NORTH Dakota | Governor Doug Burgum

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EXECUTIVE ORDER 2020-28

WHEREAS, on March 13, 2020, President Donald Trump issued a declaration of national emergency due to the growing COVID-19 crisis in the United States; and,

WHEREAS, a state of emergency was declared by Governor Doug Burgum on March 13, 2020, in response to the public health crisis resulting from COVID-19; Executive Order 2020-03 activated the State Emergency Operations Plan (SEOP), implementing appropriate response and recovery actions and future mitigation measures; and,

WHEREAS, with the guidance and assistance of the State Health Officer and the Director of Emergency Services, the State is actively responding to the crisis and working to gather, coordinate, and deploy goods, services, professionals and volunteers of all types and kinds; and,

WHEREAS, it is essential that the Department of Human Services continue to provide critical services to children residing in psychiatric residential treatment facilities and qualified residential treatment programs throughout this COVID-19 declared state of emergency; and,

WHEREAS, certain of the Department's psychiatric residential treatment facilities and qualified residential treatment programs are experiencing scheduling delays for routine medical and dental services for children in residence due to the COVID-19 crisis; and,

WHEREAS, certain of the Department's psychiatric residential treatment facilities and qualified residential treatment programs have experienced staffing shortages due to absences directly related to the COVID-19 crisis; and,

WHEREAS, strict compliance with the provisions of North Dakota law will otherwise impact an effective State response to the COVID-19 pandemic and the State's ability to continue to provide critical services to children residing in psychiatric residential treatment facilities and qualified residential treatment programs.

NOW THEREFORE, Doug Burgum, Governor of North Dakota, by virtue of the authority under Article V, Section 1 of the North Dakota Constitution of North Dakota Century Code 37-17.1, and in consultation with the State Health Officer and the Executive Director of the Department of Human Services, (DHS), hereby suspends certain licensing requirements for psychiatric residential treatment facilities (PRTF) as defined in North Dakota Century Code (NDCC) Chapter 25-03.2 and North Dakota Administrative Code (NDAC) Chapter 75-03-17, and certain licensing requirements for qualified residential treatment programs (QRTP) as defined in NDCC Chapter 50-11 and NDAC Chapter 75-03-40, to conform with the preventative and mitigating measures issued by the Centers for Disease Control (CDC) and the State Health Officer and in support of the State's response to the COVID-19 pandemic.

1. The provisions under NDCC § 25-03.2-03, NDAC §§ 75-03-17-07 and NDAC 75-03-17-08, requiring every child in a psychiatric residential treatment facility to have

medical and dental examinations within specific timeframes are hereby suspended until May 15, 2020. Scheduling challenges due to the COVID-19 crisis have prevented facilities from fulfilling the requirements for medical and dental examinations. This provision presumes the facility executive director will ensure that all necessary medical and dental care is scheduled as soon as reasonably possible.

2. The provisions of NDAC § 75-03-40-42, requiring that every child residing in a qualified residential care program have a comprehensive written plan for preventive, routine, and emergency medical and dental care is hereby suspended until May 15, 2020. Due to the limited availability of health care professionals in certain communities during the COVID-19 declared emergency, certain qualified residential treatment programs may have difficulty meeting this requirement. During this period of emergency, the Department is encouraged to seek alternative solutions, such as telehealth, if available. This provision presumes that ongoing health screenings will continue by QTRP onsite nursing staff.

3. All in-person staff training requirements for psychiatric residential treatment facilities and qualified residential treatment programs under NDAC § 75-03-17-10(2) and NDAC 75-03-40-29 are suspended until May 15, 2020, to encourage social distancing and other preventative measures recommended by the Centers for Disease Control and Prevention and the State Health Officer. Any employee training available on-line must be timely completed. The Department of Human Services will ensure that at least one employee who has completed all required annual training, including CPR, First Aid and Crisis Prevention, will be on-site at all times.

4. The nationwide criminal history record check requirements for prospective employees providing direct care or contact with children residing in a psychiatric residential treatment facilities under NDAC §§ 75-03-17-16 and 75-03-17-16.2 are hereby suspended during this declared state of emergency, until such time as law enforcement agencies have the ability to safety conduct fingerprinting, a requirement for nationwide criminal history record checks. Provided, however, a statewide criminal history check must be completed on any new employee or non-employee who will have direct care or contact with a child in residence. Further, an employee hired or non-employee providing care without a nationwide criminal history check may not have direct care or contact with a child in residence unless the employee is supervised by an employee who has completed and been approved after a nationwide history record check.

   Any employee hired or non-employee providing care, without a required nationwide criminal history check, pursuant to this Order, will be considered temporarily approved, effective only during the pendency of the declared

emergency or until this Order is rescinded.

5. Licenses for psychiatric residential treatment facilities under NDCC§ 50-03.2-02 and NDAC § 75-03-17 are renewed through a full on-site facility review unless, at the Department's discretion, a facility has been accredited by a nationally recognized body and receives deemed status. During the COVID-19 crisis, to maintain social distancing, the Department is not conducting on-site reviews for license renewals. To maintain critical services to vulnerable youth residing in psychiatric residential treatment facilities, all facility licenses shall be extended for a period of 120 days, to allow the Department sufficient time to complete all necessary on-site reviews.

6. Annual inspections of buildings, grounds and equipment for psychiatric residential treatment facilities under NDAC § 75-03-17-18, and for qualified residential treatment programs under NDAC § 75-03-40-47 are hereby suspended for a period of 120 days. Providers report that local fire departments have suspended facility inspections at this time; local public health officials have also suspended inspections. This extension coincides with the 120 day extension of facility licensing, above, and will allow these required inspections to occur.

7. Psychiatric residential treatment facilities have experienced a reduced workforce and staff absences due to the COVID-19 pandemic. To continue to maintain critical services to this vulnerable population, staffing requirements under NDAC § 75-03-17-15 are suspended until June 1, 2020. Working with the Department of Human Services, each facility is responsible to staff at sufficient levels to ensure the safety and supervision of youth, based upon the needs of youth and available staff. At no time shall any facility have less than two employees on-site, qualified to provide direct care, with at least one staff on-site who has completed in-person training for CPR, First Aid and Crisis Response.

This Order is based upon the following authority and issued for the following reasons:

1. The Governor is vested with the executive authority pursuant to Article V, Section 1, of the North Dakota Constitution.

2. The Governor is vested with statutory authority to issue executive orders, to minimize or avert the effects of a disaster or emergency pursuant to Chapter 37-17.1 of the North Dakota Century Code.

3. A coordinated and effective effort of appropriate government departments is required to minimize the impact of emergencies and disasters in this state.

This Order is effective as of April 2, 2020 and it shall remain in effect during the declared state of emergency unless otherwise noted herein.

Executed at Bismarck, North Dakota, this 13th day of April, 2020.

Doug Burgum
Governor

ATTEST:

Secretary of State