Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019

HOUSE BILL NO. 1099
(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 43-12.1-04, 50-11-00.1, 50-11-02.4, 50-11-06.8, 50-11-06.9, and 50-24.1-18 of the North Dakota Century Code, relating to the delegation of administration of routine medications to a qualified service provider, agency foster homes for adults, criminal history record investigations, and the implementation of residential habilitation and community support services in a residential setting or private residence; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-04. Persons exempt from provisions of chapter.

This chapter does not apply to a person that is not licensed or registered under this chapter and is:

1. A person that performs nursing interventions in cases of emergency or disaster.
2. A student practicing nursing as a part of an in-state board-approved nursing education program.
3. A licensed nurse of another state who is in good standing and who is employed in this state by the United States government or any of its bureaus, divisions, or agencies.
4. A nurse licensed by another state or Canada, whose employment requires the nurse to accompany and care for a patient in transit for health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
6. An individual who performs nursing tasks for a family member.
7. A person that renders assistance pursuant to chapter 23-27.
8. A person licensed or registered under another chapter of this title and carrying out the therapy or practice for which the person is licensed or registered.
9. A person that provides medications, other than by the parenteral route:
   a. Within a correctional facility, in compliance with section 12-44.1-29;
   b. Within a psychiatric residential treatment facility for children licensed under chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;
   c. Within a treatment or care center for individuals with developmental disabilities licensed under chapter 25-16;
   d. Within a group home, a residential child care facility, or an adult foster care facility licensed under section 50-11-01 or North Dakota Administrative Code chapter 75-03-16;

e. Within the life skills and transition center, to the extent the individual who provides medications is a direct training technician or a vocational training technician as approved by the department of human services;

f. Within a human service center licensed under chapter 50-06; ~~or~~

g. Within a primary or secondary school under a program established under section 15.1-19-23 if the individual has received education and training in medication administration and has received written consent of the student's parent or guardian~~.~~; or

h. Who is an employee of a qualified service provider agency who meets the criteria set forth in subsection 2 of section 50-24.1-18.

10. A nurse currently licensed to practice nursing by another jurisdiction:

a. Whose practice in another state requires that nurse to attend orientation, meetings, or continuing education in North Dakota;

b. Who serves as a guest lecturer or short-term consultant; or

c. Who provides evaluation undertaken on behalf of an accrediting organization.

11. An individual, including a feeding assistant, performing nonhands-on tasks while employed in a Medicare-funded organization.

12. A student practicing nursing as part of an out-of-state board-recognized nursing education program, upon written notification to the board and contingent upon clinical site availability.

13. An individual who is registered on the state department of health nurse aide registry, including a certified nurse aide, home health aide, nurse aide, and medication assistant.

SECTION 2. 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 by the department of a home of a Native American family located on a recognized Indian reservation in North Dakota or of a facility owned by the tribe or a tribal member and located on a recognized Indian reservation in North Dakota, not subject to the jurisdiction of the state of North Dakota for licensing purposes, to allow the home or facility to receive title IV-E funding.

~~2.~~3. "Authorized agent" means the county social service board, unless another entity is designated by the department.

~~3.~~4. "Department" means the department of human services.

~~4.~~5. "Facility" means a foster home for adults, agency foster home for adults, family foster home for children, group home, or residential child care facility for children.

~~5.~~6. "Family foster home for children" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee ~~thereof~~of the residence to no more than four children, unless all the children in foster care are related to each other by blood or

marriage or unless the department approves otherwise for the placement of siblings, in which case the limitation in this subsection does not apply.

~~6.~~7. "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 ~~a person~~an individual age eighteen or older, who is unable, neglects, or refuses to provide for the ~~person's~~individual's own care.

~~7.~~8. "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 family foster home, group home, or residential child care facility.

~~8.~~9. "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.

~~9.~~10. "Group home" means a licensed or approved residence in which foster care is regularly provided to at least four, but fewer than thirteen, unrelated children.

~~10.~~11. "Residential child care facility" means a licensed or approved facility other than an occupied private residence providing foster care to thirteen or more unrelated children, except as may be otherwise provided by rule or regulation.

SECTION 3. AMENDMENT. Section 50-11-02.4 of the North Dakota Century Code is amended and reenacted as follows:

50-11-02.4. Criminal history record investigation for foster care for adults - Fingerprinting not required.

1. Except as provided in section 50-11-06.9, the department shall secure from any individual employed by, or providing care in, ~~an adult family foster care~~a facility providing foster care for adults and any adult living in the facility, but not being provided care in the facility, identifying information other than fingerprints, that is appropriate to accomplish a statewide criminal history record investigation.

2. Fingerprints need not be taken and a nationwide background check need not be made if an individual:

   a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;

   b. Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or

   c. Is excused from providing fingerprints under rules adopted by the department.

3. The department shall verify that sufficient identifying information has been provided. Upon verification, the department shall submit that information to the bureau of criminal investigation.

4. The bureau of criminal investigation shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.

5. The department shall pay the cost of securing any criminal history record information made available under chapter 12-60 and section 50-11-06.8 for foster home for adults. An agency foster home for adults is responsible for the cost of securing any criminal history record information made available under chapter 12-60 and section 50-11-06.8.

6. The department shall consult with the bureau of criminal investigation to determine the identifying information, other than fingerprints, appropriate to accomplish a statewide criminal history record investigation.

7. The department may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.

SECTION 4. AMENDMENT. Section 50-11-06.8 of the North Dakota Century Code is amended and reenacted as follows:

50-11-06.8. Criminal history record investigation - Fingerprinting required.

1. Each facility providing foster care for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:

   a. Any individual employed by, or providing care in, the facility; and

   b. Any adult living in the facility, but not being provided care in the facility.

2. The facility shall assure that information obtained under subsection 1 is provided to the department.

3. Upon receipt of all fingerprints and necessary information relating to a license request, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.

4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.

5. Upon request by the operators of a facility, a law enforcement agency shall take fingerprints of persons described in this section if the request is made for purposes of this section.

6. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check for each facility providing foster care for children.

7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

8. Except as provided in sections 50-11-02.4 and 50-11-06.9, the department shall secure from a law enforcement agency or any other agency authorized to take fingerprints two sets of fingerprints and all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:

   a. Any individual employed by, or providing care in, ~~an adult family foster care~~a facility providing foster care for adults; and

b. Any adult living in ~~an adult family foster care~~a facility providing foster care for adults, but not being provided care in the facility.

9. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-11.3-01 and 50-12-03.2.

SECTION 5. AMENDMENT. Section 50-11-06.9 of the North Dakota Century Code is amended and reenacted as follows:

50-11-06.9. Criminal history record investigation for foster home for adults - When not required.

A criminal history record investigation may not be required, under section 50-11-06.8 or 50-11-02.4, of a ~~family~~ foster ~~care~~ home for adults licensed or approved on August 1, 1999, for so long as that home remains continuously licensed or approved.

SECTION 6. AMENDMENT. Section 50-24.1-18 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-18. Personal care option - Basic care facilities - Residential habilitation - Community support services.

1. The department of human services may implement a personal care option benefit program. Personal care option benefits may only be made available to qualifying individuals who reside in basic care facilities. As used in this section, "basic care facility" has the meaning provided in section 23-09.3-01.

2. The department may implement residential habilitation and community support services in a residential setting or private residence that would allow for the delegation of administration of medication by an employee of a qualified service provider agency. The qualified service provider agency shall employ or contract with a licensed registered nurse to provide supervision to the employees of a qualified service provider agency who are administering routine medications. The employees of a qualified service provider agency shall complete department-approved training on the administration of routine medications before administering routine medications. The department shall adopt rules as are necessary to establish and govern residential habilitation and community support services in a residential setting or private residence.

SECTION 7. IMPLEMENTATION CONTINGENT UPON APPROPRIATION - APPLICATION. The department of human services is not required to implement or enforce sections 1, 2, 3, 4, and 6 of this Act with respect to agency foster home for adults and administration of routine medication if the legislative assembly does not provide an appropriation to support the implementation and enforcement of sections 1, 2, 3, 4, and 6 of this Act.

SECTION 8. CONTINGENT IMPLEMENTATION - APPLICATION. The department of human services may not implement residential habilitation and community supports in section 6 of this Act unless the sixty-sixth legislative assembly provides an appropriation in Senate Bill No. 2012 to support the implementation of residential habilitation and community supports in section 6 of this Act.

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-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1099.

House Vote:	Yeas 91	Nays 0	Absent 3
Senate Vote:	Yeas 42	Nays 0	Absent 5

Chief Clerk of the House

Received by the Governor at 11:54 AM. on March 15, 2019.

Approved at 1:52 PM. on March 20, 2019.

Governor

Filed in this office this 21st day of March, 2019,

at 9:09 o'clock A. M.

Secretary of State