine residents;
 - c. No less than one full-time facility administrator for a facility providing treatment for ten or more residents;
 - d. No less than one full-time clinical director;

- e. No less than one full-time nurse;
 - f. No less than one full-time treatment coordinator employee for each ten residents; and
 - g. No less than one full-time family engagement specialist for each twenty residents or aftercare clients.
5. During awake hours each facility shall meet the standards of the facility's accrediting body or the ratios set forth in this subsection, if the ratios set forth in this subsection are greater than the employee-to-resident ratios set by the accrediting body.
- a. Two employees who are qualified to provide direct care for one to twelve residents; and
 - b. One additional employee who is qualified to provide direct care for every one through six additional ~~children~~residents thereafter.
6. During overnight hours each facility shall have:
- a. Awake employees at all times;
 - b. Employee-to-resident ratio at a rate not less than:
 - (1) Two employees who are qualified to provide direct care for one to twenty residents; and
 - (2) One additional employee who is qualified to provide direct care for every one through ten additional ~~children~~residents thereafter; and
 - c. A policy that includes a requirement that an employee will check on residents during overnight hours at a minimum of every fifteen minutes, and more frequently if the acuity of the resident demands greater supervision. The overnight checks must be:
 - (1) Documented and available for review; and
 - (2) Conducted in the least invasive manner to not disrupt the residents.
7. The facility shall notify the department, in writing, if the minimum employee-to-resident ratios are not met based on position vacancies. An interim plan to cover the employee duties must be approved by the department.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

SECTION 18. Section 75-03-40-29 is amended as follows:

75-03-40-29. Employee professional development.

1. All employees in contact with residents shall receive at least twenty hours of training per year, with evidence of completion in the employee file.
2. Required trainings to prepare employees to meet the needs of residents served by the facility include:
 - a. Certified first aid;
 - b. Certified cardiopulmonary resuscitation and automated external defibrillator training;
 - c. Certified nonviolent crisis intervention training;
 - d. Institutional child abuse and neglect training;
 - e. Facility trauma informed care training;
 - f. Child abuse and neglect mandated reporter training;
 - g. Children's emotional and developmental needs; and
 - h. Suicide prevention training, including identification of signs and facility response measures.
3. A certified instructor shall provide training for nonviolent crisis intervention, first aid, cardiopulmonary resuscitation, and automated external defibrillator. ~~A formal certificate must be provided to each employee demonstrating their competencies in the specific training area. A copy of the certificate must be placed in the employee file.~~ Until a new employee has completed these required trainings, the facility administrator shall ensure that another employee, current in the required trainings, is scheduled to work on the same shift as the new employee pending training.
4. Prior to a new employee working independently with residents, the facility shall provide orientation training to the employee covering all of the following areas, with evidence of completion present in the employee file:
 - a. Facility philosophy and program goals;
 - b. Administrative procedures, policy, and protocols;

- c. Personnel policies;
- d. Programs and services offered onsite to residents;
- e. Residents' emotional and physical needs;
- f. Facility daily routine, activities, transportation, treatment group schedules, and meals;
- g. Expected employee conduct toward residents;
- h. Expected resident conduct while residing onsite;
- i. Facility's behavior management, including de-escalation techniques;
- j. Overview of trauma and facility trauma informed treatment;
- k. Protocol for observing and reporting resident behavior;
- l. Resident rights and grievance procedures;
- m. Protocol for identifying and reporting of child abuse and neglect;
- n. Suicide prevention, including identifying signs and facility response;
- o. Disaster plan;
- p. Resident search procedures and policies;
- q. Confidentiality standards;
- r. Procedures for reporting a runaway;
- s. Fire safety and evacuation procedures;
- t. Protocol for emergency medical procedures;
- u. Protocol for facility security measures and access to visitors; and
- v. Discuss interest in becoming certified for medication distribution.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 19. Subsection 3 of section 75-03-40-30 is amended as follows:

3. Resident medical information, including:
 - a. Consent for medical care. The facility has obtained written, signed informed consent that gives the facility, resident's physician, or health care consultant the following authority to:
 - (1) Provide or order routine medical services and procedures;
 - (2) Delegate and supervise administration of medications by authorized employees and for such employees to handle, provide the medication to the resident, and provide monitoring of resident self-administration;
 - (3) Obtain medical information, as needed, on the resident; and
 - (4) Provide or obtain an order for medical services and procedures when there is a life-threatening situation, emergency medical procedures, including surgery, when it is not possible to reach the ~~person~~individual or authority authorized immediately to give signed written specific informed consent;
 - b. Documentation about any special nutritional or dietary needs identified;
 - c. Documentation of health history;
 - d. Documentation of any medical treatments received while residing in the facility, including:
 - (1) Dates and ~~person~~individual administering medical treatment;
 - (2) Immunizations;
 - (3) Laboratory tests;
 - (4) Routine and emergency health care examinations;
 - (5) Dental examinations and treatment; and
 - (6) Eye examinations and treatment;
 - e. Medication administration records; and
 - f. A copy of the treatment plan prepared by the facility.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-11-05

SECTION 20. Subsection 1 of section 75-03-40-32 is amended as follows:

1. Eligibility. Residents eligible for respite care offered by an approved facility include a ~~foster child~~ in foster care in public custody and a former qualified residential treatment program resident engaged in the six-month aftercare.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 21. Section 75-03-40-33 is amended as follows:

75-03-40-33. Admissions and assessment.

1. Admissions policies and procedures. A facility shall have written resident admission policies and procedures that describe the primary treatment offered onsite, range of presenting behaviors the facility shall treat, and procedures for admitting a resident.
2. Admissions and discharge committee. A facility shall have an admissions and discharge committee with written policy specific to employees on the committee and the timeliness the committee has in responding to referrals. The committee shall meet on at least a weekly basis.
3. Admission determination. The admissions committee shall complete a written, dated, and signed admission determination on a prospective resident which includes a preadmission review and identification of the prospective resident's primary presenting needs. The facility shall provide the admission determination to the referral within seven days of receipt of the completed application. Referral may be completed by:
 - a. A public agency, if a prospective resident is in foster care and a public agency is granted custody and given full placement authority pursuant to law or court order; or
 - b. A parent or guardian, if a prospective resident is preapproved by the department as a private placement.
4. Admission conditions. A facility may admit a prospective resident, as determined by the admission determination and the following conditions are met:

- a. Qualified individual – Level of care assessment.
 - (1) Completed assessment. The facility has received documentation from the department-approved qualified individual granting approval for the resident to be admitted to a qualified residential treatment program based on the North Dakota level of care assessment; or
 - (2) Emergency placement. A resident may be admitted to the facility for an emergency placement for a thirty-day level of care assessment period. Emergency placements denied for continued placement may not exceed thirty days from admission. For residents placed in the facility during the thirty-day level of care assessment period, the facility shall allow access to the qualified individual and collaborate in the completion of the required level of care assessment;
 - b. Juvenile court approval. For ~~foster-children~~ in foster care, custodial case managers must receive confirmation from the juvenile court approving the qualified residential treatment program placement within sixty days of the resident's date of entry into the facility. A facility is not required to have a copy of the confirmation on file;
 - c. Interstate placements. In accepting a prospective resident from outside the state of North Dakota, the facility shall receive prior written approval under the interstate compact on the placement of children and meet all requirements of section 75-03-40-34;
 - d. Nondiscrimination against a resident; and
 - e. All documentation required for the resident record, including medical consent, medical history, family custodian, parent or guardian contact information, family history, placement care agreement, and financial responsibility.
5. Orientation. Upon admissions, each resident shall receive orientation to facility living. An employee shall:
- a. Orient the new resident and the custodian and parent or guardian to the facility program;
 - b. Help the new resident to adjust to the effects of ~~separation from family and to the~~ residential placement; and
 - c. Provide the new resident and the custodian and parent or guardian copies of the facility rules, including rules on visiting, expected

behavior and consequences for rule infractions, resident rights, and grievance and complaint procedures, with explanations of the documents.

6. Initial screenings must be completed immediately or no later than twenty-four hours from admission. A facility shall complete for each resident a:
 - a. Suicide risk screening;
 - b. Mental health screening; and
 - c. Health screening completed by the facility nurse. The health screening may include documenting height, weight, and identification of any distinct markings, such as a resident's birthmark, tattoos, bruises, or cuts.
7. Discharge date. Each admission must have preliminary plans for discharge.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 22. Section 75-03-40-35 is amended as follows:

75-03-40-35. Treatment plan.

1. A treatment coordinator shall develop a written, individualized treatment plan for each resident. Upon admission, the facility shall conduct an initial assessment of the resident's treatment and service needs and develop a treatment plan. An initial abbreviated treatment plan should be developed immediately for each resident while the formal treatment plan is developed by utilizing the needs assessments and other collateral information within fourteen days. The resident's treatment plan must:
 - a. Indicate review of the level of care assessment completed by the qualified individual, as well as other supporting documentation to assist in the development of a written treatment plan;
 - b. Be based on a thorough assessment of the situation and circumstances of the resident and the resident's family parent or guardian strengths and needs;
 - c. Support timely achievement of permanency, including reunification, guardianship, or adoption, if in foster care;
 - d. Specify details, including the resident's:

- (1) Strengths and needs;
 - (2) Family's Parent or guardian's strengths and needs;
 - (3) Behavioral functioning;
 - (4) Psychological or emotional adjustment;
 - (5) Personal and social development;
 - (6) Medical needs;
 - (7) Medication management;
 - (8) Educational and vocational needs;
 - (9) Independent living and transition skills; and
 - (10) Recreational interests and normalcy activities;
- e. Be time-limited, goal-oriented, and individualized to meet the specific needs of the resident as identified from the assessment, including:
- (1) Implementation date;
 - (2) Goals and objectives that specify behaviors to be modified;
 - (3) Projected achievement dates, with measurable indicators or criteria for monitoring progress and assessing achievement of treatment goals; and
 - (4) The name of the employee or community provider responsible for providing treatment required to the resident and the resident's ~~family~~ parent or guardian;
- f. Include and document the involvement from the resident, parent or guardian, public custodial agency, courts, schools, informal social network, residential treatment team members, peer support, or any other individuals important to the resident;
- g. Document the conditions for discharge and estimated discharge date; and
- h. Be reviewed at least every thirty days by the treatment coordinator employee or designated facility clinician. Changes and modifications

must be made and documented in writing to ensure appropriateness of the treatment goals.

2. Family treatment. The facility shall plan for how ~~family members~~ parent or guardian are integrated into the treatment process, including postdischarge aftercare services, and how sibling connections are maintained throughout placement. ~~The family~~ This section of the resident's treatment plan must include:
 - a. Contact information and outreach services with family members, including siblings. The plan must detail how the resident may maintain contact for any known family and appropriate social supports of the resident;
 - b. Family-based support during placement;
 - c. Family-based support for at least six months postdischarge;
 - d. Document and provide evidence of the resident's and family's involvement during ongoing planning efforts;
 - e. Document ongoing outreach to and engagement with family members during resident's treatment. The facility shall maintain contact with the resident's custodian and parent or guardian at least weekly. Type of contact may be detailed and includes face-to-face, phone calls, and written communication;
 - f. Date and signature of the resident, employee, custodian, parent or guardian, and others, as applicable; and
 - g. Evidence of facility providing the treatment plan to the resident's custodian and parent or guardian.
3. Visitation plan. The facility shall detail in the resident's treatment plan the agreed upon visitation schedule for the resident from the custodian and parent or guardian. The plan shall identify approved visitors and opportunities for the resident to engage in home visits. A resident who engages in home visits shall have an active safety plan provided to the responsible party supervising the resident on a home visit.
4. Resident acknowledgment. The written treatment plan must include an indication of who must provide treatment coordination, and the residents' signature or the signed statement of the treatment coordinator employee that the treatment plan was explained to the resident and the resident refused to sign the treatment plan.

5. Electronic filing. If a facility engages in electronic data entry and case filing, the facility shall develop a policy to manage this process. The policy must include the electronic medical records process, procedures for internal network security, employee access, and management of facility data, backup systems, and how the facility shall engage in electronic file sharing with the resident's custodian and parent or guardian.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 23. Subdivision k of subsection 1 of section 75-03-40-36 is amended as follows:

- k. Foster parents~~care providers~~, if applicable;

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 24. Section 75-03-40-38 is amended as follows:

75-03-40-38. Aftercare.

The facility shall have written policies and procedures regarding how the six-month aftercare requirements must be implemented to best meet the needs of residents and families including completion of an aftercare plan that identifies how the facility will ensure continuity of services provided to the resident and their parent or guardian, postdischarge.

1. The aftercare plan is created prior to discharge in collaboration with the resident and their custodian, parent, or guardian and must include:
 - a. A list of followup appointments scheduled by the facility;
 - b. A list of resident and family supports;
 - c. A list of resources and referrals completed by the facility engagement specialist to meet the needs of the resident, which includes documentation that a release of information was signed by the custodian, parent, or guardian for the family engagement specialist to maintain postdischarge communication regarding services;
 - d. Coordination with and contact information for local services providers;
 - e. A safety plan created to address treatment needs of the resident upon return to the community;

- f. Documentation plan for engagement with the resident and their custodian, parent, or guardian, service providers, and other relevant parties; and
 - g. Documented participation in child and family team meetings if the resident remains in foster care.
2. Aftercare policy applies to all residents accepted into the facility for treatment. If a resident is placed as an emergency placement and not approved for treatment, aftercare services are not required.
 3. The aftercare six-month followup period must begin the day following the resident's discharge from the facility. The facility shall implement the aftercare plan developed as part of the discharge planning process. The facility may directly provide aftercare services and supports or coordinate with local service providers.
 4. The facility shall conduct a department-approved postresidential outcomes survey at the conclusion of the six-month required aftercare period.
 5. Postdischarge aftercare services must be provided by the facility as follows:
 - 1.a. If a resident discharged from the facility remains in foster care, the facility shall collaborate with the custodial agency to implement the six-month ~~postdischarge~~aftercare plan.
 - 2.b. If a resident is discharged and no longer in foster care, the facility shall coordinate the ongoing six-month aftercare with the resident and resident's family. ~~If the resident's family declines continued engagement with the facility, the facility is required to continue to attempt to maintain at least monthly contact with the family for a period of six months~~parent or guardian.
 - 3.c. If a resident is successfully discharged, but does require readmission to a facility, the aftercare services will discontinue and a new aftercare period will begin postdischarge from the current facility placement.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 25. Section 75-03-40-40 is amended as follows:

75-03-40-40. Incident and sentinel event reporting.

The facility shall have written policy outlining the documentation of incidents and sentinel events that occur while the resident is in placement. Policy must include:

1. Description of an incident as an unplanned occurrence that resulted or could have resulted in injury to people or damage to property, specifically involving the general public, residents, or agency employees.
 - a. Incidents involving law enforcement, including in the case of a runaway, criminal activity, behavior resulting in harm to others, or restraint injury. An incident also may involve issues, such as outbreak of a serious communicable disease, harassment, violence, and discrimination.
 - b. Notification must be made to the custodian and parent or guardian immediately or no more than twelve hours.
2. Description of a sentinel event as an unexpected occurrence involving death or serious physical or psychological injury not related to the natural course of a resident's illness or underlying condition, including any process variation for which a reoccurrence would carry a significant chance of a serious adverse outcome.
 - a. Sentinel events include serious injury or trauma to a resident, attempted suicide by the resident, death of a resident, or inappropriate sexual contact.
 - b. Notification must be made to the custodian and parent or guardian, and the department immediately or no more than twelve hours.
3. Documentation of an incident or sentinel event must be completed and placed in the resident's record. The report must include:
 - a. Resident's name, age, and sex;
 - b. A description of the incident or event;
 - c. The date, time, and location of the incident or event;
 - d. The name of each ~~employee or nonemployee~~ personnel involved;
 - e. Methods used to address the resident's behavior, including duration of each intervention;
 - f. Detailed description of the technique or approach engaged with the resident at the time of the incident or event;

- g. Results achieved from methods used to address resident behavior; and
 - h. Injuries received by either the resident or an employee in using physically enforced separation or restraint, how the injuries occurred, and any medical care provided.
4. The facility shall maintain a log of written reports of incidents involving residents.
 5. Direct care employees must be given time at the beginning of each shift to be informed of or review incident reports occurring since their last shift.
 6. ~~Employees, nonemployees,~~ Personnel and residents must be given time to debrief the incident with clinical ~~staff~~ personnel.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 26. Section 75-03-40-41 is amended as follows:

75-03-40-41. Suicide prevention.

A facility shall develop a suicide prevention plan that addresses several key components, including:

1. ~~Employee and nonemployee~~ Personnel training;
2. Intake screening;
3. Ongoing risk assessments;
4. Levels of supervision for resident's;
5. Intervention options;
6. Use of suicide prevention kits with cut down tools;
7. Facility communication, notification, and referral procedures;
8. Reporting and documentation; and
9. Sentinel event debriefing procedures.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 27. Section 75-03-40-42 is amended as follows:

75-03-40-42. Medical.

1. The facility shall adopt a comprehensive written plan of preventive, routine, and emergency medical care for residents, including first aid, dental, optical care, and administration of prescription and nonprescription medicine. If a resident is due for a medical examination, the facility shall arrange for a physical examination within seven days of admission and for a dental or optical examination, if needed, within ninety days of admission. The facility shall arrange and provide for necessary remedial and corrective measures for every resident as soon as possible after an examination indicates a need.
2. The facility shall have policies governing the use of psychotropic medications.
3. The facility shall have a plan to separate an ill resident from other residents only if necessary, because of the severity of the illness and it is contagious or infectious.
4. The facility shall have a policy to prevent transmission of infection from all blood or other body fluid exposures, and all ~~employees and nonemployees~~ personnel shall be aware of and follow policy related to universal precautions.
5. The facility shall have a first aid kit on each level of the building housing residents, in buildings where resident activities take place, and in every vehicle used to transport residents. The first aid kit must be placed where it is inaccessible to residents, but accessible to ~~employees and nonemployees~~ personnel. A first aid kit must be inventoried and resupplied after each use.
6. The facility shall have a suicide prevention kit on each level of the building housing residents; including a cut down tool. The kit must be placed where it is inaccessible to residents, but accessible and readily available to ~~employees and nonemployees~~ personnel. A kit must be inventoried and resupplied after each use.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 28. Section 75-03-40-45 is amended as follows:

75-03-40-45. Emergency safety interventions.

The facility shall provide and administer emergency safety interventions as follows:

1. For purposes of this section:
 - a. "Drug used as a restraint" means any drug that:
 - (1) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;
 - (2) Has the temporary effect of restricting the resident's freedom of movement; and
 - (3) Is not a standard treatment for the resident's medical or psychiatric condition.
 - b. "Emergency safety intervention" means the use of restraint as an immediate response to an emergency safety situation involving unanticipated resident behavior that places the resident or others at threat of serious violence or serious injury if no intervention occurs.
 - c. "Emergency safety situation" means a situation where immediate risk of harm is present due to unanticipated resident behavior that places the resident or others at threat of serious violence or serious injury if no intervention occurs and that calls for an emergency safety intervention as defined in this section.
 - d. "Personal restraint" means the application of physical force without the use of any device, for the purposes of restraining the free movement of a resident's body. The term personal restraint does not include briefly holding without undue force a resident to calm or comfort him or her, or holding a resident's hand to safely escort a resident from one area to another, or a physical escort which means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a resident who is acting out to walk to a safe location.
 - e. "Tier 2 mental health professional" has the same meaning as the term defined in subsection 9 of North Dakota Century Code section 25-01-01.
2. Education and training related to emergency safety interventions:
 - a. Individuals who are qualified by education, training, and experience shall provide employee education and training.

- b. Employees must be trained and demonstrate competency before participating in an emergency safety intervention.
- c. The facility shall document in the employee personnel records that the training and demonstration of competency were successfully completed.
- d. All training programs and materials used by the facility must be available for review by the accreditation body and the state agency.
- e. The facility shall require employees to have ongoing education, training, and demonstrated knowledge and competency of all of the following, no less than semiannually:
 - (1) Techniques to identify employee and resident behaviors, events, and environmental factors that may trigger emergency safety situations;
 - (2) The use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods, to prevent emergency safety situations;
 - (3) The safe use of restraint, including the ability to recognize and respond to signs of physical distress in residents who are restrained; and
 - (4) Training exercises in which employees successfully demonstrate in practice the techniques they have learned for managing emergency safety situations.

3. Emergency safety intervention:

- a. Facilities shall have a policy for the safe use of emergency safety interventions;
- b. Restraint may be used only 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 use of seclusion by a facility is prohibited;~~
- c. Employees shall document all interventions attempted to de-escalate a resident before the use of a restraint;
- d. When restraint is deemed appropriate, personal restraint is allowed.;

e. Mechanical restraints, prone restraints, and drugs or chemicals used as a restraint are prohibited;

f. The use of seclusion by the facility is prohibited;

e.g. Employee training requirements must include procedures:

- (1) For when restraint may and may not be used;
- (2) That safeguard the rights and dignity of the resident;
- (3) For obtaining informed consent, including the right of the custodian and parent or guardian of the resident to be notified of any use of restraint or any change in policy or procedure regarding use;
- (4) Regarding documentation requirements of each restraint episode and the use of such data in quality improvement activities; and
- (5) Regarding the debriefing of the resident and employees immediately after incidents of restraint; and

f.h. Quality management activities must examine the following:

- (1) Available data on the use of these practices and their outcomes, including the frequency of the use of restraint, settings, authorized employees, and programs;
- (2) The accuracy and consistency with which restraint data is collected, as well as the extent to which restraint data is being used to plan behavioral interventions and employee training;
- (3) Whether policies and procedures for using these practices are being implemented with fidelity;
- (4) Whether procedures continue to protect residents; and
- (5) Whether existing policies for restraint remain properly aligned with applicable state and federal laws.

4. ~~Restraint~~Personal restraint:

a. Personal restraint is the only form of restraint allowed.

- b. If an emergency safety situation occurs and a personal restraint is determined necessary, the following actions are prohibited:
 - (1) Any maneuver or techniques that do not give adequate attention and care to protection of the resident's head;
 - (2) Any maneuver that places pressure or weight on the resident's chest, lungs, sternum, diaphragm, back, or abdomen causing chest compression;
 - (3) Any maneuver that places pressure, weight, or leverage on the neck or throat, on any artery, or on the back of the resident's head or neck, or that otherwise obstructs or restricts the circulation of blood or obstructs an airway, such as straddling or sitting on the resident's torso;
 - (4) Any type of choke hold;
 - (5) Any technique that uses pain inducement to obtain compliance or control, including punching, hitting, hyperextension of joints, or extended use of pressure points for pain compliance; and
 - (6) Any technique that involves pushing on or into a resident's mouth, nose, or eyes, or covering the resident's face or body with anything, including soft objects, such as pillows, washcloths, blankets, and bedding.

5. Authorization for the use of restraint:

- a. Authorization for restraint must be given by a tier 2 mental health professional and the tier 2 mental health professional must be trained in the use of the facility emergency safety interventions.
- b. The authorization must indicate the least restrictive emergency safety intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with the clinical director.
- c. If the authorization for restraint is verbal, the verbal authorization must be received by a clinical team member, while the emergency safety intervention is being initiated by an employee or immediately after the emergency safety situation ends. The tier 2 mental health professional must verify the verbal authorization in a signed written form in the resident's record and be available to the resident's

treatment team for consultation, in person or through electronic means, throughout the period of the emergency safety intervention.

- d. Each authorization for restraint:
 - (1) Must be limited to no longer than the duration of the emergency safety situation;
 - (2) May not exceed the amount of time necessary to begin verbal de-escalation techniques with the resident; and
 - (3) Must be signed by the tier 2 mental health professional no later than twelve hours from initiation of a verbal authorization.

- e. Within one hour of the initiation of a restraint, a face-to-face assessment of the physical and psychological well-being of the resident must be completed, documenting:
 - (1) The resident's physical and psychological status;
 - (2) The resident's behavior;
 - (3) The appropriateness of the intervention measures; and
 - (4) Any complications resulting from the intervention.

- f. Each authorization for restraint must include:
 - (1) The name of the tier 2 mental health professional;
 - (2) The date and time the authorization was obtained; and
 - (3) The emergency safety intervention authorized, including the length of time authorized.

- g. An employee shall document the intervention in the resident's record. That documentation must be completed by the end of the shift in which the intervention occurs. If the intervention does not end during the shift in which it began, documentation must be completed during the shift in which it ends. Documentation must include all of the following:
 - (1) Each authorization for restraint as required in subdivision f;
 - (2) The time the emergency safety intervention began and ended;

- (3) The time and results of the one-hour assessment required in subdivision e;
 - (4) The detailed emergency safety situation that required the restraint; and
 - (5) The name of each employee involved in the restraint intervention.
 - h. The facility must maintain a record of each emergency safety situation, the interventions used, and their outcomes.
 - i. If a tier 2 mental health professional authorizes the use of restraint, that ~~person~~individual shall:
 - (1) Consult with the resident's prescribing physician as soon as possible and inform the resident's physician of the emergency safety situation that required the restraint; and
 - (2) Document in the resident's record the date and time the resident's prescribing physician was consulted.
6. Monitoring of the resident in and immediately after restraint:
- a. An on-call clinical team member trained in the use of emergency safety interventions shall be physically present, continually assessing and monitoring the physical and psychological well-being of the resident and the safe use of restraint throughout the duration of the emergency safety intervention.
 - b. If the emergency safety situation continues beyond the time limit of the authorization for the use of restraint, a nurse or other on-call clinical team member, immediately shall contact the tier 2 mental health professional, to receive further instructions.
 - c. Upon completion of the emergency safety intervention, the resident's well-being must be evaluated immediately after the restraint has ended.
7. Notification of custodian and parent or guardian:
- a. The facility shall notify the custodian and parent or guardian of the resident who has been restrained as soon as possible after the initiation of each emergency safety intervention.

- b. The facility shall document in the resident's record that the custodian and parent or guardian has been notified of the emergency safety intervention, including the date and time of notification and the name of the employee providing the notification.
8. Postintervention debriefings:
- a. Within twenty-four hours after the use of restraint, employees involved in an emergency safety intervention and the resident shall have a face-to-face discussion. This discussion must include all employees involved in the intervention except when the presence of a particular employee may jeopardize the well-being of the resident. Other employees and the custodian and parent or guardian may participate in the discussion when it is deemed appropriate by the facility. The facility shall conduct such discussion in a language understood by the custodian and parent or guardian. The discussion must provide all parties the opportunity to discuss the circumstances resulting in the use of restraint and strategies to be used by the facility, the resident, or others who could prevent the future use of restraint.
 - b. Within twenty-four hours after the use of restraint, all employees involved in the emergency safety intervention, and appropriate supervisory and administrative leadership, shall conduct a debriefing session that includes, at a minimum, a review and discussion of:
 - (1) The emergency safety situation that required the emergency safety intervention, including a discussion of the precipitating factors that led up to the emergency safety intervention;
 - (2) Alternative techniques that might have prevented the use of the restraint;
 - (3) The procedures, if any, employees are to implement to prevent any recurrence of the use of restraint; and
 - (4) The outcome of the emergency safety intervention, including any injuries that may have resulted from the use of restraint.
 - c. An employee shall document in the resident's record that both debriefing sessions took place and shall include in that documentation the names of employees who were present for the debriefing, names of employees excused from the debriefing, and any changes to the resident's treatment plan that resulted from the debriefings.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024.

General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

SECTION 29. Section 75-03-40-47 is amended as follows:

75-03-40-47. Buildings, grounds, and equipment.

1. A facility shall comply with all state, county, and local building and zoning codes and ordinances as well as all applicable state, county, and local safety, sanitation laws, codes, and ordinances.
2. A facility must be inspected annually by the local fire department or the state fire marshal's office. A facility shall correct any deficiencies found during these inspections. The facility shall keep a written report of the annual inspection and provide a copy to the department, including evidence of correction of noted deficiencies. All chimneys, flues, and vent attachments to combustion-type devices must be structurally sound, appropriate to the unit or units attached to them, and cleaned and maintained as necessary to provide safe operation. The heating system of each facility, including chimneys and flues, must be inspected at least once each year by a qualified individual.
3. ~~There must be at least one~~A facility shall have a 2A 10BC fire extinguisher on each floor and in or immediately adjacent to the kitchen, incinerator, and combustion-type heating units. ~~Additional fire extinguishers must be provided so it is never necessary to travel more than seventy five feet [22.86 meters] to an extinguisher. Fire extinguishers must be mounted on a wall or a post where they are clearly visible and at a readily accessible height~~certified by Underwriters' Laboratories and maintained in accordance with the manufacturer's instructions and located in areas defined in the fire code. All required fire extinguishers must be checked once a year and serviced as needed. Each fire extinguisher must have a tag or label securely attached indicating the month and year the maintenance check was performed last and the individual who performed the servicecompleted.
4. The facility shall ~~provide the following smoke~~have smoke detectors:
 - a. ~~One unit for each bedroom hallway;~~
 - b. ~~One unit at the top of each interior stairway; and~~
 - c. ~~One unit for each room with a furnace or other heat source~~ installed and maintained in accordance with the manufacturer's instructions and located in areas defined in the fire code.
5. ~~Battery operated smoke detectors must signal when the battery is exhausted or missing and be tested at least once a month.~~

- ~~6. Carbon~~ The facility shall have carbon monoxide detectors must be operational as recommended by the local fire department or state fire marshal, where applicable, installed and maintained in accordance with the manufacturer's instructions and located in areas defined in the fire code.
- ~~7.6.~~ The facility may choose to install automatic sprinklers in bedrooms, hallways, and areas required by fire code. If an automatic sprinkler system is installed, it must be inspected annually and a copy of the inspection must be provided to the department.
- ~~7.~~ The facility must be equipped with furnishings suitable to the needs of the residents. Recreational space and equipment must be safe, functional, and available for all residents.
8. The facility shall have one centrally located living room for the informal use of residents.
9. The facility shall have a dining room area large enough to accommodate the number of residents served.
10. A facility shall provide space and privacy for individual interviewing and counseling sessions. This space must be separate and apart from rooms used for ongoing program activities.
11. A facility shall have bedroom accommodations for the residents as follows:
 - a. The facility shall have at least one bedroom for each three residents;
 - b. The facility may not permit nonambulatory residents to sleep above or below the ground floor;
 - c. There may be no more than one resident per bed, and triple bunks are prohibited;
 - d. All bedrooms must have at least one window that openscan open to the outside. A facility may implement further restrictions such as a safety lock, to the window, if it is determined to be a benefit for resident safety. If a lock is placed on a bedroom window, the facility must have an automatic sprinkler system and fire alarm system installed and notify the department, in writing, that this additional safety measure has been implemented. Notification to the department shall include policy surrounding the need and duration;
 - e. A sleeping room may not be in an unfinished attic, hallway, or other room not normally used for sleeping purposes;

- f. A basement that has over half its outside walls below grade and no door opening directly to the outside may not be used for bedrooms, unless the bedroom space has egress windows;
 - g. Furnishings must be safe, attractive, easy to maintain, and selected for suitability to the age and development of the residents; and
 - h. A facility shall have sufficient individual storage areas to accommodate resident's clothing and other personal belongings.
12. A facility shall have one complete bathroom to include a toilet, washbasin, and a tub or shower for each six residents and:
- a. All bathroom facilities must be indoors, equipped with hot and cold running water, and kept clean;
 - b. When bathroom units contain more than one toilet, tub, or shower, each must be in a separate compartment; and
 - c. The facility shall provide bathrooms with nonslip surfaces in showers or tubs.
13. Facilities shall ensure kitchen equipment and area meet the standards prescribed by the ~~state department of health~~ for food and beverage establishments. Compliance with these standards must be documented annually and inspection documentation must be provided to the department. A facility shall ensure:
- a. Food storage space is clean, and containers are covered and stored off the floor;
 - b. Dishes, cups, and drinking glasses used by the residents are free of chips, cracks, and other defects, and are sanitized after every use by a washing process, sanitization solution, and air-drying or commercial dishwasher; and
 - c. Kitchen floors are reasonably impervious to water, slip-resistant, and maintained in a clean and dry condition.
14. Laundry facilities must be located in an area separate from areas occupied by residents. Space for sorting, drying, and ironing must be made available to residents who are capable of handling personal laundry.
15. The water supply of a facility must be from an approved municipal system where available. Where a municipal system is not available, a water sample

must pass the approved drinking water standard bacteriological water analysis testing. The facility shall obtain results from an environmental protection agency approved laboratory for testing through licensing with the department of environmental quality.

16. Alcohol, tobacco, and vaping is prohibited in the facility.
17. All toxic cleaning supplies, aerosols, chemical, agricultural and ground maintenance chemicals, pesticides, and other poisons must be stored in a locked cabinet.
18. All shampoos, body wash, hand sanitizers, and perfumes, must be distributed in a limited quantity ~~to~~ based on the individual needs of the resident. These items must be stored in a locked cabinet when not distributed to residents.
19. Firearms are prohibited in program or living areas of a facility premises. Firearms kept at any other location on the facility premises must be stored in a locked and secure area.
20. A facility shall have a quiet area to be used for studying and furnished for that purpose.
21. All rooms in a facility must have adequate lights, heat, and ventilation. All bathrooms must have ~~a window which opens to the outside or exhaust~~ proper ventilation.
22. Buildings and grounds of a facility must be maintained in a clean, comfortable, sanitary, and safe condition.
 - a. The facility may not be located within three hundred feet [91.44 meters] of an aboveground storage tank containing flammable liquids used in connection with a bulk storage or other similar hazards;
 - b. The grounds must be attractive, well-kept, and spacious enough to accommodate recreational areas that take into consideration the age and interest levels of residents;
 - c. Rooms, exterior walls, exterior doors, skylights, and windows must be weathertight and watertight;
 - d. Stairways, porches, and elevated walks and ramps must have structurally sound and safe handrails;
 - e. Buildings must be free of unabated asbestos; and

- f. Lead paint may not be used within a building or on the exterior, grounds, or recreational equipment.
23. Any nonhousing buildings located on the facility property must be locked when not in use by ~~employees, nonemployees,~~personnel or residents. Residents must be supervised by an employee when entering a nonhousing building.
 24. All pet inoculations must comply with the local and state requirements.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 30. Section 75-03-40-48 is amended as follows:

75-03-40-48. Food and nutrition.

1. The facility shall appoint an employee to be responsible for complying with requirements for healthy and safe food and nutrition practices.
2. All food service personnel shall have in-service training annually. Training topics must relate to proper food handling procedures, maintenance of sanitary conditions, and food service arrangements. Documentation of annual training must be kept in the employee's file.
3. Food must be in wholesome condition, free from spoilage, ~~filth,~~ or contamination and must be safe for human consumption. ~~Food in damaged containers or with expired freshness dating is not considered safe for human consumption.~~
4. The facility shall ensure the nutritional requirements of the residents are met. The facility shall serve nutritionally balanced meals each day. Medically required special diets must be prepared for residents as needed.
5. Except for garden produce, all homegrown food, poultry, meat, eggs, and milk must be from an approved source as determined by the state or local health authorities. The facility shall document the approval of state or local health authorities.
6. ~~No home-canned foods may be served.~~
7. ~~—~~ Frozen homegrown food products may be served if maintained in compliance with standards prescribed by the ~~state department of health~~ for food and beverage establishments.

- ~~8.7.~~ The facility shall provide refrigeration for perishable food and shall maintain perishable food in accordance with standards prescribed by the ~~state department of health~~ for food and beverage establishments.
- ~~9.8.~~ ~~Employees, nonemployees,~~Personnel and residents helping to prepare food shall wash their hands before handling food, and as often as necessary to keep them clean, and shall use effective hair restraints to prevent contamination of food and food contact surfaces.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 31. Section 75-03-40-50 is amended as follows:

75-03-40-50. Transportation.

This section applies to the transportation of residents in a facility-owned or leased vehicle, driven by ~~an employee or nonemployee~~personnel. A facility shall develop a comprehensive transportation policy addressing the following:

1. Driver information. A facility shall maintain a list of approved ~~employee and nonemployee~~personnel drivers. The list must indicate the name of each driver, type of license held, and the date of expiration of the license. The list must be on file at the facility.
2. Driver qualifications.
 - ~~a. The driver must~~All drivers shall hold a current valid operator's license for the type of vehicle being driven, be at least twenty-one years of age, and have at least one year of experience as a licensed driver;
 - ~~b. Before a driver may transport residents, the facility shall obtain a copy of their driver's license. A copy of a valid driver's license must remain in the employee or nonemployee file; and~~
 - ~~c. Before a driver may transport residents, the~~The facility initially shall complete an initial check of the driver's driving record for any driving safety violations. A copy of the employee's or nonemployee's driving record must be obtained annually and placed in the employee's or nonemployee's file. The facility shall develop policy to address safety-related driving violations and the ability to transport residents upon hire and annually thereafter.
3. Vehicle capacity and supervision.
 - a. A facility shall meet employee-to-resident ratios; and

- b. A facility shall determine if additional supervision is required to minimize risk while transporting, based on the resident's needs.
4. Vehicle operation. Any vehicle used by a facility for the transportation of residents must:
- a. Be maintained and inspected on a monthly basis, with records of inspections maintained at the facility;
 - b. Be registered and licensed in accordance with North Dakota law and carry vehicle liability insurance;
 - c. Have a first aid kit stored inside the vehicle;
 - d. Have a log to track date and time of the transport, who was driving, and the residents in the vehicle. The log book also must list emergency contact information for community first responders and facility administration to notify in case of an accident;
 - e. Have operating seat belts for the use of all occupants on each transport;
 - f. Prohibit smoking, tobacco use, and vaping; and
 - g. Prohibit the use of a cell phone while operating the vehicle.
5. Accident report. A facility shall implement a policy for ~~employees and nonemployees~~personnel to follow when operating a facility vehicle impacted by a motor vehicle accident. In addition, the facility shall keep on file a copy of the official police report of any accident involving a facility vehicle transporting residents.

History: Effective October 1, 2019; amended effective April 1, 2024.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02