

**CHAPTER 75-03-09**  
**GROUP CHILD CARE EARLY CHILDHOOD SERVICES**

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**75-03-09-01. Purpose.**

Repealed effective January 1, 2011.

**75-03-09-02. Authority and objective.**

Repealed effective January 1, 2011.

**75-03-09-03. Definitions.**

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Application" means all forms the department requires when applying or reapplying for a license.

2. "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
3. "Attendance" means the total number of children present at any one time at the group child care.
4. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
5. "Emergency designee" means an individual designated by the operator to be a backup caregiver for emergency assistance or to provide substitute care.
6. "Group child care supervisor" means an individual responsible for overseeing the day-to-day operation of a group child care.
7. "Infant" means a child who is less than twelve months of age.
8. "Medications" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
9. "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a group child care.
10. "Provider" means the group child care owner or operator.
11. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
12. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; January 1, 2022.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

#### **75-03-09-04. Effect of licensing and display of license.**

1. The issuance of a license to operate a group child care is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed prominently in the premises to which it applies.
3. The license must specify the maximum number of children who may be cared for by the group child care. The group child care may not admit a greater number of children than the license allows.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04

**75-03-09-05. Denial or revocation of license.**

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the provider may continue the operation of the group child care pending the final administrative determination or until the license expires, whichever occurs first, unless continued operation would jeopardize the health and safety of the children attending the group child care. This subsection does not limit the actions the department may take pursuant to North Dakota Century Code sections 50-11.1-07.8 and 50-11.1-12.
3. The department may revoke a license to operate a group child care without first issuing a correction order or simultaneously with a suspension if continued operation would jeopardize the health and safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

**75-03-09-06. Provisional license.**

1. The department may issue a provisional license for the operation of a group child care although the applicant or provider fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:
  - a. State that the provider has failed to comply with all applicable standards and rules of the department;
  - b. State the items of noncompliance;
  - c. Expire at a set date, not to exceed six months from the date of issuance; and
  - d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance of the provisional license, after the applicant or provider demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. The department may issue a provisional license only to an applicant or provider who has waived, in writing:
  - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
  - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the department and must be acknowledged in writing by the provider.
5. Subject to the exceptions contained in this section, a provisional license entitles the operator to all rights and privileges afforded the operator of an unrestricted license.

6. The department may not issue a provisional license if the group child care is not in compliance with section 75-03-09-17 or 75-03-09-18.
7. The provider shall display prominently the provisional license and agreement.
8. The provider shall provide parents written notice that the group child care is operating on a provisional license and the basis for the provisional license.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2020.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

#### **75-03-09-06.1. Restricted license.**

The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;
2. To restrict a pet or animal from areas accessible to children; or
3. When necessary to inform the parents that the provider is licensed, but is restricted to operating in certain rooms or floors of the residence or restricted from using specific outdoor space of the residence.

**History:** Effective January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04

#### **75-03-09-07. Application for and nontransferability of group child care license.**

1. An application for license must be submitted to the department or its authorized agent. Application must be made in the form and manner prescribed by the department.
2. A license issued under this chapter is nontransferable and valid only for the premises indicated on the license.
3. An application for a new license must be filed upon change of provider or location.
4. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; July 1, 2020; January 1, 2022.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

#### **75-03-09-08. Duties of group child care provider.**

1. The provider of a group child care is responsible for compliance with requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. The provider shall:
  - a. Establish the child care program;
  - b. Apply for a license for the group child care;

- c. Possess knowledge or experience in management and interpersonal relationships;
- d. Formulate written policies and procedures for the operation of the group child care. Policies must include:
  - (1) An explanation of how accidents and illnesses will be handled;
  - (2) The methods of developmentally appropriate discipline and guidance techniques that are to be used;
  - (3) The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;
  - (4) Hiring practices and personnel policies for staff members;
  - (5) Informing parents that they may request daily reports for their child, including details regarding eating, napping, and diapering;
  - (6) Procedure for accountability when a child fails to arrive as expected at the child care; and
  - (7) Transportation procedures, if the provider provides transportation;
- e. Notify the department or its authorized agent of any major changes in the operation or in the ownership of the group child care, including staff member changes;
- f. Maintain records of enrollment, attendance, health, and other required records;
- g. May select an emergency designee;
- h. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the group child care;
- i. Ensure the group child care is sufficiently staffed at all times to meet the child and staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
- j. Ensure preadmission visits for children and their parents are offered so the facility's program, fees, operating policies, and procedures can be viewed and discussed;
- k. Ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
- l. Provide parents, upon request, with progress reports on their children, and provide unlimited opportunities for parents to observe their children while in care. Providing unlimited access does not prohibit a group child care from locking its doors while children are in care;
- m. Provide parents with the name of the group child care provider, the group child care supervisor, staff members, and the emergency designee;
- n. Report, as a mandatory reporter, any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
- o. Ensure that children do not depart from the child care premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for the age and development of the child. The provider shall obtain written

parental consent for the child to leave the child care premises unsupervised, which must specify the activity, time the child is leaving and length of time the child will be gone, method of transportation, and parental responsibility for the child once the child leaves the child care premises; and

- p. Ensure that each child is released only to the child's parent, legal custodian, guardian, or individual who has been authorized by the child's parent, legal custodian, or guardian.
2. If the provider is also the group child care supervisor, the provider shall also meet the qualifications of the supervisor in section 75-03-09-10.
  3. The provider shall report to the department or its authorized agent within twenty-four hours:
    - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the group child care or attributable to care received in the group child care;
    - b. An injury to any child which occurs while the child is in the care of the group child care and which requires medical treatment;
    - c. Poisonings or errors in the administering of medication;
    - d. Closures or relocations of child care programs due to emergencies; and
    - e. Fire that occurs and explosions that occur in or on the premises of the group child care.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-09-09. Staffing requirements.**

1. The number of staff members and their responsibilities must reflect program requirements, individual differences in the needs of the children enrolled, and may permit flexible groupings, if necessary.
2.
  - a. A provider may provide early childhood services for no more than seven children at any one time, which includes no more than three children under twenty-four months of age. A provider may also provide early childhood services to two additional school-age children; or
  - b. A provider may elect to staff according to the following minimum ratio of staff members responsible for caring for or teaching children to children in group child care:
    - (1) For children younger than eighteen months of age, a ratio of .25 in decimal form is assigned;
    - (2) For children eighteen months of age to thirty-six months of age, a ratio of .20 in decimal form is assigned;
    - (3) For children thirty-six months of age to four years of age, a ratio of .14 in decimal form is assigned;
    - (4) For children four years of age to five years of age, a ratio of .10 in decimal form is assigned;

- (5) For children five years of age to six years of age, a ratio of .08 in decimal form is assigned;
  - (6) For children six years to twelve years of age, a ratio of .05 in decimal form is assigned; and
  - (7) When there is a mixed-aged group, the number of children in each age category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of staff members responsible for caring for or teaching children necessary at any given time, numbers of staff members for all age categories are added, and any fractional staff member count is then rounded to the next highest whole number whenever the fractional staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped. No more than four children under the age of eighteen months per staff member are allowed in any mixed-aged group.
3. A provider licensed for at least two years may apply for a waiver of the required ratio, not to exceed .25 decimal point. The department shall consider demonstration of need, health and safety of children, age of children, number of children, and licensing history of the provider in determining whether to approve the application for a waiver. The department may deny an application for waiver and may revoke a waiver granted under this subsection. The decision to deny or revoke a waiver is not an appealable decision. The department shall review each waiver granted under this subsection annually to determine if the circumstances which led to granting the waiver continue to exist.
  4. The provider of a group child care shall ensure that the group child care is sufficiently staffed at all times to meet the child and staff ratios for children in attendance, and that no more children than the licensed capacity are served at one time.
  5. If a child with special needs is admitted to the group child care, the child's developmental age level must be used in determining the number of children for which care can be provided.
  6. The provider shall ensure that children with special needs requiring more than usual care and supervision have adequate care and supervision provided to them without adversely affecting care provided to the remaining children in the group child care.

**History:** Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; January 1, 1989; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2013; April 1, 2014; January 1, 2022.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

**75-03-09-10. Minimum qualifications of group child care supervisor.**

1. A group child care supervisor must be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care.
2. The group child care supervisor shall meet at least one of the following qualifications, in addition to those set out in subsection 1:
  - a. A bachelor's degree in the field of early childhood education or child development;
  - b. An associate's degree with at least one of the following:

- (1) Eight semester hours or twelve quarter hours of department-approved early childhood education or child development;
  - (2) One hundred twenty hours of department-approved early childhood training; or
  - (3) A director's credential approved by the department;
- c. Current certification as a child development associate or successful completion of a department-approved diploma program with emphasis in early childhood or child care;
  - d. Certification from a Montessori teacher training program;
  - e. At least one year of exclusive experience as a self-declaration holder or licensed child care provider with positive references from at least two parents whose children were in the provider's care;
  - f. A high school degree or equivalency with certification of completion in a secondary occupational child care program and at least one year of exclusive experience working with young children, with references from at least two individuals who either had their children in the group child care supervisor's care or instructed the group child care supervisor in child care programming; or
  - g. A minimum of one year of exclusive experience providing care to three or more children, with positive references from at least two parents whose children were in the group child care supervisor's care or a center director or teacher who observed the group child care supervisor's care of children first hand.
- 3. The group child care supervisor shall certify completion of a minimum of ten hours of department-approved training related to child care annually, including one hour on sudden infant death prevention prior to provider having unsupervised access to infants. The ten hours of training in the first year following initial licensure must include a department-approved basic child care course. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training.
  - 4. The group child care supervisor must be present in the group child care no less than sixty percent of the time when children are in care.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-11. Duties of group child care supervisor.**

The group child care supervisor, in collaboration with the group child care provider, shall:

- 1. Plan, supervise, and conduct daily activities in the group child care;
- 2. Ensure that staff members and children under the age of eighteen shall have adult supervision in the group child care at all times;
- 3. Develop and deliver orientation for new staff members and keep a record of the items covered during orientation; and
- 4. Instruct each employee of the group child care of the process for reporting a complaint, a suspected licensing violation, or a suspected child abuse or neglect incident.



**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-12. Minimum qualifications for all staff members responsible for caring for or teaching children.**

Staff members shall:

1. Be at least fourteen years of age, provided that each staff member under age sixteen provides written parental consent for employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07. A member of the immediate family of the provider may provide care if the family member is at least twelve years of age;
2. Be individuals of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
3. Receive orientation related to child care policies, emergency procedures, special needs of children in care, and group child care activities during the first week of work;
4. Ensure that at no time a child is placed in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health;
5. Certify completion of a department-approved basic child care course within ninety days of employment;
6. Certify the staff member's own completion of department-approved training related to child care annually as set forth below:
  - a. A staff member working thirty or more hours per week shall certify a minimum of eight hours of department-approved training annually;
  - b. A staff member working fewer than thirty and at least twenty hours per week shall certify a minimum of six hours of department-approved training annually;
  - c. A staff member working fewer than twenty and at least ten hours per week shall certify a minimum of four hours of department-approved training annually;
  - d. A staff member working fewer than ten hours per week shall certify a minimum of two hours of department-approved training annually;
  - e. An emergency designee is exempt from department-approved annual training, with the exception of training required by subsections 5 and 7; and
  - f. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training; and
7. Certify annual completion of one hour of department-approved sudden infant death prevention training prior to staff member having unsupervised access to infants;
8. Ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible

for caring for or teaching children being available for assistance and care so that the child's health and safety are protected;

9. Be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department; and
10. Be currently certified within ninety days of employment and prior to staff member having unsupervised access to children in care, in first aid by a program approved by the department.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; April 1, 2018.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-09-12.1. Minimum qualifications of volunteers.**

If a volunteer is providing child care, the volunteer shall meet the qualifications of a staff member responsible for caring for or teaching children and shall receive orientation for all assigned tasks.

**History:** Effective January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-09-13. Minimum health requirements for all applicants, operators, and staff members.**

1. If the physical, cognitive, social, or emotional health capabilities of an applicant or staff member appear questionable, the department may require the individual to present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.
2. A staff member or household member may not use or be under the influence of any illegal drugs or alcoholic beverages while caring for children.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-09-14. Minimum requirements for facility.**

1. The provider shall ensure that the group child care is properly lighted. If the lighting of the group child care appears questionable, the department or its authorized agent may require the provider to obtain additional lights.
2. The provider shall ensure that safe and comfortable arrangements for naps for enrolled children are provided.
  - a. The provider may allow a child to sleep or rest on the floor only when the floor is carpeted or padded, warm, free from drafts, and when each child has an individual blanket or sleeping mat.

- b. The provider shall ensure that there is a room available, separate from the nap room, where an individual child can go for supervised play if the child is unable to nap, so as not to disrupt the other children's rest.
3. Water supply:
  - a. The provider shall ensure that the group child care has a drinking supply from a community water system or from a source tested and approved by the department of environmental quality.
  - b. The group child care must have hot and cold running water. The water in the faucets used by children must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
4. Toilet and sink facilities:
  - a. The provider shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff.
  - b. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping. A minimum of one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained.
  - c. The provider shall provide child-sized toilet adapters, training chairs, or potty chairs for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.
  - d. The provider shall provide at least one handwashing sink per toilet room facility or diapering area. The provider shall provide sanitary hand-drying equipment, single-use or individually designated cloth towels, or paper towels near handwashing sinks.
  - e. The provider shall provide safe step stools to allow standard-size toilets and sinks to be used by the children or the provider shall ensure the availability of child-size toilets and sinks.
5. The operator of a group child care not on a municipal or public water supply or wastewater disposal system shall ensure the group child care's sewage and wastewater system has been approved by the department of environmental quality.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; April 1, 2018; July 1, 2020.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-09-15. Minimum standards for provision of transportation.**

1. Prior to licensure, the provider shall establish a written policy governing the transportation of children to and from the group child care, if the group child care provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the group child care. If the group child care provides transportation, the provider shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.

2. When transportation is provided by a group child care, children must be protected by adequate staff supervision, safety precautions, and liability insurance.
  - a. Staffing requirements must be maintained to assure the safety of children while being transported.
  - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.
4. The driver must be eighteen years of age or older and must comply with all relevant federal, state, and local laws, including child restraint system laws.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

#### **75-03-09-16. Minimum emergency evacuation and disaster plan.**

1. Each provider shall establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with local emergency management agencies. The plan must include:
  - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
  - b. Procedures for evacuation, relocation, shelter-in-place, and lockdown;
  - c. Communications and reunification with families;
  - d. Continuity of operations; and
  - e. Accommodations for infants, toddlers, children with disabilities, and children with chronic medical conditions.
2. Fire and emergency evacuation drills must be performed.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2018; January 1, 2022.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

#### **75-03-09-17. Fire inspections.**

1. The provider shall ensure that initial and annual fire inspections are completed by local or state fire authorities for all group child cares in which care is provided. The group child care is responsible for any inspection fee. The provider shall have any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the department or its authorized agent. If the fire, safety, health, or sanitation environment appears questionable, the department or its authorized agent may require the provider to obtain additional inspections at the cost of the provider.
2. The provider shall provide:

- a. The fire inspector's written statement of compliance with the local fire code, if there is one; or
  - b. The fire inspector's written statement that the group child care has been inspected and that the inspector is satisfied that the facility meets minimum fire and safety standards.
3. The provider shall ensure that the group child care is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; July 1, 2020.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-18. Minimum sanitation and safety requirements.**

1. In facilities other than an occupied private residence and where meals are prepared, the provider shall ensure that the state department of health conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The provider shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the department or its authorized agent.
2. The provider shall ensure that the group child care bathroom sinks, toilets, tables, chairs, and floors are cleaned daily.
3. The provider shall ensure that the group child care building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures must be established to protect the health of the children and the staff members.
4. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, individually designated cloth towels, or paper towels must be available at each sink.
5. The provider shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The provider shall ensure that all toys and equipment are kept clean and in sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
6. The provider shall ensure that the group child care ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
7. The provider shall ensure that garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The provider shall keep indoor garbage in covered containers. The provider may allow paper waste to be kept in open waste containers.
8. The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers, to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.

9. The provider shall ensure that potential hazards, such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The provider shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks . The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
10. The provider shall ensure that indoor floors and steps are not slippery and do not have splinters. The provider shall ensure that accumulations of water, ice, snow, or debris are removed from steps and walkways as quickly as possible.
11. The provider shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
12. The provider shall take steps to keep the group child care free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the group child care. Insect repellent may be applied outdoors on children with parental permission.
13. The provider shall ensure that exit doorways and pathways are not blocked.
14. The provider shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.
15. The provider shall ensure that combustible materials are kept away from light bulbs and other heat sources.
16. The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the group child care is occupied by children, the room temperature must not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
17. A provider shall ensure that all group child care buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of environmental quality.
18. The provider shall ensure that personal items, including combs, pacifiers, and toothbrushes, are individually identified and stored in a sanitary manner.
19. Pets and animals.
  - a. The provider shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
  - b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.

- c. The provider shall ensure parents are aware of the presence of pets and animals in the group child care.
  - d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
  - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
  - f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
  - g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.
  - h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
20. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the group child care and shall empty, clean, and sanitize wading pools daily.
21. All swimming pools used by children must be approved annually by the local health unit.
22. Aquatic activities:
- a. The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
  - b. The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.
23. The provider shall ensure that beds, cots, mats, or cribs, complete with a mattress or pad, are available and the provider shall ensure:
- a. Pillows and mattresses have clean coverings.
  - b. Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
  - c. If beds, cots, mats, or cribs are used by different children, sheets and pillowcases are laundered before use by other children.
  - d. Cots, mats, or cribs are cleaned as often as necessary for cleanliness and hygiene, at least weekly, and after each use if used by different children;
  - e. That cots, mats, and cribs are single occupancy.
  - f. Each bed, cot, or mat has sufficient blankets available.
  - g. That aisles between beds, cots, mats, or cribs are a minimum space of two feet [60.96 centimeters] and are kept free of all obstructions while beds, cots, mats, or cribs are occupied.

- h. Provide separate storage for personal blankets or coverings.
- i. That mattresses and sheets are properly fitted.

**History:** Effective December 1, 1981; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; July 1, 2020.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-09-19. Minimum requirements regarding space.**

Each group child care shall provide adequate indoor and outdoor space for the daily activities of all children within the licensed capacity of the group child care.

1. There must be a minimum of thirty-five square feet [3.25 square meters] of appropriate indoor space per child in the group child care. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space that children are not permitted to occupy.
2. There must be a minimum of seventy-five square feet [6.97 square meters] of appropriate outdoor play space per child for the group child care. If available outdoor play space does not accommodate the licensed capacity of the group child care at one time, the total appropriate outdoor play space available must be no less than the number of children in the largest class or group of the group child care multiplied by seventy-five square feet [6.97 square meters]. Operators who provide seventy-five square feet [6.97 square meters] of separate indoor recreation space per child for the largest class or group are exempt from the outdoor space requirement. The provider shall prepare a written schedule of outdoor or separate indoor recreation space playtime which limits the use of the play area to its capacity, giving each class or group an opportunity to play daily.

**History:** Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-09-20. Program requirements.**

1. The group child care provider shall have a program of daily individual or small group activities appropriate to the ages and needs of the children in the group child care. The program must include activities which foster sound social, cognitive, emotional, and physical growth, and the program must be developed with consideration of parental input. A written daily routine including mealtimes, rest times, planned developmentally appropriate activities, free play, and outside time must be available to parents. The daily routine must be flexible enough to allow for spontaneous activity as appropriate.
2. The provider shall design the program with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest. The daily routine must be written, but subject to change. The daily routine must foster the development of good health habits and self-discipline, adequate indoor and outdoor play, rest, and sleep, with sufficient time and opportunities for various experiences.
3. The program must provide a variety of educational experiences for all ages of children served with an adequate supply of safe play equipment, toys, and materials for indoor and outdoor activity. Each group child care must have enough play materials and equipment so that each child in attendance may be involved individually or as a group.



4. Areas used for napping must provide an opportunity for undisturbed rest. The provider shall set napping schedules for children in consultation with their parents, according to the children's ages and needs.
5. At the time of enrollment, the provider shall meet with the parents to discuss the child's habits, activities, and schedules while at home and in school and the parent's special concerns about the child's past and future behavior and development. The provider shall design the schedule and activities to complement and supplement the child's experiences at home or in school.
6. The group child care provider shall contact parents to exchange information concerning the child and any concerns about the health, development, or behavior of the child. These concerns must be communicated to parents promptly and directly.
7. Staff members shall stress personal hygiene practices appropriate for a child's age and development.
8. Each child's cultural and ethnic background and primary language or dialect must be respected by the staff members.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-09-21. Minimum standards for food and nutrition.**

1. When the provider is responsible for providing food to children, the food supplied must meet United States department of agriculture standards and must be properly prepared, sufficient in amount, nutritious, varied according to the diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in the group child care must be treated in a safe and sanitary manner with safe and sanitary equipment.
2. When parents bring sack lunches for their children, the provider shall supplement lunches, as necessary, to provide nutritious and sufficient amounts of food for children and shall provide adequate and appropriate refrigeration and storage as required.
3. Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of day.
4. The provider shall serve nutritious meals to children in care during any normal mealtime hour.
5. The provider shall serve snacks to children in care after school.
6. When the provider is responsible for providing food to children, menus must be posted on a daily or weekly basis.
7. The provider shall consider information provided by the children's parents as to their eating habits, food preferences, or special needs in creating the feeding schedules and in tailoring menus.
8. The provider shall serve snacks and meals to children in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.
9. The provider or staff member may encourage children to eat the food served, but the provider or staff member may not coerce or force-feed children.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-09-22. Records.**

1. The provider shall keep a copy of this chapter on the premises of the group child care and shall make it available to staff members at all times.
2. The provider shall maintain the following records:
  - a. The child's full name, birthdate, and current home address;
  - b. Legal names of the child's parents, and current business and personal telephone numbers where they can be reached;
  - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individuals legally responsible for the child cannot be reached immediately in an emergency;
  - d. A written statement from the parents authorizing emergency medical care;
  - e. Names and telephone numbers of individuals authorized to take the child from the group child care;
  - f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document citing that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-age child; and
  - g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
3. The provider must verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
4. The provider shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents of each child, and to the following, unless otherwise protected by law:
  - a. The authorized agent and department representatives;
  - b. Individuals having a definite interest in the well-being of the children concerned and who, in the judgment of the department, are in a position to serve the children's interests should that be necessary; and
  - c. Individuals who possess a written authorization from the child's parent. The group child care shall have a release of information form available and shall have the form signed prior to the release of information.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2022.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-23. Discipline - Punishment prohibited.**

Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, neglect, or abuse to any child is grounds for denial or revocation.

1. The group child care must have a written policy regarding the discipline of children. The provider shall provide the policy to, and discuss the policy with, staff members before the group child care begins operation or before staff members begin working with children.
2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint, such as holding. A child may not be subjected to physical harm, fear, or humiliation.
3. Authority to discipline may not be delegated to children nor may discipline be administered by children.
4. Separation, when used as discipline, must be appropriate to the child's development and circumstances. The child must be in a safe, lighted, well-ventilated room within sight or hearing range of a staff member responsible for caring for or teaching children. A staff member may not isolate a child in a locked room or closet.
5. A child may not be punished for lapses in toilet training.
6. A staff member may not use verbal abuse or make derogatory remarks about the child, the child's family, race, or religion when addressing a child or in the presence of a child.
7. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
8. A staff member may not force-feed a child or coerce a child to eat unless medically prescribed and administered under a medical provider's care.
9. A staff member may not use deprivation of meals or snacks as a form of discipline or punishment.
10. A staff member, household member, or any other adult in or at the group child care may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.
11. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in the mouth of a child to deter the child from biting other children.
12. A staff member may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**75-03-09-24. Specialized types of care and minimum requirements.**

1. Infant care.

a. Environment and interactions.

- (1) A group child care serving children from birth to twelve months shall provide an environment which protects the children from physical harm.
- (2) The provider shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children, or emergency designee, such as being held, rocked, talked with, or sung to.
- (3) The staff members responsible for caring for or teaching children, or emergency designee, shall respond promptly to comfort an infant's or toddler's physical and emotional distress.
  - (a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and
  - (b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.
- (4) The provider shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.
- (5) Staff members responsible for caring for or teaching children shall take children outdoors or to other areas within the group child care for a part of each day to provide some change of physical surroundings and to interact with other children.
- (6) The provider shall ensure that infants are not shaken or jostled.
- (7) The provider shall ensure that low chairs and tables, high chairs with trays, or other age-appropriate seating systems are provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.
- (8) The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

b. Feeding.

- (1) The provider shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed by the infant's parent or medical provider in writing.
- (2) The provider shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider in writing.
- (3) The provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.

- (4) The provider shall ensure that frozen breast milk is thawed under cool running tap water or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent within twenty-four hours.
- (5) The provider shall ensure that an infant is not fed by propping a bottle.
- (6) The provider shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.
- (7) The provider shall ensure that a staff member responsible for caring for or teaching children is within sight and hearing range of an infant during the infant's feeding or eating process.

c. Diapering.

- (1) The provider shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the group child care if children requiring diapering are in care.
- (2) The provider shall ensure that diapers are changed promptly when needed and in a sanitary manner.
- (3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
- (4) The provider shall ensure that soiled or wet diapers are stored in a sanitary, covered container separate from other garbage and waste until removed from the group child care.

d. Sleeping.

- (1) The provider shall ensure that infants are placed on their back initially when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
- (2) The provider shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.
- (3) The provider shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise.
- (4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- (5) The provider shall ensure that all items are removed from and that no toys or objects are hung over or attached to the crib or portable crib when an infant is sleeping or preparing to sleep. With written parental permission, the provider may place one individual infant blanket or sleep sack, a pacifier, and a security item that does not pose a risk of suffocation to the infant in the crib or portable crib while an infant is sleeping or preparing to sleep.

- (6) A staff member shall check on sleeping infants regularly and have a monitor in the room with the sleeping infants, unless a staff member is in the room with the infants while the infants are sleeping.
2. Night care.
  - a. Any group child care offering night care shall provide program modifications for the needs of children and their parents during the night.
  - b. In consultation with parents, special attention must be given by the staff member responsible for caring for or teaching children to provide a transition into this type of care, appropriate to the child's needs.
  - c. The provider shall encourage parents to leave their children in care or pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parents' work schedule.
  - d. The provider shall ensure that children under the age of six are supervised directly when bathing.
  - e. The provider shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available.
  - f. The provider shall require each child in night care to have night clothing and a toothbrush marked for identification.
  - g. For a group child care not operating out of an occupied private residence, staff members responsible for caring for or teaching children must be awake and within hearing range during sleeping hours to provide for the needs of children and to respond to an emergency.
3. Drop-in group child care.
  - a. If a group child care serves drop-in children, schoolchildren, or before-school and afterschool children, the group child care must be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program and to maintain the proper staff member to child ratio.
  - b. The provider shall ensure that the program reflects the individual needs of the children who are provided drop-in care.
  - c. The provider shall ensure that records secured comply with all enrollment requirements contained in section 75-03-09-22, except the immunization verification record requirement.
  - d. The provider shall ensure that admittance procedures provide for a period of individual attention for the child to acquaint the child with the group child care, its equipment, and the staff members.
  - e. A group child care may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the group child care to exceed the total number of children for which the group child care is licensed.
4. A provider shall ensure that a group child care serving only drop-in care children complies with this chapter but is exempt from the following provisions:

- a. Subsections 4 and 5 of section 75-03-09-20, subsections 6 and 7 of section 75-03-09-21, subdivision f of subsections 2 and 3 of section 75-03-09-22, and subsection 1 of section 75-03-09-25.
- b. A group child care serving only drop-in care children is exempt from the outdoor space requirements.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

#### **75-03-09-25. Minimum requirements for care of a child with special needs.**

A provider shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of children with special needs. The provider shall receive documentation of the child's special needs from the parent upon the child's enrollment.

1. When a child with special needs is admitted, the group child care supervisor shall consult with the child's parents, and with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The provider shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description of the special needs, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.
2. The provider shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's special needs and potential for growth and development.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

#### **75-03-09-26. Minimum provisions regarding emergency care for children.**

The group child care must have written plans to respond to illness and emergencies, including burns, serious injury, and ingestion of poison. The provider shall ensure that parents of enrollees are advised of these plans. Plans must:

1. Establish emergency response procedures;
2. Provide accessible posting of emergency response procedures and require training for all staff members concerning those emergency procedures;
3. Require the availability of at least one working flashlight;
4. Require at least one department-approved first-aid kit maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times;
5. Provide a working telephone line immediately accessible to staff members with a list of emergency telephone numbers conspicuously posted;

6. Require a plan for responding to minor illnesses and minor accidents when children are in the care of the group child care;
7. Require written permission to dispense medication and proper instructions for the administration of medication obtained from the parent of a child in the group child care who requires medication.
  - a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to dosage and storage, and labeled with the child's name and date.
  - b. Medication must be stored in an area inaccessible to children, and medication stored in a refrigerator must be stored collectively in a spillproof container.
  - c. The provider shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. The provider shall include completed medication records in the child's record;
8. Require a supervised temporary isolation area designated for a child who is too ill to remain in the group child care or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
  - a. Parents are notified immediately and asked to pick up their child; and
  - b. First aid is provided and medical care is sought, as necessary;
9. Identify a source of emergency health services available to the group child care, including:
  - a. A prearranged plan for emergency medical care in which the parent of each enrolled child is advised of the arrangement; and
  - b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume responsibility for the child's care and until the parent or emergency contact is notified;
10. Establish and implement practices in accordance with guidance obtained through consultation with local or state department of health authorities regarding the exclusion and return of children with infectious or communicable conditions. The operator may obtain this guidance directly or through current published materials regarding exclusion and return to the group child care; and
11. Require that the group child care operator inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, and immediately notify parents of any injury which requires emergency care beyond first aid, and require each injury report to be made part of the child's record.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08



### **75-03-09-27. Effect of conviction on licensure and employment.**

1. An applicant or provider may not be, and a group child care may not employ or allow, in any capacity that involves or permits contact between the emergency designee, group child care supervisor, staff member, or household member and any child cared for by the group child care, a provider, emergency designee, group child care supervisor, staff member, or household member who has 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; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of 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; 12.1-21-01, arson; 12.1-22-01, robbery; 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; 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 in the case of a group child care applicant, provider, or group child care supervisor, or household member, or the provider in the case of a staff member or emergency designee, determines that the individual has not been sufficiently rehabilitated. 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 charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public as a provider, emergency designee, or staff member.
3. In the case of a misdemeanor offense described in North Dakota Century Code sections 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; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that 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 conviction.
4. The provider shall establish written policies and engage in practices that conform to those policies to effectively implement this section before the hiring of any staff.
5. A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and within five years from the date of initial approval and at least once every five years thereafter. The provider shall ensure that each staff member submits an

application for a fingerprint-based criminal history record check upon hire and within five years from the date of initial approval and at least once every five years thereafter. 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 shall submit a request to the bureau of criminal investigation for a nationwide name-based criminal history record check.

6. Review of fingerprint-based criminal history record check results.
  - a. If an individual disputes the results of the criminal history record 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 department's memo outlining 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. 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.
  - c. 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.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

#### **75-03-09-28. Child abuse and neglect decisions.**

1. A provider shall ensure safe care for the children receiving services in the provider's group child care. If a confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department can determine the applicant's, provider's, emergency designee's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or provider.
2. Each applicant, provider, emergency designee, and staff member in the group child care shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form no later than the first day of employment.
3. Household members over the age of twelve shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background

check form at the time of application or relicensure or upon obtaining residence at the location of the group child care.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-29. Correction of violations.**

1. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care at the group child care that a correction order has been issued. In addition to providing notice to the parent of each child, the provider shall post the correction order in a conspicuous location within the facility until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
  - a. For a violation of North Dakota Century Code section 50-11.1-02.2; section 75-03-09-04; subdivision i of subsection 1 of section 75-03-09-08; section 75-03-09-09; subsection 4 or 8 of section 75-03-09-12; subsection 3, 6, 9, or 10 of section 75-03-09-18; section 75-03-09-23; or subsection 1 of section 75-03-09-24, within twenty-four hours;
  - b. For a violation requiring the hiring of a group child care supervisor with those qualifications set forth in section 75-03-09-10, within sixty days;
  - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-09-17, within sixty days;
  - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and
  - e. For all other violations, within twenty days.
3. All periods for correction begin on the date of receipt of the correction order by the provider.
4. The department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
5. The provider shall furnish written notice to the department or its authorized agent upon completion of the required corrective action. The correction order remains in effect until the department or its authorized agent confirms the corrections have been made.
6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a group child care that has been issued a correction order. If, upon reinspection, it is determined that the group child care has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the group child care. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a group child care receives more than one correction order in a single year, the department or its authorized agent may refer the group child care for consulting services to assist the provider in maintaining compliance and to avoid future corrective action.

8. Refutation process for a correction order:
  - a. A provider may refute a correction order by submitting a refutation request in writing on the form provided by the department within five calendar days of receiving the correction order.
  - b. The department shall respond to written refutations within five business days of receipt.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2018; July 1, 2020; January 1, 2022.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

#### **75-03-09-30. Fiscal sanctions.**

1. The department shall assess a fiscal sanction of twenty-five dollars per day for each violation of North Dakota Century Code chapter 50-11.1; subdivision i of subsection 1 of section 75-03-09-08; section 75-03-09-09 or 75-03-09-17; subsection 6, 9, or 13 of section 75-03-09-18; or section 75-03-09-19, 75-03-09-23, 75-03-09-27, or 75-03-09-28, for each day the provider has not verified correction after the allowable time for correction of violations ends.
2. The department shall assess a fiscal sanction of fifteen dollars per day for each violation of subsection 2 of section 75-03-09-10; section 75-03-09-12; subsection 2 or subdivision b or d of subsection 4 of section 75-03-09-14; section 75-03-09-15; subsection 3, 5, 8, 10, or 12 of section 75-03-09-18; subsection 2 or 4 of section 75-03-09-20; subsection 1 of section 75-03-09-21; or subsection 1 or 3 of section 75-03-09-24, for each day that the provider has not verified correction, after the allowable time for correction of violations ends.
3. The department shall assess a fiscal sanction of five dollars per day for each violation of any other provision of this chapter for each day that the provider has not verified correction after the allowable time for correction of violations ends.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-07.4, 50-11.1-08

#### **75-03-09-31. Appeals.**

An applicant or provider may appeal a decision to deny or revoke a license by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of the applicant's or provider's receipt of written notice of the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing may be conducted in the manner prescribed by chapter 75-01-03.

**History:** Effective January 1, 1999; amended effective January 1, 2011.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-08, 50-11.1-10