

## **CHAPTER 33-03-24.1 BASIC CARE FACILITIES**

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### **33-03-24.1-01. Definitions.**

1. "Abuse" includes the willful infliction of mental, physical, sexual, and verbal abuse which could result in temporary or permanent mental, physical, emotional, or psychological injury or harm. Mental abuse includes humiliation, harassment, intimidation, threats of punishment, or deprivation. Physical abuse includes hitting, slapping, pinching, kicking, unreasonable confinement, and deprivation, by an individual, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. It also includes controlling behavior through corporal punishment. Sexual abuse includes sexual harassment, sexual coercion, sexual contact, or sexual assault. Verbal abuse includes any use of oral, written, or gestured language that includes disparaging and derogatory terms to residents or their families, used within their hearing distance to describe the residents, regardless of their age, ability to comprehend, or disability.
2. "Activities of daily living" means those personal, functional activities required by an individual for continued well-being, including eating, nutrition, dressing, personal hygiene, mobility, toileting, and behavior management.
  - a. "Assistance" means the resident is able to help with most of an activity, but cannot do it entirely alone. The resident may need prompting, encouragement, or the minimal hands-on assistance of the personal care attendant.
  - b. "Independent" means the resident can perform the activities of daily living without help.
3. "Activity staff" means an employee who is responsible for providing an activity program.

4. "Adult day care services" means the provision of basic care facility services to meet the needs of individuals who do not remain in the facility overnight.
5. "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.
6. "Capable of self-preservation" means a resident's ability, with or without assistance, to evacuate the facility or relocate from the point of occupancy to a point of safety in case of fire in compliance with the requirements of this chapter.
7. "Department" means the North Dakota state department of health.
8. "End-of-life care" means a program of palliative and supportive care for a resident with a physician or nurse practitioner's order identifying a terminal illness or condition with a limited prognosis of six or fewer months to live that has elected to receive hospice services through a licensed and Medicare-certified hospice agency.
9. "Facility" means a basic care facility.
10. "Governing body" means the entity legally responsible for the operation of a basic care facility.
11. "Instrumental activities of daily living" includes preparing meals, shopping, managing money, housework, laundry, transportation, use of telephone, and mobility outside the basic care facility.
12. "Licensed health care practitioner" means an individual who is licensed or certified to provide medical, medically related, or advanced registered nursing care to individuals in North Dakota.
13. "Medication administration" means an act in which a drug or biological is given to a resident by an individual who is authorized in accordance with state laws and regulations governing such acts, and may include a licensed health care practitioner, licensed nurse, or medication assistant.
14. "Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful temporary or permanent taking or use of a resident's belongings or money, or both.
15. "Neglect" includes failure to carry out resident services as directed or ordered by the licensed health care practitioner or other authorized personnel, or failure to give proper attention to residents.
16. "Personal care" means assistance with activities of daily living and instrumental activities of daily living and general supervision of physical or mental well-being.
17. "Resident" means an individual admitted and retained in a facility in order to receive room and board and health, social, and personal care who is capable of self-preservation, and whose condition does not require continuous, twenty-four-hour a day onsite availability of nursing or medical care.
18. "Restricting device" means any device which limits a resident from freely exiting the facility or unit, including pressure devices which delay the time frame in which a door will open.

19. "Secured facility" means a facility that is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility that has restricting devices to restrict residents from freely exiting the building.
20. "Secured unit" means a specific area of the facility that is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care unit that has a restricting device separating the residents in the unit from the residents in the remainder of the facility.
21. "Significant medication error" means a medication error which causes the resident discomfort or jeopardizes his or her health and safety, or a pattern of more than three medication errors that has the potential for causing a negative impact or harm to residents.
22. "Unsecured facility" means a facility that is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility without restricting devices to restrict residents from freely exiting the building.
23. "Unsecured unit" means a specific area of the facility that is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care unit that is separate from the residents in the remainder of the facility without a restricting device.

**History:** Effective January 1, 1995; amended effective January 1, 2008; July 1, 2015; January 1, 2018.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3

**33-03-24.1-02. Certificate of need.**

Repealed effective October 1, 1998.

**33-03-24.1-03. Issuance of license.**

A facility meeting the definition of a basic care facility as outlined in North Dakota Century Code chapter 23-09.3, North Dakota Administrative Code chapter 33-03-24.2, and this chapter must obtain a license from the department in order to operate in North Dakota.

1. Application to operate a facility must be made to the department prior to opening a facility, prior to change in ownership, annually, and upon determination by the department that a facility meets the definition of a basic care facility.
2. Floor plans must be submitted to the department for review and approval prior to opening a facility and prior to making structural alterations, including those which increase or decrease resident bed capacity.
3. Upon receipt of an application for an initial license, the department may schedule an inspection. Upon completion of the inspection and consideration of the findings, the department may issue an initial or provisional license, or deny the application.
4. An initial license is valid for a period not to exceed one year and shall expire on December thirty-first of the year issued.
5. Licenses must be issued on a calendar year basis and expire on December thirty-first of each year. An application for licensure renewal must be received by the department with sufficient time prior to the beginning of the licensure period to process.
6. A provisional license may be issued to a facility that does not comply with this chapter if practices in the facility do not pose a danger to the health and safety of the residents, as determined by the department.

- a. A provisional license must be accompanied by a written statement of the specific rules or statutes violated and the expiration date of the license, which is not to exceed three months from the date of issuance.
  - b. If compliance with the requirements has been determined by the department prior to the expiration of the provisional license, an annual license may be issued. If an acceptable plan of correction has been approved by the department but compliance has not yet been achieved, the provisional license may be renewed no more than one time for an additional period up to three months at the discretion of the department.
7. Once issued, the facility shall display the license in a conspicuous place. A license is not subject to sale, assignment, or other transfer, voluntary or involuntary. A license is not valid for any premises other than those for which originally issued.
  8. The department may, at any time, inspect a facility that the department determines meets the definition of a basic care facility as described in North Dakota Century Code chapter 23-09.3 and this chapter.
  9. The facility must provide the department access to any material and information necessary, as determined by the department, for determining compliance with these requirements.
  10. Information regarding facilities is public information and is available upon request through the department.

**History:** Effective January 1, 1995; amended effective January 1, 2008; July 1, 2015.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3-04, 23-09.3-05

#### **33-03-24.1-04. Waiver provision.**

The department may waive licensure requirements for specified periods of time in specific instances, provided compliance with the requirement would result in an unreasonable hardship upon the facility and lack of compliance does not adversely affect the health or safety of the residents.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 23-09.3-19

**Law Implemented:** NDCC 23-09.3-09

#### **33-03-24.1-05. Plans of correction.**

1. A basic care facility must submit a plan of correction within ten days of receipt of the notification of deficiencies pursuant to this chapter.
2. The plan of correction must address how each deficiency will be corrected, what the facility will put in place to assure continued compliance, and the date upon which the corrective action will be completed.
3. The department may accept, reject, negotiate modifications to, or direct the plan of correction. A directed plan of correction is a plan of correction which has been developed in coordination with the department.
4. Correction of deficiencies must be completed within sixty days of the survey completion date, unless an alternative schedule of correction has been approved by the department.
5. The department shall determine, based on the review of the facility's plan of correction, what followup is necessary to verify the correction of deficiencies has been completed. Followup may occur by telephone, mail, or onsite revisit.

6. The department shall make available to the public, on the department's website, the deficiency statement and accepted plan of correction, following verification of correction.

**History:** Effective January 1, 1995; amended effective July 1, 2015.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3-05

### **33-03-24.1-06. Enforcement actions.**

1. Facilities are subject to one or more enforcement actions, which include a ban or limitation on admissions, suspension or revocation of a license, or a denial to license, for the following reasons:
  - a. Noncompliance with the requirements of this chapter or chapter 33-03-24.2 have been identified which:
    - (1) Present imminent danger to residents. These conditions or practices must be abated or eliminated immediately or within a fixed period of time as specified by the department;
    - (2) Have a direct or immediate negative relationship to the health, safety, or security of the residents; or
    - (3) Have a potential for jeopardizing resident health, safety, or security if left uncorrected.
  - b. Recurrence of the same or substantially same deficient practice in a thirty-six-month period.
  - c. Failure to provide an acceptable plan of correction or to correct any deficiency pursuant to an approved plan of correction.
  - d. Refusal to allow a survey of the facility by representatives of the department.
  - e. Gross incompetence, negligence, or misconduct in operating the facility as determined through department investigation or by a court of law.
  - f. Fraud, deceit, misrepresentation, or bribery in obtaining or attempting to obtain a license.
  - g. Knowingly aiding and abetting in any way the improper granting of a license.
2. The effective date of the enforcement action must be ninety days from the date the department notifies the facility in writing of the department's decision to initiate an enforcement action, unless the department determines there is imminent danger to the residents.
3. The notice to the facility must include the basis of the department's decision and the effective date of the enforcement action and must also advise the facility of their right to:
  - a. Request a review by the department.
    - (1) A request for a review by the department to verify correction of the deficient practices must be submitted by the facility to the department within forty-five days from the date the department notifies the facility in writing of its decision to initiate an enforcement action.
    - (2) The facility must submit written documentation to the department with the request for a review to verify correction of the deficient practices that were cited. The department shall determine, based on review of the documentation submitted, if an

onsite revisit is warranted. The department review and onsite revisit, if conducted, must take place within sixty days of the date the department notified the facility in writing of its decision to initiate an enforcement action.

- (3) If the department determines, based on the review of the facility documentation and the onsite revisit, if conducted, that the deficient practices have been corrected, the enforcement action may be halted. The department shall notify the facility in writing of the decision within ten days of this determination.
  - (4) If the department determines, based on the review of the facility documentation and the onsite revisit, if conducted, that the deficient practices were not corrected, the enforcement action will be imposed. If imposed, the enforcement action will, at a minimum, remain in effect until the department determines that the conditions leading to the enforcement action have been corrected.
- b. Request a reconsideration of an enforcement action consistent with section 33-03-24.1-07.
4. If the department sustains the decision, the department shall publish a public notice in the local newspaper not less than fifteen days prior to the imposition of the enforcement action stating the name of the facility, the enforcement action to be imposed, the reason for the action, the date on which the enforcement action will be effective, and the length of time for which it will be imposed.
  5. The department of human services and the county social service office in the county in which the facility is located will be notified in writing by the department regarding the enforcement action.

**History:** Effective January 1, 1995; amended effective July 1, 2015.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3

### **33-03-24.1-07. Reconsideration of enforcement actions.**

The facility has the right to request a reconsideration of decisions resulting in enforcement actions.

1. A written request for a reconsideration must be filed with the department within ten days of the date the department notified the facility in writing of the decision to initiate an enforcement action.
2. The facility requests for reconsideration must be accompanied by written documents, including:
  - a. A copy of the notice received from the department.
  - b. The reason or basis in fact for the dispute and request for reconsideration.
  - c. The statutes or rules relied upon with respect to each disputed issue and the factual basis for the facility's contention that the violation was erroneously determined.
  - d. The name, address, and telephone number of the person to whom all notices will be mailed or delivered regarding the request for reconsideration.
3. Within ten days after the receipt of the request for reconsideration, the department shall grant or deny the request.
4. A request for reconsideration will be denied unless it specifically identifies each disputed deficient practice and states the factual basis for the facility's contention that the deficient

practice was erroneously determined. The correction of the factors that led to the determination of a deficient practice may not be asserted as a basis for a request for reconsideration.

5. If the department denies the request for reconsideration, the department shall notify the facility in writing of that decision. If denial was for any reason other than a failure of the request to conform to the requirements of subsection 4, the notice must advise the facility of the right to appeal.
6. If the department determines to undertake reconsideration, the decision on reconsideration must be rendered within twenty days of receipt of the request for the reconsideration and the department must notify the facility in writing of the decision. The notice of the decision on the reconsideration must advise the facility of the right to appeal.
7. The reconsideration of an enforcement action does not delay the implementation of the enforcement action. The date of implementation of the enforcement action is effective unless otherwise determined.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 23-09.3-19

**Law Implemented:** NDCC 23-09.3-09

### **33-03-24.1-08. Appeals.**

1. A facility dissatisfied with the decision on a request for reconsideration, which conforms to the requirements of subsection 4 of section 33-03-24.1-07, may appeal. An appeal may be initiated by mailing or delivering the information described in subdivisions a through d to the department, division on health facilities, state capitol, Bismarck, North Dakota, on or before 5:00 p.m. on the fortieth day from the date the department notified the facility in writing of the department's decision to initiate an enforcement action. Written documents including all of the following must accompany the appeal:
  - a. A copy of the notice received from the department regarding the department's decision on the request for reconsideration.
  - b. A statement of each disputed deficient practice and the reason or basis in fact for the dispute.
  - c. The authority in statute or rule upon which the facility relies for each disputed item.
  - d. The name, address, and telephone number of the person to whom all notices will be mailed or delivered regarding the appeal.
2. Except as otherwise provided in this section, the appeal must be considered as provided in article 98-02.
3. The appeal must be decided based on whether the deficient practice occurred, not whether the deficient practice has been corrected.
4. The hearing officer must make written findings of fact and conclusions of law and must recommend a decision to the department. The recommended decision must set forth the reasons for the decision and the evidence upon which the decision is based.
5. The department may accept, modify, or reject the recommended decision. If the department rejects the recommended decision, it may remand the matter to the office of administrative hearings with directions. The department may require, through its directions, the receipt of additional evidence and the submission of amended findings of fact and conclusions of law

and recommend a decision that reflects consideration of the additional evidence. The department may require, through its direction, that the matter be referred to the same or a different hearing officer, and the office of administrative hearings shall comply with that direction unless compliance is impossible.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 23-09.3-19

**Law Implemented:** NDCC 23-09.3-09

**33-03-24.1-09. Governing body.**

1. The governing body is legally responsible for the quality of resident services; for resident health, safety, and security; and to ensure the overall operation of the facility is in compliance with all applicable federal, state, and local laws.
2. The governing body is responsible for approval and implementation of effective resident care and administrative policies and procedures for the operation of the facility. These policies and procedures must be in writing, signed, dated, reviewed annually, and revised as necessary, and shall address:
  - a. All services provided by the facility to meet the needs of the residents, including admission, transfer, discharge, discharge planning, and referral services.
  - b. Protocols developed by appropriately licensed professionals for use in the event of serious health-threatening conditions, emergencies, or temporary illnesses. These protocols must include provisions for:
    - (1) Designation of a licensed health care practitioner for each resident and arrangements to secure the services of another licensed health care practitioner if the resident's designated licensed health care practitioner is not available.
    - (2) Notification of an appropriately licensed professional in the event of an illness or injury of a resident.
  - c. Provisions for pharmacy and medication services developed in consultation with a registered pharmacist, including:
    - (1) Assisting residents in obtaining individually prescribed medications from a pharmacist of the resident's choice.
    - (2) Disposing of medications that are no longer used or are outdated, consistent with applicable federal and state laws.
    - (3) Allowing the resident to be totally responsible for the resident's own medication upon resident request and based on the assessment of the resident's capabilities with respect to this function by an appropriately licensed professional.
  - d. Infection control practices, including provision of a sanitary environment and an active program for the prevention, investigation, management, and control of infections and communicable diseases in residents and staff members.
  - e. Prohibition of resident abuse, neglect, and misappropriation of resident property, including investigation, reporting to the department, and followup action.
  - f. Reporting a significant medication error to officials in accordance with state law. A significant medication error by a medication assistant I or II shall be reported to the department of health.



- g. A process for handling complaints made by residents or on behalf of residents.
  - h. Resident rights which comply with North Dakota Century Code chapter 50-10.2.
  - i. Personnel policies to include checking state registries and licensure boards prior to employment for findings of inappropriate conduct, employment, disciplinary actions, and termination.
  - j. Personnel records to include job descriptions, verification of credentials where applicable, and records of training and education.
3. If the facility provides any clinical laboratory testing services to an individual, regardless of the frequency or the complexity of the testing the governing body is responsible to obtain and maintain compliance with the applicable parts of the clinical laboratory improvement amendments of 1988, 42 CFR part 493.
  4. The governing body shall appoint an administrator to be in charge of the general administration of the facility. Provisions must be made for a staff member to be identified in writing to be responsible for the onsite operation of the facility in the absence of the administrator.
  5. The governing body shall ensure sufficient trained and competent staff are employed to meet the residents' needs. Staff must be in the facility, awake and prepared to assist residents twenty-four hours a day.

**History:** Effective January 1, 1995; amended effective July 1, 2015.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3-04

### **33-03-24.1-10. Fire safety.**

The fire safety provisions located in section 33-03-24.2-08 apply to this chapter.

**History:** Effective January 1, 1995; amended effective July 1, 1996; October 1, 1998; July 1, 2015.

**General Authority:** NDCC 23-09.3-19

**Law Implemented:** NDCC 18-01-03.2, 23-09.3-09

### **33-03-24.1-11. Education programs.**

1. The facility shall design, implement, and document educational programs to orient new employees and develop and improve employees' skills to carry out their job responsibilities.
2. On an annual basis, all employees shall receive inservice training in at least the following:
  - a. Fire and accident prevention and safety.
  - b. Mental and physical health needs of the residents, including behavior problems.
  - c. Prevention and control of infections, including universal precautions.
  - d. Resident rights.
3. The administrator shall attend at least twelve continuing education hours per year relating to care and services for residents.
4. The staff responsible for food preparation shall attend a minimum of two dietary educational programs per year.

5. The staff responsible for activities shall attend a minimum of two activity-related educational programs per year.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3-04

### **33-03-24.1-12. Resident assessments and care plans.**

1. An assessment is required for each resident within fourteen days of admission and as determined by an appropriately licensed professional thereafter, but no less frequently than quarterly.
2. The assessment must be completed in writing by an appropriately licensed professional. The assessment must include:
  - a. A review of health, psychosocial, functional, nutritional, and activity status.
  - b. Personal care and other needs.
  - c. Health needs.
  - d. The capability of self-preservation.
  - e. Specific social and activity interests.
3. A care plan, based on the assessment and input from the resident or person with legal status to act on behalf of the resident, must be developed within twenty-one days of the admission date and consistently implemented in response to individual resident needs and strengths.
4. The care plan must be updated as needed, but no less than quarterly.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3-04

### **33-03-24.1-13. Resident records.**

1. The facility shall provide for secure maintenance and storage of all resident records.
2. Resident records must include:
  - a. The resident's name, social security number, marital status, age, sex, previous address, religion, personal licensed health care practitioner, dentist, and designated representative or other responsible person.
  - b. The licensed health care practitioner's orders and report of an examination of the resident's current health status.
  - c. An admission note.
  - d. A copy of an initial and current assessment and care plan.
  - e. Documentation of resident observations by authorized staff.
  - f. Documentation of death, including cause and disposition of the resident's personal effects, money, or valuables deposited with the facility.

- g. A quarterly progress note documenting the resident's current health condition, level of functioning, activity involvement, nutritional status, psychosocial interactions, and needs.
  - h. Documentation of review of prescribed diets.
  - i. Transfer forms that are completed, signed, and sent with the resident when transferred to another facility.
  - j. A medication administration record documenting medication administration consistent with applicable state laws, rules, and practice acts.
  - k. Documentation of an annual medication regimen review.
  - l. A written report of any funds kept at a resident's request. Such record shall show deposits to and withdrawals from the fund.
  - m. Documentation of a fire drill walk-through within five days of admission.
  - n. All agreements or contracts entered into between the facility and the resident or legal representative.
  - o. A discharge note.
3. The facility shall maintain resident records for a period of not less than five years from the date of discharge or death.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3-03, 23-09.3-04

**33-03-24.1-14. Personal care services.**

The facility shall provide personal care services to assist the resident to attain and maintain their highest level of functioning consistent with the resident assessments and care plans. These services must include assistance with:

- 1. Activities of daily living and instrumental activities of daily living and observation and documentation of changes in physical, mental, and emotional functioning, as needed.
- 2. Arrangements to seek health care when the resident shows signs or describes symptoms of an illness or abnormality for which treatment may be indicated.
- 3. Arrangements for appropriate transfer and transport as needed.
- 4. Functional aids or equipment, such as glasses, hearing aids, canes, crutches, walkers, or wheelchairs.
- 5. Clothing and other personal effects as well as maintenance of personal living quarters.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3-03, 23-09.3-04

**33-03-24.1-15. Pharmacy and medication administration services.**

- 1. The facility shall provide assistance to the resident in obtaining necessary medications and medical supplies.

2. The facility shall provide a secure area for medication storage consistent with chapter 61-03-02.
  - a. A specific system must be identified for the accountability of keys issued for locked drug storage areas.
  - b. Residents who are responsible for their own medication administration must be provided a secure storage place for their medications.
3. Medication administration services must be available for residents.
4. All medications used by residents which are administered or supervised by staff must be:
  - a. Properly recorded by staff at the time of administration.
  - b. Kept and stored in original containers labeled consistently with state laws.
  - c. Properly administered.
5. The resident's licensed health care practitioner, another licensed health care professional consistent with applicable state practice acts, or a consulting pharmacist shall review the medication regimen of each resident as needed, but at least annually.
6. A medication record need not be kept for those residents for whom authorization has been given by the licensed health care professional to keep their medication in their rooms and to be fully responsible for taking the medication in the correct dosage and at the proper times.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3-04

### **33-03-24.1-16. Social services.**

Social services must be available to meet the needs of the residents either by the facility directly or arranged by the facility through an appropriate agency offering social services.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3-04

### **33-03-24.1-17. Nursing services.**

Nursing services must be available to meet the needs of the residents either by the facility directly or arranged by the facility through an appropriate individual or agency providing nursing services.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3-04

### **33-03-24.1-18. Dietary services.**

The facility must meet the dietary needs of the residents and provide dietary services in conformance with the North Dakota sanitary requirements for food establishments. Dietary services must include:

1. A minimum of three meals each day. Meals must be nutritious and well-balanced in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences.

2. No more than a fourteen-hour span may exist between an evening meal and breakfast.
3. Snacks between meals and in the evening. These snacks must be listed on the daily menu. Vending machines may not be the only source of snacks.
4. Provisions for prescribed diets, if the facility accepts or retains individuals in need of such diets.
  - a. The facility shall provide for preparation and serving of prescribed diets.
  - b. Menus for prescribed diets must be planned and reviewed as needed by a professional consistent with North Dakota Century Code chapter 43-44.
5. Menus of food served, which must be kept for at least three months.
6. Preparation of food by methods that will conserve nutritive value and enhance flavor and appearance, and be served at the proper temperatures and in a form to meet individual needs.
7. Meals must be served to all residents in a dining room, except for residents with a temporary illness.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3-04

#### **33-03-24.1-19. Activity services.**

There must be a planned and meaningful activity program to meet the needs and interests of the residents and encourage self-care and continuity of normal activities. This program must:

1. Be developed based on the activity needs and interests of each resident identified through the initial and ongoing assessments.
2. Develop and post a monthly group activity calendar, based on the individual interests identified, which lists social, recreational, and other events available to residents.
3. Activities must be available and provided to meet the needs of all residents during the day, in the evening, and on the weekend.
4. Assist residents with arrangements to participate in social, recreational, religious, or other activities within the facility and the community in accordance with individual interests and capabilities.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3-04

#### **33-03-24.1-20. Housekeeping and laundry services.**

The facility shall maintain the interior and exterior of the facility in a safe, clean, and orderly manner and provide sanitary laundry services, including personal laundry services, for residents.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3-04

### **33-03-24.1-21. Adult day care services.**

1. A facility must obtain approval from the department to provide adult day care services.
2. Use of existing space and equipment to deliver adult day care services is acceptable if this does not diminish the services provided to the residents of the facility and their needs being met.
3. Medications and treatments must be administered only by order of a licensed health care practitioner.
4. Records must be maintained of services provided to individuals participating in adult day care services.
5. An area allowing privacy for adult day care individuals must be developed to allow for rest periods.

**History:** Effective January 1, 1995.

**General Authority:** NDCC 23-09.3-09, 28-32-02(1)

**Law Implemented:** NDCC 23-09.3-04

### **33-03-24.1-22. General building requirements.**

Repealed effective July 1, 2015.

### **33-03-24.1-23. Optional end-of-life care service.**

A facility that intends to retain residents who require end-of-life care must comply with the requirements of this section, apply on an application as specified by the department, and receive written approval from the department prior to providing the services. The facility must meet the following requirements:

1. A facility may not retain residents who require more than intermittent nursing care unless the resident requires and elects to receive end-of-life care from a licensed and Medicare-certified hospice agency and the facility is licensed to provide end-of-life care.
2. A facility providing end-of-life care must employ or contract with a registered nurse to supervise resident care to meet the needs of the residents at all times, either directly or indirectly. The facility must employ a licensed nurse who is on the premises at least forty hours per week to identify and respond to resident needs, care plan accordingly, provide oversight related to care, and review and document the resident's individual needs and care provided.
3. Individuals in need of end-of-life care who require skilled nursing care or are not capable of self-preservation may not be admitted.
4. The facility and the licensed and Medicare-certified hospice agency shall enter into an agreement that delineates responsibilities, with the licensed and Medicare-certified hospice agency retaining the professional management responsibility for the hospice service.
5. The facility and licensed and Medicare-certified hospice agency in consultation with the resident shall develop and implement an interdisciplinary care plan that identifies how the resident's needs are met and includes the following:
  - a. What services are to be provided;
  - b. Who will provide the services, the facility or hospice agency;

- c. How the services will be provided;
  - d. Delineation of the roles of facility staff and the hospice agency in the care plan process;
  - e. Documentation of the care and services that are provided with the signature of the person who provided the care and services; and
  - f. A list of the current medications or biologicals the resident receives and who is authorized to administer the medications.
6. The facility shall notify the department within forty-eight hours of election that the resident has elected hospice, the date the hospice was elected, and the name of the hospice agency serving the resident.
  7. The facility shall notify the department within forty-eight hours of the hospice resident's discharge, transfer, death, or when the resident is no longer capable of self-preservation.
  8. A facility that retains a resident requiring end-of-life care that is not capable of self-preservation shall be equipped with an approved automatic sprinkler system designed to comply with the national fire protection association standard 13 or 13R, or shall meet the national fire protection association 101 Life Safety Code, 2012 edition, health care occupancy requirements.
  9. Facility evacuation or E scores shall be completed at a minimum of weekly and when there is a significant change in the resident's capability for self evacuation when a resident is receiving end-of-life care. Facility staffing must be adjusted consistent with the E scores to maintain a slow evacuation capability. Hospice staff, family members, volunteers, or other nonfacility staff cannot replace required facility staff.
  10. A facility approved to provide end-of-life care 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 terminally ill resident, and the hospice philosophy and services. The training and competency evaluation may be completed, and documented, by the facility registered nurse, a registered nurse consultant, or a hospice agency nurse. Nursing and personal care staff members shall complete the above training and competency evaluation:
    - a. Prior to facility approval from the department to provide end-of-life care;
    - b. Within thirty days of employment; and
    - c. Annually.
  11. A facility that intends to retain residents who require end-of-life care shall comply with the additional requirements in this section and request and receive approval on a printed new license from the department, prior to providing end-of-life care to residents.
  12. The facility approved and licensed to retain residents in need of end-of-life care remains responsible for the appropriate delivery of end-of-life care in coordination with the licensed and Medicare-certified hospice agency. If the facility is unable, or becomes unable, to meet the needs of the resident requiring end-of-life care, the resident rescinds election of the hospice benefit, or the facility is unable to comply with these requirements, the facility shall promptly make arrangements to discharge or transfer the resident to a safe and appropriate placement consistent with the level of care required to meet the resident's needs.

**History:** Effective July 1, 2015.

**General Authority:** NDCC 23-09.3-09, 28-32-02

**33-03-24.1-24. Optional Alzheimer's, dementia, special memory care, or traumatic brain injury facility or unit services.**

A basic care facility or unit that admits or retains only residents with Alzheimer's, dementia, or special memory care needs in a secured or unsecured facility or unit, or a facility that admits and retains only residents with traumatic brain injury must comply with the additional requirements of this section, apply on an application as specified by the department, and receive written approval from the department before providing the services. A basic care facility may not 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 this section. The facility must meet the following requirements:

1. 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; however, do not need more than intermittent nursing or medical care.
2. Residents with Alzheimer's, dementia or special memory care needs, or traumatic brain injury admitted and retained must meet the basic care functional level of care and be capable of self-preservation.
3. The facility or unit licensed to provide specialized care and services to residents under this section shall provide:
  - a. Care of residents with chronic moderate to severe memory loss or an individual who has significant emotional, behavioral, or cognitive impairments and needs services that may include independent living skills, support and training to promote and develop relationships, participate in the social life of the community, and develop behavioral skills as determined necessary based on assessment and care plan;
  - b. Protective oversight and supervision in a structured environment that is staffed with sufficient personal care and intermittent licensed nursing staff to monitor, evaluate, and accommodate an individual's changing needs;
  - c. Service in which assistance with activities of daily living and independent activities of daily living, therapeutic, social, and recreational programming is provided; and
  - d. Care furnished in a way that fosters the maintenance or improvement, as appropriate, to promote independence of the resident.
4. The facility shall develop a written policy related to resident rights and provide the policy to the resident or designee, verbally and in writing. The facility shall ensure each resident's right to privacy, dignity and respect, and freedom from coercion and restraint by promoting individual initiative, autonomy, and independence in making life choices related to daily activities, physical environment, and with whom to interact. The facility or unit must comply with residents' rights in North Dakota Century Code chapter 50-10.2, and:
  - a. Residents must be provided privacy in their sleeping or living area, including entrance doors lockable by the individual, with only appropriate staff having keys to the doors;
  - b. Residents sharing a room with another resident must have a choice of roommate in that setting;
  - c. Residents must be granted the freedom to furnish and decorate their sleeping unit or living area to the extent allowable based on facility policy and fire code requirements;



- d. Residents must have the freedom and support to control their schedules and activities and have access to food any time and eat where they choose;
  - e. Residents are allowed to have visitors of their choosing at any time;
  - f. Must have access to the community; and
  - g. Residents must have access to outdoor space. Residents in a secured facility or unit must have access to a secured outdoor space.
5. The facility shall develop a person-centered care plan for each resident. The care plan must be completed following the functional assessment and be based on input from the resident or designee.
  6. The person-centered care plans must be reviewed quarterly and anytime there is a change in need by the resident based on the assessment, and modified as needed.
  7. 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. The areas to be covered include:
    - a. Dementia education, including progression of the disease, memory loss, and psychiatric and behavioral symptoms;
    - b. Techniques for understanding and approaching behavioral symptoms, such as aggravating behaviors, sexual behaviors, and wandering, including alternatives to chemical and physical restraints;
    - c. Positive therapeutic interventions;
    - d. Strategies for addressing social needs and providing options for meaningful activities;
    - e. Information on how to address aspects of care and safety, such as pain, food, fluid, and wandering;
    - f. Communication issues;
    - g. Resident rights, including dignity, respect, choice, independence, and privacy; and
    - h. Strategies for providing person-centered care.
  8. Each nursing or personal care staff member shall receive annually a minimum of four hours of educational training in two or more of the topics identified in subsection 7.
  9. Nursing or personal care staff members must successfully complete a competency evaluation in the areas identified in subsection 7 annually.
  10. For other staff members hired to work in a facility or unit licensed under this section, training upon hire and annual training shall include at a minimum an overview of dementia and communication issues, and may include other topics identified in subsection 7 as needed.
  11. Before providing services to residents, a basic care facility licensed to provide specialized services to residents in this section shall comply with the additional requirements in this section and receive approval on a printed new license from the department.

12. The department may issue existing facilities a provisional license not to exceed one year to complete construction or remodel to come into compliance with environmental requirements if it does not pose a danger to the health and safety of the residents. An additional provisional license for no more than six months may be granted at the discretion of the department to complete the project.
13. If the facility or unit is unable to meet the needs of the resident, or the resident no longer meets the criteria for retention, the facility promptly shall make arrangements to discharge or transfer the resident to a safe and appropriate placement consistent with the level of care required to meet the resident's needs.

**History:** Effective January 1, 2018.

**General Authority:** NDCC 23-09.3-09, 28-32-02

**Law Implemented:** NDCC 23-09.3-04, 23-09.3-09