

North Dakota

Agency Department of Health Response and Licensure, Division of Health Facilities

Contact Bridget Weidner

E-mail bweidner@nd.gov

Phone (701) 328-2352

Website <https://www.health.nd.gov/regulation-licensure/health-facilities/north-dakota-basic-care-facilities>

Agency Department of Health, Division of Food and Lodging for Assisted Living

Contact Julie Wagendorf

E-mail jwagendorf@nd.gov

Phone (701) 328-2523

Website <https://www.health.nd.gov/regulation-licensure/food-and-lodging/assisted-living>

Licensure Term Basic Care Facilities and Assisted Living Facilities

Opening Statement The Department of Health establishes rules for basic care facilities and the Department of Human Services oversees licensing and rules of assisted living facilities, which must also meet Department of Health Rules. The primary differences between these licensure categories are: (1) the extent to which they are regulated--the assisted living regulations are very brief; and (2) only basic care facilities are required to provide meals. Basic care facilities are not certified to participate in Medicare or Medicaid, but are eligible for state funding for basic care services.

“Basic care facility” means a facility licensed by the department under North Dakota Century Code chapter 23-09.3 whose focus is to provide room and board and health, social, and personal care to assist the residents to attain or maintain their highest level of functioning, consistent with the resident assessment and care plan, to five or more residents not related by blood or marriage to the owner or manager. These services shall be provided on a 24-hour basis within the facility, either directly or through contract, and shall include assistance with activities of daily living and instrumental activities of daily living; provision of leisure, recreational, and therapeutic activities; and supervision of nutritional needs and medication administration.

Legislative and Regulatory Update In 2021, the Legislature updated the North Dakota Century Code Chapter 23-09 (NDCC 23-09): Food and Lodging

Establishments and Assisted Living Facilities to refine the terms related to expired facility licenses. There are no recent updates to the state ND Food Code. Effective July 1, 2020, there are updates to end-of-life services requirements under Chapter 33-03-24.1: Basic Care Facilities. The definitions listed in Chapter 23-09.3 are effective through August 31, 2022.

North Dakota's 2021 legislature passed one law affecting the basic care facilities moratorium. Basic care beds may not be added to the state's licensed bed capacity during the period between August 1, 2021, and July 31, 2023, except if:

- a. A nursing facility converts nursing facility beds to basic care;
- b. An entity licenses bed capacity transferred as basic care bed capacity under section
- c. An entity demonstrates to the department that basic care services are not readily available within a designated area of the state or that existing basic care beds within a fifty-mile [80.47-kilometer] radius have been occupied at ninety percent or more for the previous twelve months. In determining whether basic care services will be readily available if an additional license is issued, preference may be given to an entity that agrees to any participation program established by the department for individuals eligible for services under the medical assistance program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]; or
- d. The department grant approval of new basic care beds to an entity. The approved entity shall license the beds within forty-eight months from the date of approval.

Definition

Basic Care Facility: Basic care facility" means a facility licensed by the department under North Dakota Century Code chapter 23-09.3 whose focus is to provide room and board and health, social, and personal care to assist the residents to attain or maintain their highest level of functioning, consistent with the resident assessment and care plan, to five or more residents not related by blood or marriage to the owner or manager. These services shall be provided on a twenty-four-hour basis within the facility, either directly or through contract, and shall include

assistance with activities of daily living and instrumental activities of daily living; provision of leisure, recreational, and therapeutic activities; and supervision of nutritional needs and medication administration.

Assisted Living Facility: A building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility is licensed by the Department of Human Services under North Dakota Century Code 50-32. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under Chapters 23-16 or 25-16 or Section 50-11-01.4.

Disclosure Items

Basic Care Facility: None specified.

Assisted Living Facility: Must maintain a written agreement with each tenant that includes the rates for rent and services provided, payment terms, refund policies, rate changes, tenancy criteria, and living unit inspections. Additionally, facilities must provide each tenant with written notice of how to report a complaint regarding the facility.

Facility Scope of Care

Basic Care Facility: Must provide personal care services to assist residents to attain and maintain their highest level of functioning consistent with the resident assessments and care plans. It must provide assistance with: ADLs and IADLs; arrangements to seek health care when resident has symptoms for which treatment may be indicated; arrangements for appropriate transfer and transport as needed; functional aids or equipment, such as hearing aids; and clothing and other personal effects, as well as maintenance of living quarters.

Assisted Living Facility: An entity may provide health services to individuals residing in an assisted living facility owned or operated by that entity. For purposes of this subsection, health services means services provided to an individual for the purpose of preventing disease and

promoting, maintaining, or restoring health or minimizing the effects of illness or disability.

2. A tenant of an assisted living facility who is in need of hospice services and who exceeds tenancy criteria, as determined by the facility, may remain in the facility only if the tenant contracts with a third party, such as a hospice agency, or utilizes family support, or both, to meet those needs.

Third Party Scope of Care

Basic Care Facility: A facility that retains residents who require end-of-life care continues to be responsible for the care and services of all residents, must comply with the requirements and apply on basic care application form and indicate a change in services provided.

Assisted Living Facility: Home health agencies may provide services under contract with the resident. Long term care insurance may pay in basic care and assisted living facilities.

Admission and Retention Policy

Admission and discharge criteria are developed by each basic care or assisted living facility dependent upon their ability to meet the needs of the residents and the services available.

Basic Care Facility: May admit or retain only individuals whose condition and abilities are consistent with National Fire Protection Association (NFPA) 101 Life Safety Code requirements and who must be capable of self-preservation. Residents of facilities meeting a greater level of fire safety must meet the fire drill requirements of that occupancy classification. Basic care residents are admitted and retained in the facility in order to receive room and board and health, social, and personal care, and whose condition does not require continuous, 24-hour-a-day onsite availability of nursing or medical care. A basic care facility may retain an individual in need of end-of-life services if the facility wraps around the individual's family, or the individual's designee, volunteers, or staff services to support the individual through end of life.

Assisted Living Facility: Each assisted living facility must have clear, concise, and understandable tenancy criteria that is fully disclosed to all tenants, in writing, before the tenancy agreement is signed. Before a facility unit is

rented, the facility or landlord shall evaluate the tenant's ability to meet the facility's tenancy criteria.

Each assisted living facility shall require the administrator of the facility to complete twelve hours of continuing education per year. The assisted living facility shall require all direct care staff to receive annual education or training in the areas of:

- a. Resident rights;
- b. Fire and accident prevention and training;
- c. Mental and physical health needs of tenants;
- d. Behavior problems and prevention; and
- e. Control of infection, including universal precautions.

Each assisted living facility shall maintain a record for each tenant. The tenant record must include:

- a. An initial evaluation to meet tenancy criteria;
- b. The tenancy agreement signed by the tenant or the tenant's legal representative;
- c. If applicable, a medication administration record that documents medication administration consistent with applicable state laws, rules, and practices; and
- d. An itemized list of services provided for the tenant.

Before hiring, the assisted living facility shall conduct a reference and previous employment check and a check of applicable registries of each applicant being considered for employment at the facility.

At least once every twenty-four months, each assisted living facility shall conduct a consumer satisfaction survey. The assisted living facility shall provide each tenant with a copy of the results of the survey.

Resident Assessment

In basic care and assisted living facilities, the facilities develop and utilize their own forms.

Basic Care Facility: An assessment is required for each resident within 14 days of admission and as determined by an appropriately licensed professional thereafter, but no less frequently than quarterly. The assessment must include: a review of health, psychosocial, functional, nutritional, and activity status; personal care and other

needs; health needs; capability of self-preservation; and specific social and activity interests.

Assisted living Facility: None specified

Medication Management In assisted living and in basic care facilities, unlicensed staff may administer medication except for 'as needed' controlled prescription drugs. Those personnel must have specific training and be monitored by a registered nurse.

Square Feet Requirements Basic Care Facility: Private resident units must be a minimum of 100 square feet and semi-private resident units must provide a minimum of 80 square feet per resident. Generally, basic care facilities have semi-private units.

Assisted Living Facility: Square feet requirements are not specified. Generally living units are efficiency or one- or two-bedroom apartments. A living unit must contain a sleeping area, an entry door that can be locked, and a private bathroom with a toilet, bathtub or shower, and a sink.

Residents Allowed Per Room Basic Care Facility: None specified.

Assisted Living Facility: No more than two people may occupy one bedroom of each living unit.

Bathroom Requirements Common toilets, lavatories, and bathing facilities are permitted.

Basic Care Facility: There must be at least one toilet for every four residents and a bathtub or shower for every 15 residents.

Central bathing rooms or areas shall be located on each floor with resident sleeping areas. One bathtub or shower shall be provided for each eight residents, plus each fraction of eight, not otherwise served by showers in resident rooms.

Assisted Living Facility: There must be a private bathroom with a toilet, bathtub or shower, and a sink.

Life Safety Basic Care Facility: The basic care facility shall comply with the national fire protection association Life Safety

Code, 2012 edition, chapters 32 and 33, residential board and care occupancy, slow evacuation capability, or a greater level of fire safety.

Fire drills must be held monthly with a minimum of twelve per year, alternating with all workshifts. Residents and staff, as a group, shall either evacuate the building or relocate to an assembly point identified in the fire evacuation plan. At least once a year, a fire drill must be conducted during which all staff and residents evacuate the building.

Fire evacuation plans must be posted in a conspicuous place in the facility.

Written records of fire drills must be maintained. These records must include dates, times, duration, names of staff and residents participating and those absent and why, and a brief description of the drill, including the escape path used and evidence of simulation of a call to the fire department.

Each resident shall receive an individual fire drill walk-through within five days of admission.

Any variation to compliance with the fire safety requirements must be approved in writing by the department.

Residents of facilities meeting a greater level of fire safety must meet the fire drill requirements of that occupancy classification.

Basic care facilities must comply with the NFPA safety code, 2012 edition, chapters 32 and 33, residential board and care occupancy, slow evacuation capability, or a greater level of fire safety.

Fire drills must be held monthly with a minimum of 12 per year, alternating with all work shifts. Residents and staff, as a group, shall either evacuate the building or relocate to an assembly point identified in the fire evacuation plan. At least once a year, a fire drill must be conducted during which all staff and residents evacuate the building.

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Each resident shall receive an individual fire drill walk-through within five days of admission.

Any variation to compliance with the fire safety requirements must be approved in writing by the department. Residents of facilities meeting a greater level of fire safety must meet the fire drill requirements of that occupancy classification.

Basic care facilities that retain residents who require end-of-life care and are not capable of self-preservation must meet additional requirements.

Assisted Living Facility: Operators of assisted living facilities must certify that facilities are in compliance with all applicable federal, state, and local laws, and upon request make available to the department copies of current certifications, licenses, permits, and other similar documents providing evidence of compliance with such laws. Each assisted living facility must install smoke detection devices or other approved alarm systems of a type and number approved by the department, in cooperation with the state fire marshal. Assisted living facilities must meet exiting requirements. Access to fire escapes must be kept free and clear at all times of all obstructions of any nature. The proprietor of the assisted living facility must provide for adequate exit lighting and exit signs as defined in the state building code.

Each assisted living facility must be provided with fire extinguishers as defined by the NFPA standard number 10 in quantities defined by the state building code and the state fire code. Standpipe and sprinkler systems must be installed as required by the state building code and state fire code. Fire extinguishers, sprinkler systems, and standpipe systems must conform with rules adopted by the state fire marshal. A contract for sale or a sale of a fire extinguisher installation in a public building is not

enforceable, if the fire extinguisher or extinguishing system is of a type not approved by the state fire marshal for such installation. No fire extinguisher of a type not approved by the state fire marshal may be sold or offered for sale within the state.

Assisted living facilities must meet smoke detector regulations as stated in North Dakota Administrative Code 33-33-05. These regulations require every sleeping room, passageway, and hallway to be equipped with a smoke detection device. In addition, at least one sleeping room in an assisted living facility shall be equipped with a listed smoke detection device for the hearing impaired. At least 10 percent of battery-operated smoke detectors must be tested weekly and at least 10 percent of hard-wired detectors must be tested monthly on a systematic basis. Records of those tests need to be kept for two years.

Assisted living facilities are required to have written disaster plans and emergency lighting. Passenger or freight elevators must comply with state building code fire protection requirements.

**Unit and Staffing
Requirements for Serving
Persons with Dementia**

Alzheimer's units are available in basic care facilities. They are not available in assisted living facilities.

Basic care facilities that wish to advertise or hold itself out to the public to provide specialized care to residents with Alzheimer's, dementia, memory loss, or care for residents with traumatic brain injury unless licensed consistent with section 33-03-24.1-24 of the regulations. A basic care facility licensed to provide specialized services to residents in this section may admit and retain residents who require twenty-four-hour per day dedicated personal care staff, but do not need more than intermittent nursing or medical care. Such facilities must develop a written policy related to resident rights and provide the policy to the resident or designee, verbally and in writing.

A basic care facility licensed to provide specialized services to residents with Alzheimer's, dementia, or special memory care needs must meet additional training requirements. For example, all nursing and personal care staff must complete: a minimum of eight education hours on specified topics within three months of hire, a minimum of four hours annually thereafter, and competency evaluation annually.

Regulations specify a number of other requirements.

Staffing Requirements

Basic Care Facility: An administrator must be in charge of the general administration of the facility. While there are no staffing ratios, basic care facilities must provide 24-hour staffing.

Assisted Living Facility: An entity providing assisted living services to five or more individuals must be licensed as an assisted living facility by both the North Dakota Department of Health and the North Dakota Department of Human Services and meet staffing requirements as defined by Century Code and regulatory code.

Administrator Education/Training

Basic Care Facility: Administrators must complete at least 12 hours of continuing education per year relating to care and services for residents.

Assisted Living Facility: Administrators must complete 12 hours of continuing education per year.

Staff Education/Training

Basic Care Facility: All employees must have in-service training annually on: 1) fire and accident prevention and safety; 2) mental and physical health needs of the residents, including behavior problems; 3) prevention and control of infections, including universal precautions; and 4) resident rights. In basic care facilities, the staff responsible for food preparation are required to attend a minimum of two dietary educational programs per year and staff responsible for activity services are required to attend a minimum of two activity-related programs per year.

A Basic Care Facility licensed to provide specialized services to residents in this section shall ensure training and competency evaluation is completed for all nursing and personal care staff members specific to the care and services necessary to meet the needs of the residents. A minimum of eight educational hours on the following topics must be completed within three months from the date of hire. Nursing and personal care staff may not be assigned to work independently until they have successfully completed a competency evaluation. For example, all nursing and personal care staff must complete: a minimum of eight education hours on specified topics within three

months of hire, a minimum of four hours annually thereafter, and competency evaluation annually.

Assisted Living Facility: All employees must receive annual training on: 1) resident rights; 2) fire and accident prevention and training; 3) mental and physical health needs of tenants; 4) behavior problems and prevention; and 5) control of infection, including universal precautions.

Entity Approving CE Program

None specified for either basic care or assisted living facilities.

Medicaid Policy and Reimbursement

A Section 1915(c) waiver, the Home and Community-Based Services Waiver, covers services in basic care facilities that have experience providing services to individuals with a diagnosis of either dementia or brain injury. The Medicaid State Plan also covers personal care services for providers that are licensed and enrolled as a basic care facility.

COVID-19 Public Health Emergency

There are no permanent regulatory changes related to the COVID-19 public health emergency.

Citations

North Dakota Legislative Branch, Chapter 75-03-34: Licensing of Assisted Living Facilities. [July 1, 2006] <https://www.ndlegis.gov/information/acdata/pdf/75-03-34.pdf>

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North Dakota Legislative Branch, Chapter 33-03-24.1: Basic Care Facilities. [January 1, 2018] <https://www.ndlegis.gov/information/acdata/pdf/33-03-24.1.pdf>

North Dakota Legislative Branch, Chapter 33-03-24.2 General Standards for Construction and Equipment for Basic Care Facilities. [July 1, 2015] <http://www.legis.nd.gov/information/acdata/pdf/33-03-24.2.pdf>

North Dakota Legislative Branch, Chapter 23-09.3: Basic Care Facilities. <http://www.legis.nd.gov/cencode/t23c09-3.pdf?20150112163011>

North Dakota Department of Human Services. Medicaid Waiver for Home and Community Based Services (Medicaid Waiver).

<https://www.nd.gov/dhs/services/adultsaging/homecare3.html>

North Dakota Administrative Code, Title 33, Article 3, Chapter 24, Section 1-23. Basic Care Facilities, End-of-life services.

<https://www.legis.nd.gov/information/acdata/pdf/33-03-24.1.pdf>

Chapter 23-09.3 Basic Care Facilities (2021)

<https://www.ndlegis.gov/cencode/t23c09-3.pdf#nameddest=23-09p3-01p1>