Family First Prevention Services Act
PL 115-123
Stakeholder Informational Meeting Highlights

The Family First Prevention Services Act (FFPSA) was signed into law as part of the Bipartisan Budget Act on February 9, 2018. This act reforms the federal child welfare financing streams, Title IV-E and Title IV-B of the Social Security Act, to provide services to families who are at risk of entering the child welfare system.

North Dakota Department of Human Services (NDDHS) is responsible to implement the federal regulations resulting from FFPSA, manage the Title IV-E State Plan, and administer funding to support these efforts. The department will host Stakeholder Informational Meetings the 3rd Wednesday of each month during 2019. The purpose of the monthly meetings is to engage with Stakeholders and inform on progress, while soliciting feedback and comments related to FFPSA implementation.

DATE	March 20, 2019
FACILITATORS	Dawn Pearson, Administrator – NDDHS-CFS Division Kelsey Bless, Administrator – NDDHS – CFS Division
TOPIC	ND Administrative Rule Changes

Link to the federal regulations:

Title VII of Public Law 115-123 (starting on page 170 of 251):
https://www.congress.gov/115/plaws/publ123/PLAW-115publ123.pdf

Highlights of the Administrative Rules:

ND Administrative Rules are in draft status and will be opening late summer for public comment via the ND legislative committee process.

1. NDAC 75-03-14 Family Foster Homes
2. NDAC 75-03-15 RCCF Ratesetting will convert to QRTP Ratesetting
3. NDAC 75-03-16 RCCF will be repealed
4. NDAC 75-03-40 will be the QRTP
5. NDAC 75-03-41 will be Supervised Independent Living

NOTE: ALL ADMINISTRATIVE RULES ARE SUBJECT TO CHANGE AS THEY MOVE THROUGH THE LEGAL RULE MAKING PROCESS. THESE NOTES REFLECT THE LATEST DRAFT AVAILABLE AT THE TIME OF THIS MEETING.

Acronyms:

LCPA:	Licensed Child Placing Agency
NDAC:	North Dakota Administrative Code
PRTF:	Psychiatric Residential Treatment Program
QRTP:	Qualified Residential Treatment Program
RCCF:	Residential Child Care Program
SILP:	Supervised Independent Living Program

NDAC 75-03-14 Family Foster Homes – Submitted late February 2019

1. Added "near" for Tribal affidavit homes: If the home of a Native American family located on or near a recognized Indian reservation, as defined by the tribe, in this state is identified as a family foster home for children, and is not subject to the jurisdiction of the state of North Dakota for family foster home for children licensing purposes, the department shall accept an affidavit from an agent of the tribal child welfare agency or an appropriate tribal officer in lieu of completing the licensing procedure.
2. Largest topic in the open comment period to the federal government. Proposed rules were to allow only the licensed provider to transport the child; however, they did reduce the requirement and instead foster families must have "reliable, legal and safe transportation available to transport children in placement."
3. ND has had this in policy, but worth mentioning that an individual bed and bedding must be provided for each foster child to sleep comfortably. If sleeping rooms are located in the basement, they must be equipped with more than one exit.
4. Ensure child safety - Co-sleeping or bed sharing with a foster child is prohibited.
5. Carbon monoxide detector required.
6. ND has had this in policy, but worth mentioning the addition of alcohol to the requirement to "properly store medications, alcohol, poisonous materials, cleaning supplies, and other hazardous materials to prevent access to children, as appropriate for age and development of the children in placement."
7. Water temperature is monitored for safety.
8. Pets belonging to the foster family must be properly vaccinated as per vet guidelines.
9. Swimming pools in the ground or an above ground pool with a depth four feet or greater must have a barrier on all sides to minimize unsupervised access. The barrier must be equipped with a safety lock. If the pool cannot be drained, the swimming pool must have a working pump and filtering system. The pool area must have a life saving device available in the event of an emergency. This standard does not apply to a small wading pool.
10. Hot tubs must have safety covers that are locked when not in use.

Qualifications of persons residing in the family foster home for children.

1. ND age requirement is higher than the national standard, ND will request age 21 as a waiver as we engage in 18+ program. ND rule requires a person applying must be age 21 or greater.
2. ND had this in policy, not in rule. Added "A person applying must be financially stable with reasonable income or resources available to the home in order to properly care for children."
3. A person applying must have functional literacy, demonstrating their ability to read licensing policy, handbook, child care plans or medication labels.
4. ND had this in rule, but worth mentioning again…. No person may smoke in the family foster home for children, in circumstances which present a hazard to the health of the foster child, or in an enclosed area when the foster child is present.
5. The department requires an initial physical examination (conducted within the prior 12 months of licensure) for all foster parents. All foster parents, annually thereafter, shall submit a declaration of good health, including all residents of the family foster home for children, except any foster child, in a manner and form required by the department. The cost of any physical examinations required pursuant to this subsection is the responsibility of the authorized agent.
6. The department may require proof of immunizations for all residents living in the foster home,

except any foster child. It is recommended all members of the household be up to date on immunizations as recommended by a health care professional, unless the immunization is contrary to the person's health as documented by a licensed health care professional.

7. The department may require foster parents specialized in the care of medically fragile infants and children to receive specific vaccines if the needs of the child require such precaution; such as the influenza or pertussis (whooping cough).

8. Relative Waivers will continue, and greater detail will be offered in policy.

**Proposed rules have been submitted for the legislative process with an October 1, 2019 effective date.*

NDAC 75-03-15 RCCF Ratesetting will convert to QRTP Ratesetting – Submitted Mar 1, 2019

1. Ratesetting is expected to change in the future, for now the RCCF rules are minimally adjusted in NDAC draft changes.

2. Today residential rates are set if 75% occupancy and get 100% return on their allowable costs. This has been helpful for facilities, historically, as occupancy can change rapidly.

3. Provider Audit changes in ND

    a. No longer determining the rate for a RCCF effective July 1, 2019

    b. RCCF rates will be determined for July 1, 2019 (provider increase%) if applicable

    c. RCCF rates end on Sept 30, 2019

    d. QRTP rates will likely carry over October 1, 2019 until further notice

4. Ratesetting changes are on the table

    a. Performance based contracting

    b. Child needs payments (base rate + enhanced rate)

    c. No eject – no reject

NDAC 75-03-40: Licensing of Qualified Residential Treatment Providers

Many hours have been spent reviewing the RCCF rules, upgrading the foundation of RCCF to a treatment focus. ND has researched other states as well as Psychiatric Residential Treatment Facility (PRTF) rules to ensure the levels are different, but that the QRTP meets the letter of the law with intent to have short stays for residential treatment with higher emphasis on family engagement and community transition.

- **All of these are subject to change as they move through the legal rule making process. these notes reflect the latest draft available at the time of this meeting.**

Application for license.

1. RCCF transition into a QRTP

2. After October 1, 2019, a prospective facility applicant has additional standards to meet including the submission of a detailed written description of the methodology and findings which document the reasons why the unserved children under paragraph (a) cannot be served satisfactorily is less restrictive settings such as children a family setting in the community. Data to support that existing North Dakota QRTP placement resources are not adequate to meet the needs of North Dakota children who require the type or types of care and treatment services the applicant proposes to provide.

Governance. — NEW layout for FACILITIES

1. Each facility must have a governing body that is responsible for the operation, policies, activities, practice and overall operations of the facility. The governing body shall:

    a. Be composed of at least five members, none of whom are family members of the facility employees. A list of the names and contact information of members of the governing body must be maintained and submitted to the department annually.

    b. Meet at least every six months.

2. Each facility shall be accredited and in good standing with one of the state-recognized national accreditation bodies.

3. All statements and policies required by this chapter must be in writing. An up to date hard copy must be maintained within the facility.

Performance and Quality Improvement.

1. A facility must have an agency Performance and Quality Improvement system (PQI) which advances efficient, effective service delivery, effective management practices, and the achievement of strategic and treatment program goals and outcomes.

Employees required:

***Proposed rules have a grandfathered clause for RCCF employees and their background checks.*

1. Administrator
2. Clinical Director - advanced Program Director
3. Treatment Coordinator - advanced from Case Manager
4. Direct Care
5. Nurse
6. Family Engagement Specialist
7. Difference between Family Engagement Specialist vs. Treatment Coordinator
    - Family engagement specialist is family centered during placement and post discharge
    - Treatment coordinator is treatment focused
8. Contracted service providers onsite
9. Nonemployees – ongoing regular volunteers or interns

Rules Sections without major changes from RCCF include:

1. Background Checks – No major changes
2. Personnel Policies – No major changes
3. Personnel Health Requirements – no major changes
4. Minimum employee requirements.

    a. A rotating **on-call clinical team** must be available 24 hours a day, 7 days a week to meet the needs of resident emergency and crisis situations. The on-call team must include at a minimum; one nurse and one clinical employee;

b. No less than one half-time administrator for a facility providing treatment for up to seven residents;

c. No less than one full-time administrator for a facility providing treatment for nine or more residents;

d. No less than one full-time clinical director;

e. No less than one full-time nurse;

f. No less than one full-time treatment coordinator for each nine residents; and

g. No less than one full-time family engagement specialists for each eighteen residents and aftercare clients.

5. During awake hours each facility shall have no less than two employees on the premises qualified to provide direct care with at least one direct care employee on duty for each six children present in the facility;

6. During overnight hours each facility must have:

   a. Awake employees at all times; and

   b. No less than two employees on the premises qualified to provide direct care with at least one direct care employee on duty for each eight children present in the facility.

Programs and services.

1. Trauma-informed care model.

2. Education. Any primary or secondary education program offered by a facility must be in compliance with standards established by the North Dakota department of public instruction. The facility shall ensure that all children who receive care in the facility comply with all state school attendance laws.

   - Much debate has gone into this topic. If a child can maintain daily in a public school setting do they really require the QRTP level of care?

3. Respite.

4. Admissions and Assessment.

   a. Qualified Individual Level of Care Assessment.

      i. Completed Assessment. The facility has received documentation from the department approved Qualified Individual granting approval for the resident to be admitted to a QRTP based on the North Dakota level of care assessment; or

      ii. 30 Day Assessment Period Approval. The facility has received documentation from the department approved Qualified Individual granting approval for the resident to be admitted for a 30-day assessment period. No resident shall be admitted to a QRTP facility for the assessment period without the approval of the Qualified Individual. For children placed in a QRTP during the 30-day assessment period to determine appropriateness of a QRTP placement, the facility must allow access to the Qualified Individual and collaborate in the completion of the level of care assessment.

   b. Juvenile Court Approval. The facility has received documentation confirming the Qualified Individual has completed an assessment indicating a QRTP level of care placement is necessary to meet the needs of the resident. For foster children, confirmation from the ND

Juvenile Court must be on file approving the QRTP placement within sixty days of placement.

Interstate compact on the placement of children.

1. ND is one of the first QRTP states.

2. Out of state agencies will be looking to ND to accept placements. However, those states opting to delay implementation of QRTP, will be able to continue to use IV-E dollars for their current level of care facilities until October 2021.

3. ND has to make a decision regarding accepting out of state placements into ND QRTP.

Treatment Plan + Coordination.

1. A treatment coordinator shall develop a written, individualized plan for each resident in placement within thirty days of admission to the facility.

2. Family Treatment Plan.

3. Visitation Plan.

4. Discharge Plan.

5. Youth and Family Engagement.

6. Aftercare Six-Month Follow-up. The six-month aftercare requirements apply to all residents accepted into the facility for treatment. The six-month follow-up period will begin the day following the resident's discharge from the facility. The facility will implement the aftercare plan developed as part of the discharge planning process. If a resident being discharged from the facility remains in foster care, the facility will collaborate with the custodial agency with the implementation of the six-month follow up period. If a resident is not in foster care, the facility bears full responsibility for coordinating the ongoing six-month aftercare with the resident and resident's family. The facility shall employ a family engagement specialist who will maintain ongoing contact with the resident's family to act as a liaison to the resident's placement in the facility. Tasks may include; communicating with families throughout the week to update the family on the resident's day, treatment progress, challenges, as well as work closely with the treatment case manager and clinical team. The family engagement specialist may provide aftercare programming with facility staff or coordinate local service providers.

7. Outcomes Survey. The facility must conduct a post residential department approved outcomes survey, at the conclusion of the six-month required aftercare period.

Behavior Management.

1. "Time-out room" means a designated room used for temporarily holding a resident who is in physically enforced separation from another resident.

2. Seclusion - The facility locked for purposes of external security is not a locked seclusion provided residents may exit at will. The facility applying locked seclusion interventions shall have approval from the department and developed policies and procedures including:
   May not be used unless:

   a. Ordered by a physician, to protect the health of the resident or other residents; or

   b. For purposes of ensuring physically enforced separation when intervening in safety situation involving the resident.

Buildings, grounds, and equipment.

1. Carbon monoxide detectors must be operational as recommended by the local fire department or state fire marshal.
2. The facility shall have at least one bedroom for each three residents.
3. There must be no more than one resident per bed. Triple bunks are prohibited.
4. A facility shall have one complete bathroom for each six residents. A complete bathroom includes toilet, washbasin, and a tub or shower.

Transportation.

1. Maintain a list of approved employee and nonemployee drivers.
2. The driver shall hold a current valid operator's license for the type of vehicle being driven.
3. Facility employees and nonemployees may not smoke or use a cell phone while operating a facility vehicle. The facility must have policy indicating smoking in vehicles while transporting residents and the use of a personal or facility cell phone while driving is prohibited.

NDAC 75-03-41 Supervised Independent Living Program

To be submitted ASAP

- Governance similar to LCPA and QRTP
- Specified levels of SIL
- Supervision and case management required

Q & A

How is the provider rate increase (effective July 1, 2019) going to be accommodated?

That is yet to be determined.

Who is going to do the RCCF/QRTP ratesetting after 6/30/19?

That is yet to be determined.

COMMENT: It was discussed about the 75% occupancy rule to stay in to get paid for 100% of your allowable costs so I'd like to put forth to keep in mind the variance that made that all work in years past. Secondly, with the 75% rule we are not totally in control of what kids are referred to us and in addition, if the goal is to keep kids out of congregate care, most of us will likely not be at 75% unless we keep lowering the numbers, which may be the end goal. But that's dangerous because in order to get 100% reimbursement we're liable to have kids in our care that have no business being in our care. Those are things that really need to be considered. Our hope is that we'll be paid 100% of what we provide to these kids.

The entire ratesetting process under QRTP will be reviewed.

Typically, when someone has the label of "Clinical Director" they are an LICSW or equivalent. We have LCSW's as the highest, but that doesn't matter with this, correct?

The degree requirements are articulated in the rule.

Does "licensed nurse" include LPN or is it just RN?

The law says "licensed" but if you want to receive Medicaid reimbursement, it has to be an RN.

COMMENT: If out of state kids come into ND QRTPs, we will have to consider how that impacts our ratesetting.

Regarding SIL, if kids are doing well enough to reach their goals, do they get kicked out of that independent living support?

The agency themselves will have the determine longevity in policies they choose to incorporate. The administrative rules are intended to have the basic expectations and requirements for reimbursement of a Supervised Independent Living program.

Are you going to be uploading the proposed rules prior to them going through legal for review, or are you waiting to upload until they go through legal?

We will provide a condensed version on the FFPSA website under the meeting highlights, but please note these will not be the formal or completed administrative rules. There is a pre-viewing for licensed RCCF's to see the drafted QRTP.

COMMENT: Please be as specific as possible regarding the staffing requirements, including if there are any education or licensing expectations, because recruiting is difficult.

The proposed rule we send to legal are considered 'final form' so you will see that information in the draft you receive. However, please keep in mind proposed rules can undergo changes based on feedback received during the open comment period.

Regarding SIL program, currently the 18+ youth have to sign themselves back into care with the county, but that option isn't available to youth through the Division of Juvenile Services. Will that still be the case, or will that age group be able to remain under DJS custody and be eligible for payment?

The rules are going to be broad so that the programs can decide for themselves the rules/policies concerning who they will accept into their program. ND 18+ Continued Care can accept DJS clients, so long as the youth has case management with the county. Historically, ND has had a low percentage of DJS youth choosing to remain in or return to 18+ Continued Care. Foster care payments will continue for those in the 18+ program as well as any child/youth in public custody who meets the terms of the rule.

Regarding private placements vs. public placements –we cannot charge private placements any less that the rate we were receiving from the state. Will that be true of the 18+ program as well?

Yes – the same rate needs to be charged regardless of who the client is. In regards to private placements; RCCF's have not had private pay clients as private insurance will not pay for RCCF level of care room and board. Likely the same for QRTP.

Is the rule about being able to give variances still in the rules?

Yes – non-safety related variances are still in the drafted rule.

With Medicaid fee for service – do we know which levels of licensure will be able to bill, and what services we'll be able to bill?

We have included Medical Services in our FFPSA roundtable discussions. If you've been following the 2019 state legislative session, you'll know that there is a bill related to changes of licensure titles so that may impact it, too. So, we are in continued conversation with Medical Services regarding the changes coming with QRTP and what that will mean for billing through Medicaid.

NEXT MEETING:

April 17, 2019 1:00-2:00PM

Topic TBD