

North Dakota Administrative Code Currentness _Title 75. Department of Human Services _Article 75-03. Community Services _Chapter 75-03-07.1. Self-Declaration Providers Early Childhood Services

NDAC 75-03-07.1-00

75-03-07.1-00. 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:

1. “Attendance” means the total number of children present at any one time.
2. “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.
3. “Emergency designee” means an individual designated by a holder of a self-declaration to be a backup staff member for emergency assistance or to provide substitute care.
4. “Infant” means a child who is less than twelve months of age.
5. “Provider” means the holder of a self-declaration document.
6. “Supervision” means a provider or 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 that the provider or staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a provider or staff member responsible for caring for or teaching children being available for assistance and care so that the child’s health and safety is protected.

NDAC 75-03-07.1-01

75-03-07.1-01. Fees.

Repealed effective January 1, 2011.

NDAC 75-03-07.1-02

75-03-07.1-02. Self-declaration standards -Application.

Current through Supplement 352 (April 2014).

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1. An applicant for a self-declaration document shall submit the application to the authorized agent in the county in which the applicant proposes to provide early childhood services. An application, including a department-approved authorization for background check for household members age twelve and older, an emergency designee, and an applicant, must be made in the form and manner prescribed by the department. The application must include the following sworn statement:

I am not required by North Dakota state law (Chapter 50-11.1) to be licensed to provide early childhood services.

2. A provisional self-declaration document may be issued:

a. The director of a regional human service center, or the director's designee, in consultation with the department, may issue a provisional self-declaration document although the applicant or self-declaration holder fails to, or is unable to, comply with all applicable standards and rules of the department.

b. A provisional self-declaration document must:

(1) State that the self-declaration holder has failed to comply with all applicable standards and rules of the department;

(2) State the items of noncompliance;

(3) Expire at a set date, not to exceed six months from the date of issuance; and

(4) Be exchanged for an unrestricted self-declaration document, which bears an expiration date of one year from the date of issuance of the provisional self-declaration document, after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.

c. The department may issue a provisional self-declaration document only to an applicant or provider who has waived, in writing:

(1) The right to a written statement of charges as to the reasons for the denial of an unrestricted self-declaration document; and

(2) The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter

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28-32, concerning the nonissuance of an unrestricted self-declaration document, either at the time of application or during the period of operation under a provisional self-declaration document.

d. Any provisional self-declaration document issued must be accompanied by a written statement of violations signed by the director of the regional human service center or the director's designee and must be acknowledged in writing by the provider.

e. Subject to the exceptions contained in this section, a provisional self-declaration document entitles the holder to all rights and privileges afforded the holder of an unrestricted self-declaration document.

f. The provider shall display prominently the provisional self-declaration document and agreement.

g. The provider shall provide parents written notice that the provider is operating on a provisional self-declaration document and the basis for the provisional self-declaration document.

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3. An applicant for a self-declaration document shall be directly responsible for the care, supervision, and guidance of the child or children; shall comply with the following standards; and shall certify:

a. That the applicant:

(1) Is at least eighteen years of age;

(2) Shall provide an environment that is physically and socially adequate for the children; and that the applicant is an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;

(3) Shall devote adequate time and attention to the children in the applicant's care;

(4) Shall provide food of sufficient quantity and nutritious quality in accordance with the United States department of agriculture standards which satisfies the dietary needs of the children while in the applicant's care;

(5) Shall provide proper care and protection for children in the applicant's care;

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(6) May not use or be under the influence of, and will not allow any household member or staff member to use or be under the influence of any illegal drugs or alcoholic beverages while caring for children;

(7) May not leave children without supervision;

(8) Shall verify 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 stating 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;

(9) Shall report immediately, as a mandated reporter, suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;

(10) Shall provide a variety of games, toys, books, crafts, and other activities and materials to enhance the child's intellectual and social development and to broaden the child's life experience. Each provider shall have enough play materials and equipment so that at any one time each child in attendance may be involved individually or as a group;

(11) Shall ensure a current health assessment or a health assessment statement completed by the parent is 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;

(12) Shall ensure a child information form completed by the parent is obtained at the time of initial enrollment of the child and annually thereafter; and

(13) Has completed a department-approved basic child care course.

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b. That discipline will 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 or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury or neglect or abuse to any child is grounds for denial or revocation of a self-declaration document.

(1) A child may not be kicked, punched, spanked, shaken, pinched, bitten, roughly handled, struck, mechanically restrained, or physically maltreated by the provider, staff member, household member, or any other adult in the residence.

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(2) Authority to discipline may not be delegated to or be administered by children.

(3) Separation, when used as discipline, must be appropriate to the child's development and circumstances, and the child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult. A child may not be isolated in a locked room or closet.

(4) A child may not be punished for lapses in toilet training.

(5) A provider may not use verbal abuse or make derogatory remarks about the child, or the child's family, race, or religion when addressing a child or in the presence of a child.

(6) A provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.

(7) A provider may not force-feed a child or coerce a child to eat unless medically prescribed and administered under a medical provider's care.

(8) A provider may not use deprivation of snacks or meals as a form of discipline or punishment.

(9) A provider may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.

(10) A provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.

c. That a working smoke detector is properly installed and in good working order on each floor used by children.

d. That a fire extinguisher that is inspected annually is properly installed, is in good working order, and is located in the area used for child care.

e. That a working telephone is located in the location used for child care. Emergency numbers for parents and first responders must be posted.

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f. When transportation is provided by a provider, children must be protected by adequate supervision and safety precautions.

(1) Drivers must be eighteen years of age or older and must comply with all relevant federal, state, and local laws, including child restraint laws.

(2) A child must not be left unattended in a vehicle.

4. Potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, poisonous plants, and open stairways must not be accessible to children. Guns and ammunition must be kept in separate locked storage, or trigger locks must be used. Other weapons and dangerous sporting equipment, such as bows and arrows, must not be accessible to children.

5. If the physical, cognitive, social, or emotional health capabilities of an applicant or provider appear to be questionable, the department may require that the individual present evidence of capability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.

6. A self-declaration document is only effective for one year.

NDAC 75-03-07.1-03

75-03-07.1-03. Smoke-free environment.

Repealed effective January 1, 2011.

NDAC 75-03-07.1-04

75-03-07.1-04. One per residence - Nontransferability of self-declaration and emergency designee.

1. The department may not authorize 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. A provider or operator with more than one in-home registration, self-declaration, or license in a single residence or two or more providers or operators operating under in-home registrations, self-declarations, or licenses out of the same residence prior to January 1, 2011, will be exempt from this subsection until January 1, 2016, after which time all providers will be subject to this subsection.

2. The applicant shall identify one emergency designee for the self-declaration at the time of the application. The

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emergency designee must be at least eighteen years old and must be approved by the department.

3. The provider shall be on the premises supervising the children at all times when children are present, except in situations during which the emergency designee is providing care.

4. The self-declaration is nontransferable to another residence.

NDAC 75-03-07.1-05

75-03-07.1-05. Appeals.

An applicant for, or a holder of, a self-declaration document has the right to appeal a decision to deny or revoke a self-declaration document. A written appeal must be postmarked or received by the department within ten calendar days of the applicant's or holder's receipt of written notice of the decision to deny or revoke the document. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner prescribed by chapter 75-01-03.

NDAC 75-03-07.1-06

75-03-07.1-06. Denial or revocation of self-declaration document.

1. The right to provide early childhood services is dependent upon the applicant's or provider's continuing compliance with the terms of the application as listed in section 75-03-07.1-02.

2. A fraudulent or untrue representation is grounds for revocation or denial.

3. a. The applicant, self-declaration provider, emergency designee, staff members, and household members may not have been found guilty of, pled guilty to, or pled no contest to:

(1) An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code section sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, 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 a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, 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; or 14-09-22, abuse or neglect of a child;

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(2) 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 paragraph 1; or

(3) An offense, other than an offense identified in paragraph 1 or 2, if the department 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.

b. The department has determined that the offenses enumerated in paragraphs 1 and 2 of subdivision a have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public in a capacity as a provider, emergency designee, or staff member.

c. In the case of 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; 12.1-17-07.1, stalking; 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. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

5. A provider shall ensure safe care for the children receiving services in the provider's residence. If a services-required decision made under North Dakota Century Code chapter 50-25.1 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 self-declaration document may be denied or revoked.

a. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 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 to the department, from which the department can determine the applicant's, provider's, or staff member's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of ability to the applicant or provider and to the director of the regional human service center or the director's designee for consideration and action on the application or self-declaration document.

b. Each applicant, provider, emergency designee, and staff member shall complete, and the provider shall

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submit to the authorized agent, a department-approved authorization for background check form no later than the first day of employment.

c. Household members over the age of twelve shall complete, and the provider shall submit to the authorized agent, a department-approved authorization for background check form at the time of application or upon obtaining residence at the location of the child care.

NDAC 75-03-07.1-07

75-03-07.1-07. Minimum sanitation requirements.

1. The provider shall operate according to the recommendations by the federal centers for disease control and prevention, including washing hands, 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 individually designated cloth towels or paper towels must be available at each sink. Clean towels must be provided at least daily.

2. The provider shall ensure that the residence, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The provider shall establish routine cleaning procedures to protect the health of the children.

3. 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 and 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 child care.

d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.

e. The provider shall ensure that all contact between pets and children is closely supervised. The provider shall

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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.

NDAC 75-03-07.1-08

75-03-07.1-08. Infant care.

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1. Environment and interactions.

a. A provider serving children from birth to twelve months shall provide an environment which protects the children from physical harm.

b. The provider shall ensure that each infant receives positive stimulation and verbal interaction such as being held, rocked, talked with, or sung to.

c. The provider shall respond to comfort an infant's or toddler's physical and emotional distress:

(1) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and

(2) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.

d. 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.

e. The provider shall take children outdoors or to other areas within the child care for a part of each day to provide some change of physical surroundings and to interact with other children.

f. The provider shall ensure that infants are not shaken or jostled.

g. 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.

h. The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

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2. Feeding.

a. 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.

b. The provider shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. The provider shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider.

c. The provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.

d. 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.

e. The provider shall ensure that an infant is not fed by propping a bottle.

f. 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.

g. The provider shall be within sight and hearing range of an infant during the infant's feeding or eating process.

3. Diapering.

a. The provider shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the child care if children requiring diapering are in care.

b. The provider shall ensure that diapers are changed promptly when needed and in a sanitary manner.

c. Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.

d. 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 child care.

4. Sleeping.

a. 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.

b. 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.

c. 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.

d. Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.

e. The provider shall ensure that all items are removed from and that no toys or objects are hung over or

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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 the infant is sleeping or preparing to sleep.

f. The provider shall ensure that mattresses and sheets are properly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when cribs are used by different infants, or at least weekly.

g. The provider shall check on sleeping infants regularly or have a monitor in the room with sleeping infants.

NDAC 75-03-07.1-09

75-03-07.1-09. Minimum requirements for the care of children with special needs.

A provider shall make appropriate provisions, 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 by the parent upon the child's enrollment.

1. When a child with special needs is admitted, the provider 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, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.

2. The provider shall ensure that staff members responsible for caring for or teaching children and the emergency designee receive proper instructions as to the nature of the child's disability and potential for growth and development.

NDAC 75-03-07.1-10

75-03-07.1-10. Correction of violations.

1. A provider shall correct violations noted in a correction order within the following times:

a. For a violation of subsection 24 of North Dakota Century Code section 50-11.1-02, North Dakota Century Code section 50-11.1-02.2, paragraph 5 or 7 of subdivision a of subsection 3 of section 75-03-07.1-02,

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subdivision b of subsection 3 of section 75-03-07.1-02, or subsection 4 of section 75-03-07.1-02, within twenty-four hours.

b. For a violation of subdivision g or h of subsection 1 of North Dakota Century Code section 50-11.1-17 or all other deficiencies of chapter 75-03-07.1, within twenty days.

2. All periods of correction begin on the date of the receipt of the correction order by the provider.

3. The regional supervisor of early childhood services 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.

4. The provider shall furnish a written notice to the authorized agent upon completion of the required corrective action. The correction order remains in effect until the authorized agent confirms the corrections have been made.

5. The provider shall notify the parent of each child receiving care at the residence and each staff member how to report a complaint or suspected rule violation.

6. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care by this provider that a correction order has been issued. In addition to providing notice to the parent of each child, the provider also must post the correction order in a conspicuous location within the residence until the violation has been corrected or five days, whichever is longer.

7. A provider who has been issued a correction order must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the provider has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order must be mailed by certified mail to the provider. 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.

NDAC 75-03-07.1-11

75-03-07.1-11. 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 b, c, d, or e of subsection 3 of section 75-03-07.1-02; or subsection 4 of section 75-03-07.1-02 for each day that the provider has not verified correction, after the allowable time for correction of violations ends.

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2. The department shall assess 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.