

October 31, 2023

Liz Fordahl, Counsel
North Dakota Legislative Council
State Capitol
Bismarck, ND 58505

RE: Proposed Amendments to N.D. Admin. Code Chapter 75-03-40
Licensing of Qualified Residential Treatment Program Providers

Dear Ms. Fordahl:

Enclosed for filing in the office of the Legislative Council is the Notice of Intent to Amend Administrative Rules concerning the above proposed rules as required by N.D.C.C. section 28-32-10. Also enclosed is a copy of the proposed rules.

We have requested publication of an abbreviated newspaper publication notice once in each official county newspaper which will notify the public that an oral hearing on these rules will be held on Friday, December 15, 2023, beginning at 1:30 p.m. and continuing until 3:00 p.m. or until no further testimony is offered, whichever occurs first.

If you have any questions or concerns, please contact me at 328-2311. Thank you.

Sincerely,



Jonathan Alm
Legal Division

JA/rv

cc: Kelsey Bless, Children & Family Services
Brittany Fode, Children & Family Services
Cory Pedersen, Children & Family Services
Jessica Thomasson, Executive Director of Human Services Division

Enclosures

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NOTICE OF INTENT TO AMEND
ADMINISTRATIVE RULES RELATING TO
N.D. ADMIN. CODE CHAPTER 75-03-40
LICENSING OF QUALIFIED RESIDENTIAL TREATMENT PROGRAM PROVIDERS

TAKE NOTICE that the North Dakota Department of Health and Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code chapter 75-03-40 at 1:30 p.m. on Friday, December 15, 2023, in Bismarck, N.D. in Room 210, located on the second floor of the Judicial Wing of the State Capitol.

The proposed amendments to N.D. Admin. Code chapter 75-03-40, Licensing of Qualified Residential Treatment Program Providers, are as follows.

The proposed changes are as follows:

Subsection 7 of section 75-03-40-01 is amended to replace “a person” with “an individual”.

Section 75-03-40-03 is amended to remove language regarding residential child care facilities that were repealed in 2019 and to indicate that an application will initiate an annual onsite visit.

Section 75-03-40-10 is amended to replace “employees and nonemployees” and “staff” with “personnel”.

Section 75-03-40-11 is amended to replace “employees and nonemployees” with “personnel” and to require additional documents and statements as part of the employee and nonemployee file.

Section 75-03-40-13 is amended to replace “employees and nonemployees” with “personnel” and to require additional documents and statements as part of the employee and nonemployee file.

Section 75-03-40-14 is amended to replace “employees and nonemployees” with “personnel” and to remove language regarding residential child care

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facilities that were repealed in 2019, as there are no staff who meet the “grandfathered in” clause for the position noted.

Section 75-03-40-15 is amended to remove language regarding residential child care facilities that were repealed in 2019, as there are no staff who meet the “grandfathered in” clause for the position noted.

Section 75-03-40-16 is amended to replace “employees and nonemployees” with “personnel” and to remove language regarding residential child care facilities that were repealed in 2019, as there are no staff who meet the “grandfathered in” clause for the position noted.

Section 75-03-40-17 is amended to remove language regarding residential child care facilities that were repealed in 2019, as there are no staff who meet the “grandfathered in” clause for the position noted and to remove the requirement for a mental health technician certification, as this training has not been available to employees since qualified residential treatment program implementation on October 1, 2019.

Section 75-03-40-19 is amended to clarify the responsibilities, tasks, and education and work experience of a family engagement specialist and to replace “family” with “custodian, parent or guardian”.

Section 75-03-40-22 is amended to replace “employees and nonemployees” with “personnel”.

Section 75-03-40-23 is amended to replace “resident’s family” with “resident”, “employees and nonemployees” with “personnel”, and “person” with “individual”; and to allow the disclosure of records as required by law.

Section 75-03-40-24 is amended to replace “employees and nonemployees” with “personnel”.

Section 75-03-40-25 is amended to update the background check and criminal conviction requirements and the ability for an individual to request a review to ensure qualified residential treatment program providers have the same criminal background checks standards as all other foster care settings

licensed to care for children and to incorporate the relevant portions of section 75-03-40-26 into one section.

Section 75-03-40-26 is being repealed as the relevant portions were incorporated into section 75-03-40-25.

Section 75-03-40-27 is amended to replace “employees and nonemployees” with “personnel”.

Section 75-03-40-28 is amended to require the qualified residential treatment program’s policy specific to employee coverage include the ability to ensure safety of residents and separation of populations based on the qualified residential treatment program’s populations served and to replace “children” with “residents.”

Section 75-03-40-29 is amended to remove requirement of placing a formal certification in the employee file as this is already addressed in personnel file requirements.

Subsection 3 of section 75-03-40-30 is amended to replace “person” with “individual”.

Subsection 1 of section 75-03-40-32 is amended to replace “foster child” with “child in foster care”.

Section 75-03-40-33 is amended to replace “foster children” with “children in foster care” and “family” with “custodian, parent, or guardian” and to update orientation and screening requirements.

Section 75-03-40-35 is amended to replace “family”, “Family’s”, and “family members” with “parent or guardian”, “Parent or guardian’s” and “parent or guardian”; and to require a qualified residential treatment program to have an active safety plan for a resident who engages in home visits visitation plan requirements to include an active safety plan.

Subdivision k of subsection 1 of section 75-03-40-36 is amended to replace “foster parents” with “foster care providers.”

Section 75-03-40-38 is amended to update the requirements of a qualified residential treatment program's aftercare plan requirements postdischarge aftercare services.

Section 75-03-40-40 is amended to replace "employees and nonemployees" and "staff" with "personnel".

Section 75-03-40-41 is amended to replace "employees and nonemployees" with "personnel".

Section 75-03-40-42 is amended to replace "employees and nonemployees" with "personnel".

Section 75-03-40-45 is amended to clarify that personal restraint is allowable, however, mechanical, prone, and drug or chemical restraints, along with seclusion are prohibited in a qualified residential treatment program; and to replace "person" with "individual".

Section 75-03-40-47 is amended to further clarify fire safety requirements that are in line with the state fire code, to add language to permit the qualified residential treatment program to place a safety lock on windows if certain safety and notification measures are met, and update other buildings, grounds, and equipment requirements.

Section 75-03-40-48. This section was amended to clarify food requirements at the qualified residential treatment program, remove unnecessary items, and to replace "Employees, nonemployees" with "Personnel".

Section 75-03-40-50 is amended to consolidate driver qualification requirements and to replace "employees and nonemployees" with "personnel".

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

Copies of the proposed rules are available for review at human service zones and at human service centers. Copies of the proposed rules and the regulatory analysis relating to these rules, may be requested by telephoning (701) 328-2311.

Written or oral data, views, or arguments may be entered at the hearing or sent to: Rules Administrator, North Dakota Department of Health and Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Dept. 325, Bismarck, ND 58505-0250. Written data, views, or arguments on the proposed rules must be received no later than 5:00 p.m. on Tuesday, December 26, 2023.

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

Dated this 31st day of October, 2023.

October 31, 2023

RE: Proposed Amendments to N.D. Admin. Code chapter 75-03-40
Licensing of Qualified Residential Treatment Program Providers

TO WHOM IT MAY CONCERN:

The Department of Health and Human Services is proposing amendments to N.D. Admin. Code chapter 75-03-40, Licensing of Qualified Residential Treatment Program Providers. The department has adopted procedures to assure public input into the formulation of the rules prior to adoption.

In conformity with those procedures, we are providing you with a copy of the proposed rules and are requesting that you provide any written data, views, or arguments no later than 5:00 p.m. on Tuesday, December 26, 2023.

The department has scheduled an oral hearing for Friday, December 15, 2023. Further information concerning the public hearing is included in the attached notice of proposed rulemaking and public hearing.

Your participation is welcomed, as are your suggestions. Please send all written data, views, or arguments to: Rules Administrator, Department of Health and Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Bismarck, ND 58505-0250.

Sincerely,



Sara Stolt
Interim Commissioner

SES/rv

Enclosures

cc: Liz Fordahl, Legislative Council
Kelsey Bless, Children & Family Services
Brittany Fode, Children & Family Services
Cory Pedersen, Children & Family Services
Jessica Thomasson, Executive Director of Human Services Division

EXECUTIVE OFFICE

GOVERNOR
Doug Burgum

INTERIM COMMISSIONER
Sara Stolt