

October 26, 2021

Jill Grossman, Counsel
North Dakota Legislative Council
State Capitol
Bismarck, ND 58505

RE: Proposed Amendments to N.D. Admin. Code chapters 75-03-18, 75-03-19, 75-03-19.1 and 75-03-19.2
Procedures for Appeal of Child Abuse and Neglect Assessments, Assessment of Child Abuse and Neglect Reports, Child Fatality Review Panel, and Approved Locations for Abandoned Infants

Dear Ms. Grossman:

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 Tuesday, December 7, 2021, beginning at 2:00 p.m. and continuing until 3:30 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 Advisory Unit

JA/rv

cc: Cory Pedersen, Children & Family Services
Marlys Baker, Children & Family Services
Jennifer Grabar, Children & Family Services
Jessica Thomasson, Executive Policy Director

Enclosures

LEGAL ADVISORY UNIT

NOTICE OF INTENT TO AMEND
ADMINISTRATIVE RULES RELATING TO
N.D.A.C. CHAPTERS 75-03-18, 75-03-19, 75-03-19.1, AND 75-03-19.2,
PROCEDURES FOR APPEAL OF CHILD ABUSE AND NEGLECT ASSESSMENTS,
ASSESSMENT OF CHILD ABUSE AND NEGLECT REPORTS, CHILD FATALITY
REVIEW PANEL, AND APPROVED LOCATIONS FOR ABANDONED INFANTS

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code chapters 75-03-18, 75-03-19, 75-03-19.1, and 75-03-19.2 at 2:00 p.m. on Tuesday, December 7, 2021 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 chapters 75-03-18, 75-03-19, 75-03-19.1, and 75-03-19.2, regarding Procedures for Appeal of Child Abuse and Neglect Assessments, Assessment of Child Abuse and Neglect Reports, Child Fatality Review Panel, and Approved Locations for Abandoned Infants, are necessary to comply with 2021 Senate Bill No. 2083.

The proposed changes are as follows:

Section 75-03-18-01 is amended to update the definitions of “assessment”, “decision”, and “department”.

Section 75-03-18-02 is amended to replace “a report” with “an assessment”.

Section 75-03-18-04 is amended to provide clarity that an appeal must be received by, instead of filed with, the Department and that a postmark date is not accepted as the received date.

Section 75-03-18-07.1 is amended to state that a guardian ad litem appointed for a child witness during an appeal is considered to be assisting in an investigation or child protection assessment.

Section 75-03-18-10 is amended to provide that information furnished at any informal conference, grievance meeting, or formal hearing is confidential pursuant to state law, and to provide that the identity of a reporter of any incident

LEGAL ADVISORY UNIT

600 E Boulevard Ave Dept 325 | Bismarck ND 58505-0250

701.328.2311 | Fax 701.328.2173 | 800.472.2622 | 711 (TTY) | www.nd.gov/dhs

of suspected abuse and neglect may not be disclosed at any informal conference or at any grievance meeting pursuant to state law.

Section 75-03-18-13 is amended to replace “overturned” with “reversed”.

Section 75-03-19-01 is amended to update the definitions of “assessment” and “decision”, and to remove a definition of “department”.

Section 75-03-19-03 is amended to state that all nonemergency child abuse or neglect assessments must be initiated within timeframes established by the Department, instead of seventy-two hours. The section is also amended to provide that an assessment is initiated by contact with the alleged abused or neglected child, a law enforcement officer with jurisdiction in the location where they child may be found or where the alleged abuse or neglect occurred, or the subject of the report.

Section 75-03-19-06 is amended to modify assessment procedures for suspected child abuse or neglect. The section replaces references to “services are required” with “child abuse or neglect is confirmed, confirmed with an unknown subject, unconfirmed, or unable to determine”. The section is also amended to provide that if the child abuse or neglect decision is confirmed or confirmed with an unknown subject and the child remains at substantial risk of continued abuse or neglect due to a supported state of impending danger, development of service plans for the provision of protected services must be done.

Section 75-03-19-07 is amended to replace “staff to client” with “staff-to-assessment”.

Section 75-03-19.1-01 is amended to revise the definition of “presiding officer” to mean the representative of the Department’s child protection services program.

Section 75-03-19.2-02 is amended to replace services are required language with “abuse and neglect assessment decision”.

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 offices and at human service centers. Copies of the proposed rules and the regulatory analysis relating to these rules may be requested by telephoning (701) 328-2311. Written or oral data, views, or arguments may be entered at the hearing or sent to: Rules Administrator, North Dakota Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Dept. 325, Bismarck, ND 58505-0250. Written data, views, or arguments on the proposed rules must be received no later than 5:00 p.m. on Friday, December 17, 2021.

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

Dated this 26th day of October, 2021.

CHAPTER 75-03-18
PROCEDURES FOR APPEAL OF CHILD ABUSE AND NEGLECT ASSESSMENTS

Section	
75-03-18-01	Definitions
75-03-18-02	Who May File an Appeal
75-03-18-03	Request for Appeal to be in Writing - Where Filed - Content
75-03-18-04	Time for Filing Request for Appeal
75-03-18-05	Informal Meeting
75-03-18-06	Request for Formal Hearing [Repealed]
75-03-18-07	Formal Hearing
75-03-18-07.1	Treatment of Witnesses
75-03-18-08	Hearing Decision [Repealed]
75-03-18-09	Probable Cause Finding not Directly Reviewable [Repealed]
75-03-18-10	Confidentiality
75-03-18-11	Evidence
75-03-18-12	Effect of Appeal
75-03-18-13	Effect of Overturn <u>Reversal</u> of Case Decision or Appeal

SECTION 1. Section 75-03-18-01 is amended as follows:

75-03-18-01. Definitions.

1. "Assessing agency" means the human service zone where the report of suspected abuse or neglect is assessed, or, in certain instances, the department.
2. "Assessment" is the factfinding process designed to provide information which enables a decision to be made ~~that services are required to provide for the protection and treatment~~whether a child meets the definition of an abused or neglected child.
3. "Decision" means the ~~conclusion that determines whether services are required to provide for the protection and treatment of~~determination made under North Dakota Century Code section 50-25.1-05.1 whether a child meets the definition of an abused or neglected child.
4. "Department" means the North Dakota department of human services or its ~~designee~~authorized agent.
5. "Subject" means a person responsible for the child's welfare as defined by North Dakota Century Code section 50-25.1-02.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; July 1, 2020; April 1, 2022.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-04.1, 50-25.1-05.4

SECTION 2. Section 75-03-18-02 is amended as follows:

75-03-18-02. Who may file an appeal.

1. The subject of a ~~report~~ an assessment of suspected child abuse or neglect who is aggrieved by the result of the assessment may file an appeal.
2. A staff member of child protection services will notify the subject in writing of the decision resulting from an assessment. The staff member of child protection services who notifies the subject of the decision resulting from the assessment shall complete an affidavit of mailing that becomes a part of the assessment record in the form and manner prescribed by the department.
3. Written appeal procedures are available from the department upon request.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; September 1, 1997; April 1, 2022.
General Authority: NDCC 50-25.1-05.4
Law Implemented: NDCC 50-25.1-05.4

SECTION 3. Section 75-03-18-04 is amended as follows:

75-03-18-04. Time for filing request for appeal.

An appeal may not be filed before the date of an assessment decision and must be ~~filed~~ received by the department within thirty days after the documented date of the subject notification of the decision in accordance with procedures in chapter 75-01-03. Notification is considered to have occurred three days after the date on the affidavit of mailing. A postmark date is not accepted as the received date.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; September 1, 1997; April 1, 2022.
General Authority: NDCC 50-25.1-05.4
Law Implemented: NDCC 50-25.1-05.4

SECTION 4. Section 75-03-18-07.1 is amended as follows:

75-03-18-07.1. Treatment of witnesses.

1. The hearing must be conducted according to any fair treatment standards adopted by the legislative assembly or the supreme court for the protection of witnesses or children in court proceedings.
2. If any child is to be called as a witness during the appeal hearing, whether for deposition, discovery, or for the hearing, the office of administrative hearings may appoint a guardian ad litem for the child witness. If the child

witness is the victim and the party calling the victim is the subject and the victim's parent or guardian, the office of administrative hearings shall appoint a guardian ad litem for the child victim. A guardian ad litem's involvement is considered to be assisting in an investigation or child protection assessment.

History: Effective January 1, 1996; January 1, 1996, amendments voided by the Administrative Rules Committee effective August 8, 1996; amended effective September 1, 1997; April 1, 2022.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-03, 50-25.1-05.4

SECTION 5. Section 75-03-18-10 is amended as follows:

75-03-18-10. Confidentiality.

1. Information furnished at any informal conference, grievance meeting, and formal hearing is confidential and subject to the provisions of North Dakota Century Code sections 50-06-15, 50-25.1-11, and 50-25.1-14.
2. The identity of a reporter of any incident of suspected abuse and neglect may not be disclosed at any informal ~~meeting~~conference or at any formal ~~hearing~~grievance meeting conducted under this chapter or chapter 75-03-18.1.

History: Effective September 1, 1990; amended effective November 1, 1994; April 1, 2022.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4, 50-06-15, 50-25.1-11, 50-25.1-14

SECTION 6. Section 75-03-18-13 is amended as follows:

75-03-18-13. Effect of ~~overturn~~reversal of case decision or appeal.

If an assessment decision is reversed on appeal under this chapter or under North Dakota Century Code chapter 28-32, a notation of the fact that the finding was ~~overturned~~reversed must be added to the record.

History: Effective November 1, 1994; amended effective January 1, 1996; April 1, 2022.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

CHAPTER 75-03-19
ASSESSMENT OF CHILD ABUSE AND NEGLECT REPORTS

Section	
75-03-19-01	Definitions
75-03-19-02	Department's Authorized Agent to Receive Reports and Conduct Assessments - Reimbursement
75-03-19-03	Time for Initiating Assessments - Emergencies
75-03-19-04	Time for Completing Assessments
75-03-19-05	Time for Submitting Written Assessment Reports [Repealed]
75-03-19-06	Assessment Procedures
75-03-19-07	Caseload Standards
75-03-19-08	Exchange and Transfer of Information
75-03-19-09	Child Abuse or Neglect Complaint or Allegation
75-03-19-10	Training Requirements

SECTION 7. Section 75-03-19-01 is amended as follows:

75-03-19-01. Definitions.

The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-25.1, except:

1. "Assessment" ~~is the~~ means an alternative response assessment, child protection assessment, and family services assessment as defined in North Dakota Century Code chapter 50-25.1-02.
2. "Decision" means the determination made under North Dakota Century Code section 50-25.1-05.1 whether ~~services are required to provide for the protection and treatment~~ a child meets the definition of an abused or neglected child.
3. ~~"Department" means the North Dakota department of human services.~~
4. "Subject" means a person responsible for the child's welfare as defined by North Dakota Century code section 50-25.1-02.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; January 1, 1996, amendments voided by Administrative Rules Committee effective August 8, 1996; September 1, 1997; July 1, 2020, April 1, 2022.

General Authority: NDCC 50-25.1-05

Law Implemented: NDCC 50-25.1-05

SECTION 8. Section 75-03-19-03 is amended as follows:

75-03-19-03. Time for initiating assessments - Emergencies.

All nonemergency child abuse or neglect assessments must be initiated ~~no later than seventy-two hours~~ within timeframes established by the department after receipt of

a report by the assessing agency ~~unless the department prescribes a different time in a particular case.~~ In cases involving a serious threat or danger to the life or health of a child, the assessment and any appropriate protective measures must commence immediately upon receipt of a report by the assessing agency. An assessment is initiated by ~~a search of records for information relating to the report,~~ contact with at the alleged abused or neglected child, a law enforcement officer with jurisdiction in the location where the child may be found or where the alleged abuse or neglect occurred, or the subject of the report, ~~or with a collateral contact.~~

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; April 1, 2022.

General Authority: NDCC 50-25.1-05

Law Implemented: NDCC 50-25.1-05

SECTION 9. Section 75-03-19-06 is amended as follows:

75-03-19-06. Assessment procedures.

Assessments of reports of suspected child abuse or neglect must be conducted by the department or its authorized agents in substantial conformity with the policies of the department. Assessments of reports of suspected child abuse or neglect must reflect:

1. An assessment process designed to collect sufficient information to make a decision whether ~~services are required~~ child abuse or neglect is confirmed, confirmed with an unknown subject, unconfirmed or unable to determine to provide for the protection and treatment of an abused or neglected child;
2. Assessment techniques that include interviewing and observing the subject, and the child victim, and interviewing other interested or affected persons, and documenting those interviews and observations;
3. Conclusions and a summary based on information gathered by assessment techniques described in subsection 2; and
4. If ~~services are required~~ the child abuse or neglect decision is confirmed or confirmed within an unknown subject and the child remains at substantial risk of continued abuse or neglect due to a supported state of impending danger, development of ~~treatment~~ service plans for the provision of protective services based on goals and objectives established by the department or its authorized agent for the subject and for the family of the child victim.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; July 1, 2006; July 1, 2020, April 1, 2022.

General Authority: NDCC 50-25.1-05, 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05, 50-25.1-05.4

SECTION 10. Section 75-03-19-07 is amended as follows:

75-03-19-07. Caseload standards.

Any authorized agent designated by the department to receive reports and conduct assessments of reports of suspected child abuse or neglect shall adhere to the caseload standards establishing minimum ~~staff-to-client~~staff-to-assessment ratios.

History: Effective September 1, 1990; amended effective January 1, 1996; July 1, 2006; April 1, 2022.

General Authority: NDCC 50-25.1-05

Law Implemented: NDCC 50-25.1-05, 50-25.1-06.1

**CHAPTER 75-03-19.1
CHILD FATALITY REVIEW PANEL**

Section	
75-03-19.1-01	Definitions
75-03-19.1-02	Panel Membership
75-03-19.1-03	Duties
75-03-19.1-04	Confidentiality of Records

SECTION 11. Section 75-03-19.1-01 as amended as follows:

75-03-19.1-01. Definitions.

The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-25.1, except:

1. "Decision" means the conclusion reached by the panel regarding:
 - a. Manner of death listed on the death certificate;
 - b. Whether a death was preventable, nonpreventable, or preventability undeterminable;
 - c. Cause of death, if possible;
 - d. Circumstances that contributed to the death; and
 - e. Changes in policy, practices, and law to prevent children's deaths.
2. "Indepth review" means the process of reviewing information contained in written documentation obtained from any hospital, physician, medical professional, medical facility, mental health professional, mental health facility, or other entity regarding a child who has died, and using the information as a basis of a panel decision.
3. "Panel" means the child fatality review panel, governed by North Dakota Century Code chapter 50-25.1.
4. "Presiding officer" means the representative of the department's administrator of child protection services program.

History: Effective July 1, 2006; amended effective April 1, 2022.

General Authority: NDCC 50-25.1-04.2

Law Implemented: NDCC 50-25.1-04.3

CHAPTER 75-03-19.2
APPROVED LOCATIONS FOR ABANDONED INFANTS

Section	
75-03-19.2-01	Definitions
75-03-19.2-02	Department's Authorized Agent to Receive Reports and Conduct Assessments
75-03-19.2-03	Approved Locations
75-03-19.2-04	Infants Abandoned at a Hospital at Birth

SECTION 12. Section 75-03-19.2-02 as amended as follows:

75-03-19.2-02. Department's authorized agent to receive reports and conduct assessments.

The department's authorized agent shall act as designee of the department for the purpose of receiving reports of infants abandoned under the provisions of chapter 75-03-19 and North Dakota Century Code section 50-25.1-15. Upon receipt of a report of an infant abandoned under North Dakota Century Code section 50-25.1-15, the department's authorized agent shall conduct an assessment. Upon a determination that the infant is unharmed, the assessment must be terminated and no ~~determination that services are required for the protection and treatment of an abused or neglected child~~ abuse or neglect assessment decision shall be made.

History: Effective October 1, 2020; amended effective April 1, 2022.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-25.1-15

October 26, 2021

RE: Proposed amendments to N.D. Admin. Code chapters 75-03-18, 75-03-19, 75-03-19.1, and 75-03-19.2
Procedures for Appeal of Child Abuse and Neglect Assessments, Assessment of Child Abuse and Neglect Reports, Child Fatality Review Panel, and Approved Locations for Abandoned Infants

TO WHOM IT MAY CONCERN:

The Department of Human Services is proposing amendments to N.D. Admin. Code chapters 75-03-18, 75-03-19, 75-03-19.1, and 75-03-19.2, Procedures for Appeal of Child Abuse and Neglect Assessments, Assessment of Child Abuse and Neglect Reports, Child Fatality Review Panel, and Approved Locations for Abandoned Infants. 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 Friday, December 17, 2021.

The department has scheduled an oral hearing for Tuesday, December 7, 2021. 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 Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Bismarck, ND 58505-0250.

Sincerely,



Christopher Jones,
Executive Director

Enclosures

cc: Jill Grossman, Legislative Council
Cory Pedersen, Children & Family Services
Marlys Baker, Children & Family Services
Jennifer Grabar, Children & Family Services
Jessica Thomasson, Executive Policy Director

EXECUTIVE OFFICE

GOVERNOR
Doug Burgum

EXECUTIVE DIRECTOR
Christopher Jones