

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1091
(Human Services Committee)
(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact sections 50-11-00.1, 50-11-01, 50-11-01.5, 50-11-01.6, 50-11-02, 50-11-02.1, 50-11-02.2, 50-11-03, 50-11-03.2, 50-11-03.3, 50-11-03.4, 50-11-03.5, 50-11-04, 50-11-04.2, 50-11-05, 50-11-06.7, 50-11-07, 50-11-08, and 50-11-09 of the North Dakota Century Code, relating to family foster care for children licenses, certifications, and approvals, and identified and kinship relatives; and to provide for a report to legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-11-00.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11-00.1. Definitions.

As used in this chapter:

1. "Agency foster home for adults" means a residential home in which foster care for adults is regularly provided by professional staff trained to provide services to older adults or adults with a disability, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.
2. "Approval" means the approval of tribal foster care facilities by the department, upon submission of tribal licensing standards or in the absence of tribal licensing standards compliance with state standards, of a facility located on or near, as identified by the tribe, a recognized Indian reservation in North Dakota, not subject to the jurisdiction of the state of North Dakota for licensing purposes, to allow the facility to receive title IV-E funding.
3. "Authorized agent" means the human service zone, unless another entity is designated by the department.
4. "Certified family foster home for children" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee of the residence to no more than three children, unless the department approves otherwise.
5. "Department" means the department of health and human services.
- ~~5-6.~~ "Facility" means a foster home for adults, agency foster home for adults, family foster home for children, certified family foster home for children, supervised independent living program, or qualified residential treatment program for children.
- ~~6-7.~~ "Family foster home for children" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee of the residence to no more than six children, unless the department approves otherwise.
- ~~7-8.~~ "Foster care for adults" means the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour per day basis, in the residential home of a caregiver or agency, to an individual age eighteen or older, who is unable, neglects, or refuses to provide for the individual's own care.
- ~~8-9.~~ "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable,

neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a licensed, certified, or approved family foster home for children, supervised independent living program, or qualified residential treatment program.

- ~~9-10.~~ "Foster home for adults" means an occupied private residence in which foster care for adults is regularly provided by the owner or lessee of the residence, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.
- ~~40-11.~~ "Identified relative" or "kinship relative" means:
- a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;
 - b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;
 - c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or
 - d. The child's stepparent.
- ~~41-12.~~ "Qualified residential treatment program" means a licensed or approved residence providing an out-of-home treatment placement for children.
- ~~42-13.~~ "Supervised independent living program" means a licensed or approved setting providing supervision and service delivery to youth transitioning into adulthood.

SECTION 2. AMENDMENT. Section 50-11-01 of the North Dakota Century Code is amended and reenacted as follows:

50-11-01. Foster care for children - License, certification, or approval required.

1. A person may not furnish foster care for children for more than thirty days during a calendar year without first procuring a license, certification, or approval to do so from the department. The mandatory provisions of this section requiring licensure, certification, or approval do not apply when the care is provided in:
 - a. The home of an identified relative.
 - b. The home of a kinship relative.
 - c. A home or institution under the management and control of the state or a political subdivision.
 - e.d. A home or facility furnishing room and board primarily to accommodate the child's educational or career and technical education needs.
2. An individual providing care under subdivision a of subsection 1 shall submit to a criminal history record investigation as required under section 50-11-06.8.
3. The family foster care for children license, certification, or approval is nontransferable and valid only for the applicants residing at a physical location noted at the time of issuance, unless otherwise approved by the department. Only one family foster home for children license, certification, or approval is permitted for each physical location.

SECTION 3. AMENDMENT. Section 50-11-01.5 of the North Dakota Century Code is amended and reenacted as follows:

50-11-01.5. Fire prevention training.

Before initial licensure, or certification and each renewal under this chapter, each ~~foster-parent~~family foster home for children shall complete a course of instruction related to fire prevention and safety. The state fire marshal shall design the course in cooperation with the department of health and human services. The course must be available ~~on videotape or any equivalent medium~~to the public as designed by the department. The department of health and human services shall offer the course throughout the state.

SECTION 4. AMENDMENT. Section 50-11-01.6 of the North Dakota Century Code is amended and reenacted as follows:

50-11-01.6. Self-declaration form.

The department of health and human services shall prescribe self-declaration forms to be completed and signed by each ~~foster-parent~~family foster home for children provider before initial licensure or certification and each renewal under this chapter. The self-declaration forms must include references to smoke detectors, fire extinguishers, fire escape plans, and inspections of appliances, electrical systems, and heating systems.

SECTION 5. AMENDMENT. Section 50-11-02 of the North Dakota Century Code is amended and reenacted as follows:

50-11-02. License or certification granted - Term - Conditions.

1. The department shall grant a license or certification for the operation of a facility receiving persons for foster care, for a period of not more than two years, to reputable and responsible persons upon showing that:
 - a. The premises to be used are in fit sanitary condition and properly equipped to provide good care for all persons who may be received;
 - b. The persons in active charge of the facility are properly qualified to carry on efficiently the duties required of them;
 - c. The facility is likely to be conducted for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all persons cared for in the facility;
 - d. The facility will be maintained according to the standards prescribed for its conduct by the rules of the department;
 - e. The applicant has not had a previous facility license, certification, or approval denied within two years of the date of the current application, unless waived by the department after the department considers the health and safety of children and the licensing, certification, or approval history of the applicant; and
 - f. The applicant has not had a previous facility license, certification, or approval revoked within five years of the date of the current application, unless waived by the department after the department considers the health and safety of children and the licensing, certification, or approval history of the applicant.
2. Before licensing, certifying, or approving a facility providing foster care for children or adults, the department shall seek a criminal history record when required by this chapter. The department shall consider any criminal history record information available at the time a ~~licensing~~license, certification, or approval decision is made.

3. The department shall determine, in accordance with rules of the department, whether a license, certification, or approval may be issued to a facility that houses or employs any individual who has a criminal record.

SECTION 6. AMENDMENT. Section 50-11-02.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11-02.1. Conviction not bar to licensure - Exceptions.

Conviction of an offense does not disqualify a person from licensure, certification, or approval under this chapter unless the department determines that the offense has a direct bearing upon that person's ability to serve the public as the operator of a facility or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 7. AMENDMENT. Section 50-11-02.2 of the North Dakota Century Code is amended and reenacted as follows:

50-11-02.2. Provisional license, certification, or approval.

At the discretion of the department, a provisional license, certification, or approval may be issued to an applicant who, or whose facility, fails to conform in all respects to this chapter and the rules of the department. The department may set conditions under which a provisional license, certification, or approval may be issued, and may issue such a license, certification, or approval for any period of time, not to exceed two years, as the department may deem reasonable or appropriate to the circumstances of the case. The department may not be compelled to issue a provisional license, certification, or approval.

SECTION 8. AMENDMENT. Section 50-11-03 of the North Dakota Century Code is amended and reenacted as follows:

50-11-03. Department to make rules - Records kept by facility.

A record of all children and adults cared for in any facility licensed, certified, or approved under this chapter must be maintained ~~at the facility~~ in the manner and form prescribed by the department. The department shall establish reasonable minimum standards, and shall make such reasonable rules for the conduct of such place as are necessary to carry out the purposes of this chapter.

SECTION 9. AMENDMENT. Section 50-11-03.2 of the North Dakota Century Code is amended and reenacted as follows:

50-11-03.2. Use of public funds.

1. Public funds for the purchase of foster care for children or adults may be used only in facilities licensed, certified, or approved by the department. No person acting on behalf of any state, county, or local governmental entity may arrange for or promote care provided in a facility that does not have a license, certification, or approval issued by the department. This section does not apply to any home or institution under the management and control of the state.
2. Nonfederal funds may be used to reimburse the costs of shelter care placements for no more than seven days if the shelter care services are certified by the department. If the entity has diligently pursued other placement, the department may grant an extension for the health and safety of the child or due to unforeseeable circumstances.
3. Nonfederal funds may be used for maintenance payments to unlicensed identified relatives or unlicensed kinship relatives for no more than six months.

SECTION 10. AMENDMENT. Section 50-11-03.3 of the North Dakota Century Code is amended and reenacted as follows:

50-11-03.3. Department to provide liability coverage to foster homes for children.

1. The department shall provide liability coverage for acts or omissions of foster children placed in the care of ~~foster families~~licensed, certified, or approved family foster homes for children. The department may provide this liability coverage through self-insurance.
2. The liability coverage under this section:
 - a. Must provide coverage for damage to property which is caused by the act of a foster child. This coverage must be for the lesser of the reasonable cost to repair or to replace the damaged property.
 - b. Is secondary to any other coverage.
 - c. Except as provided in subdivision d, may not exceed five thousand dollars per claim, with an annual maximum of ten thousand dollars per year per claimant. The coverage under this subsection must include a deductible not to exceed one hundred dollars per claim.
 - d. In cases in which the property damage per event total exceeds twenty-five thousand dollars, the department may further review the claim. The department may cover twenty-five percent of the remaining property damage after any insurance reimbursement, not to exceed ten thousand dollars.
3. The department may provide for exclusions from liability coverage provided under this section.

SECTION 11. AMENDMENT. Section 50-11-03.4 of the North Dakota Century Code is amended and reenacted as follows:

50-11-03.4. Immunity for a person providing foster care.

A person providing foster care for children in a licensed, certified, or approved facility is immune from civil liability for any act or omission resulting in damage or injury to or by a child in foster care if, at the time of the act or omission, the person providing foster care for children applied the reasonable and prudent parent standard in a manner that protects child safety, while also allowing the child in foster care to experience age or developmentally appropriate activities.

SECTION 12. AMENDMENT. Section 50-11-03.5 of the North Dakota Century Code is amended and reenacted as follows:

50-11-03.5. Automated clearinghouse payments.

The department shall provide payment to family foster home for children, supervised independent living program, certified family foster home for children, and qualified residential treatment program for children providers using an automated clearinghouse to provide for electronic fund transfers. To receive payment, family foster home for children, supervised independent living program, certified family foster home for children, and qualified residential treatment program for children providers and applicants shall provide sufficient documentation to enable the department to provide electronic funds transfers through an automated clearinghouse. No other forms of payment are permitted, unless approved by the department.

SECTION 13. AMENDMENT. Section 50-11-04 of the North Dakota Century Code is amended and reenacted as follows:

50-11-04. Inspection by the department - Inspection and report by the department or its authorized agent.

The department and its authorized agents at any time may inspect any facility licensed, certified, or approved under the provisions of this chapter or with respect to which a license, certification, or approval application has been made, except for approved family foster homes for children. The

department and its authorized agents shall have full and free access to every part of the facility. The department may require, on a case-by-case basis, prior to or after licensure, certification, or approval, that a facility undergo a fire inspection, inspection of the heating system or the electrical system, or any other type of inspection that the department deems necessary to carry out the purposes of this chapter. All records of the facility must be open for the inspection of the department or its authorized agents and they may see and interview all children and adults cared for therein. Upon the request of the department, the department or its authorized agent shall inspect any facility for which a license, certification, or approval is applied or issued, with the exception of approved family foster homes for children, and shall report the results of the inspection to the department.

SECTION 14. AMENDMENT. Section 50-11-04.2 of the North Dakota Century Code is amended and reenacted as follows:

50-11-04.2. Correction order - Contents.

Whenever the department determines that the facility is not in compliance with this chapter, or the rules adopted thereunder, a notice of license, certification, or approval denial or revocation or a correction order must be issued to the facility, except for approved family foster home for children. A correction order must cite the statute or rule violated, state the factual basis of the violation, specify the time allowed for correction, and specify the amount of any fiscal sanction to be assessed if the correction order is not complied with in a timely fashion. A correction order may also state a suggested method of correction or require the submission of a corrective action plan by the facility. If a correction order requires the submission of a corrective action plan, it must also specify a date by which the corrective action plan must be submitted. The department shall, by rule, establish a schedule of allowable times for correction of deficiencies.

SECTION 15. AMENDMENT. Section 50-11-05 of the North Dakota Century Code is amended and reenacted as follows:

50-11-05. Contents of records not disclosed - Exception.

The records of facilities licensed, certified, or approved under this chapter and the records of the department and its authorized agents, pertaining to the children or adults receiving care, are confidential but may be disclosed:

1. In a judicial proceeding;
2. To officers of the law or other legally constituted boards or agencies; or
3. To persons who have a definite interest in the well-being of the adults or children concerned, who are in a position to serve their interests, and who need to know the contents of the records in order to assure their well-being and interests.

SECTION 16. AMENDMENT. Section 50-11-06.7 of the North Dakota Century Code is amended and reenacted as follows:

50-11-06.7. License, approval, certification approval or denial - Time requirements.

Except as otherwise provided in this section, an application to the department for a license, certification, or approval required by this chapter to provide foster care to adults or children must be approved or denied within sixty days of its receipt by the department. The department has an additional forty-five days to grant or deny a license, certification, or approval required by this chapter if the department notifies the applicant that the additional time is necessary.

SECTION 17. AMENDMENT. Section 50-11-07 of the North Dakota Century Code is amended and reenacted as follows:

50-11-07. Denial or revocation of license or certification.

The department may deny or revoke the license or certification of any facility upon proper showing of any of the following:

1. Any of the conditions set forth in section 50-11-02 as prerequisites for the issuance of the license or certification do not exist.
2. The application contains false or misleading material information or the applicant intentionally withheld material information.
3. The license or certification was issued upon false, misleading, or intentionally withheld material information.
4. An operator, licensee, certification holder, caregiver, employee, or an agent of the facility has violated a provision of this chapter or any of the rules of the department.
5. An applicant, licensee, or certification holder providing family foster care for children has been involved in a court action in which a child in their household is currently removed from the home due to contrary to the welfare findings.
6. An operator, applicant, licensee, certification holder, caregiver, employee, or agent of the facility has been convicted of an offense determined by the department to have a direct bearing upon the person's ability to serve the public or residents of the facility, or the department determines, following conviction of any other offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 18. AMENDMENT. Section 50-11-08 of the North Dakota Century Code is amended and reenacted as follows:

50-11-08. Denial or revocation of license or certification - Hearing - Appeals.

Before any application for a license or certification under the provisions of this chapter is denied or before revocation of any such license or certification takes place, written charges as to the specific reasons therefor, a copy of the statutes and department rules authorizing such action, and notice of the applicant's or licensee's, or certification holder's right to a hearing on the matter before the department must be served upon the applicant or licensee, or certification holder. The applicant or licensee, or certification holder must also be notified in writing of the person's right to be represented at such hearing by counsel, to examine all files and documents in the custody of the department regarding the applicant or licensee, or certification holder, to present witnesses at the hearing on behalf of the applicant or licensee, or certification holder and to present documentary evidence, to present testimony and cross-examine adverse witnesses, and the right to an impartial hearing officer. The applicant or licensee, or certification holder has the right to a hearing before the department if the hearing is requested within twenty days after service of the written charges. The department shall hold the hearing within sixty days after the hearing request unless the applicant or licensee, or certification holder agrees to a later date. At any such hearing, the evidence submitted by the department in support of its denial or revocation of the applicant's or licensee's license, or certification holder's certificate must be limited to supporting only those reasons which were given by the department in its original notice of denial or revocation to the applicant or licensee, or certification holder. An applicant or licensee, or certification holder may appeal under the provisions of chapter 28-32 any final decision of the department regarding the application for or issuance of a license or certification required by this chapter.

SECTION 19. AMENDMENT. Section 50-11-09 of the North Dakota Century Code is amended and reenacted as follows:

50-11-09. Appeal from decision of department denying or revoking license or certification.

The applicant for a license or certification to operate a facility or a person whose license or certification for a facility has been revoked may appeal the denial or revocation to the district court. An appeal must be taken in the manner provided in chapter 28-32.

SECTION 20. REPORT TO LEGISLATIVE MANAGEMENT - REINSTATEMENT OF PARENTAL RIGHTS. During the 2023-24 interim, the department of health and human services, with assistance from other stakeholders, including the North Dakota supreme court, human service zone directors, and the North Dakota association of counties, shall review the option of reinstating parental rights that have been terminated by a court. Before August 1, 2024, the department shall report on the progress of the study to the legislative management.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1091.

House Vote: Yeas 90 Nays 0 Absent 4

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State