

**CHAPTER 33-03-35**  
**RESIDENTIAL END-OF-LIFE FACILITY REGULATION**

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**33-03-35-01. Definitions.**

1. "Facility" means a residential end-of-life facility.
2. "Residential services" means intermittent, nonpersonal care tasks, such as housekeeping, laundry, shopping, and arranging for transportation.
3. "Support services" includes responsibility for patient health and safety, assistance with activities of daily living and instrumental activities of daily living, provision of leisure, recreational, and therapeutic activities, supervision of nutritional needs, and medication administration.
4. "Volunteer services" means the services provided by individuals, voluntarily and without remuneration, who have successfully completed a training program implemented by the facility.

**History:** Effective April 1, 2023.

**General Authority:** NDCC 23-17.7-03

**Law Implemented:** NDCC 23-17.7-03

**33-03-35-02. Issuance of license and fees.**

A facility shall obtain a license from the department in order to operate in this state.

1. Application to operate a facility must be made to the department before opening a facility upon determination by the department that the facility meets the definition of a facility.
2. A facility shall apply to the department for a license in the form and manner prescribed by the department.
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 thirty days before 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 patients, as determined by the department.
  - a. A provisional license must be accompanied by a written statement of the specific rules or statutes the facility is in noncompliance of 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 before 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. The facility shall display the current license in a conspicuous place.
8. A facility shall notify the department and reapply for licensure upon any change in ownership of the facility.
9. 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.
10. The department may, at any time, inspect a facility that the department determines meets the definition of a residential end-of-life facility as described in North Dakota Century Code chapter 23-17.7 and this chapter, to determine compliance with licensure requirements and standards.
11. The department may deny, suspend, or revoke the license of a facility for noncompliance with North Dakota Century Code chapter 23-17.7 or this chapter.
12. The facility shall provide the department access to any materials and information necessary, as determined by the department, for determining compliance with licensure requirements and standards.
13. The facility shall submit floor plans directly or through an architect or engineer for new construction or a renovation project to be reviewed by the department. The estimated cost of the project is to accompany the submission of the project. Based on the estimated cost of the project, a letter is sent from the department to the facility administrator or designee indicating the plan review fee that needs to be submitted. The plan review fee schedule based on size and project costs is:
  - a. Small project. A fee of five hundred dollars for a project cost between zero and fifty thousand dollars.
  - b. Medium project. A fee of one percent of the project costs for a project cost between fifty thousand and one dollar and four million dollars.
  - c. Large project. A fee of forty thousand dollars plus twenty-five hundredths of one percent of the project cost after four million is subtracted for a project with project cost greater than four million dollars.
14. An application for a license for facilities not owned by the state or its political subdivisions must be accompanied by the following fees:

- a. Ten thousand dollars for each initial application.
- b. Two thousand five hundred dollars for each renewal application.

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**Law Implemented:** NDCC 23-17.7-03

### **33-03-35-03. Waiver provision.**

The department may waive licensure requirements for specified periods of time 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 patients.

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**General Authority:** NDCC 23-17.7-03

**Law Implemented:** NDCC 23-17.7-03

### **33-03-35-04. Governing body.**

1. The facility shall have a clearly defined, organized governing body that assumes full legal responsibility for the overall conduct and operation of the facility.
2. The governing body is responsible for approval and implementation of effective patient 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.
3. The governing body shall appoint an administrator to be in charge of the general administration of the facility. Provisions must be made in writing for an identified staff member to be responsible for the onsite operation of the facility in the absence of the administrator.
4. The governing body shall ensure sufficient trained and competent staff are available to provide twenty-four-hour residential and support services.
5. The governing body shall ensure training and competency evaluation is completed for all staff and volunteers specific to the care and services provided and necessary to meet the needs of the terminally ill patient.
6. The governing body shall ensure a homelike environment is provided and provide overnight family visitation within the facility.
7. The governing body shall ensure the facility has an agreement with one or more hospice programs licensed under North Dakota Century Code chapter 23-17.4 to provide hospice services. The agreement must clearly detail the responsibility of the parties involved and must include:
  - a. A detail of the licensed hospice program and the facility's responsibilities for all services delivered to the hospice patient or the hospice patient's family, including:
    - (1) Providing medical direction and management of the hospice patient;
    - (2) Nursing services;
    - (3) Spiritual, dietary, bereavement, or other counseling services;
    - (4) Social work;
    - (5) Provisions of medical supplies and equipment;

- (6) Provisions of drugs necessary for the palliation of pain and symptoms associated with the terminal illness and related conditions; and
- (7) Any other hospice services that are necessary for the care of the patient.
- b. A detail of the responsibilities of the hospice provider and the facility to provide bereavement services to facility staff.
- c. The manner in which the facility and hospice program are to communicate and document communications to ensure patient needs are met twenty-four hours a day.
- d. A provision allowing the hospice program to use the facility staff and volunteers to assist in the administration of the hospice plan of care only to the extent that the hospice program would routinely use the services of a volunteer or hospice patient's family in implementing the hospice plan of care.
- e. A provision stating the licensed hospice program assumes responsibility for determining the appropriate course of hospice care, including the determination to change the level of services provided.
- f. A requirement that the hospice program and facility coordinate regarding the hospice patient's plan of care and the facility patient's plan of care.
- g. A statement that the facility agrees to abide by the hospice patient's plan of care established by the hospice program.
- h. A requirement that the facility records must include documentation of all support services provided to the hospice patient and that a copy must be provided to the hospice program.
- i. A provision that requires the facility to immediately notify the hospice program if:
  - (1) The patient has a significant change in physical, mental, social, or emotional status;
  - (2) Clinical complications appear that suggest a need to alter the hospice plan of care;
  - (3) A need to transfer a patient from the facility occurs; or
  - (4) A patient dies.

**History:** Effective April 1, 2023.

**General Authority:** NDCC 23-17.7-03

**Law Implemented:** NDCC 23-17.7-03

**33-03-35-05. Codes and standards.**

- 1. A facility must be designed, constructed, equipped, maintained, and operated in compliance with:
  - a. North Dakota Century Code section 54-21.3-04.1, relating to accessibility standards;
  - b. The requirements for food and beverage establishments issued by the department;
  - c. Article 62-03.1 relating to plumbing standards;
  - d. Title 24.1 relating to electrical wiring standards; and
  - e. Article 45-12 relating to boiler rules and regulations.

2. A facility shall comply with all applicable building codes, ordinances, and rules of city, county, or state jurisdictions. The most stringent requirement must be applied.

**History:** Effective April 1, 2023.

**General Authority:** NDCC 23-17.7-03

**Law Implemented:** NDCC 23-17.7-03

### **33-03-35-06. Plans and specifications.**

1. A facility shall submit plans and specifications to the department for approval for all construction, remodeling, and installations subject to review. The plans and specifications must be prepared by an architect or engineer licensed in North Dakota, unless otherwise determined by the department.
2. A facility shall contact the department prior to any substantial changes in or alterations to any portion of the structure to determine to what extent it is subject to review. A substantial change includes alterations affecting the fire safety or structural integrity of the building, changes in service areas or services provided within a service area, changes in bed capacity, or any other change governed by the standards of this chapter. The department may request plans, specifications, or other information as may be required and shall make the final determination on those areas subject to review.
3. Start of construction prior to approval by the department of the final plans and specifications is not permitted.
4. All construction, remodeling, and installations must be in accordance with the final plans and specifications approved by the department. Modifications or deviations from the approved plans and specifications must be submitted to and approved by the department.
5. The department may make inspections of construction, remodeling, or installations and arrange conferences with the facility to ensure conformance with approved plans and specifications.
6. The construction specifications must require the contractor to perform tests to ensure all systems conform to the approved plans and specifications.

**History:** Effective April 1, 2023.

**General Authority:** NDCC 23-17.7-03

**Law Implemented:** NDCC 23-17.7-03

### **33-03-35-07. Fire safety.**

1. Each facility must be constructed as a single-story facility with a minimum construction Type V (111), that is arranged, equipped, maintained, and operated to ensure the safety of its occupants from fire, smoke, fumes, or resulting panic during the period of time necessary for escape from the structure in case of fire or other emergency. Walls and ceilings separating each dwelling unit must have a one-hour fire rating. Dwelling unit doors must be substantial doors, such as those of one and three-fourths inch thick, solid bonded wood-core construction or of other construction of equal or greater stability and fire integrity. These doors must be self-closing or automatic closing and must be provided with latches or other mechanisms suitable for keeping the doors closed.
2. Every dwelling unit must have access to a primary and secondary means of escape located to provide a safe path of travel to the outside at grade level. Designated means of escape must be continuously maintained free of all obstructions.

3. No doors in any means of escape may be locked against egress when the building is occupied.
4. The facility shall provide an automatic fire alarm system with a means for manual activation. Occupant notification must be provided automatically and without delay. Private operating mode must be permitted to be used. This allows staff and other personnel required to evacuate patients to be notified. The notification must include means to readily identify the area or building in need of evacuation. Each sleeping room must be provided with an approved smoke alarm that is interconnected to the fire alarm system. The fire alarm system must be installed and tested in accordance with National Fire Protection Association 72, National Fire Alarm and Signaling Code, 2010 edition.
5. The facility must be protected throughout by an approved automatic sprinkler system using quick-response, residential sprinklers or domestic sprinklers and must initiate the fire alarm system. All habitable areas, closets, roofed porches, roofed decks, and roofed balconies must be protected by the sprinkler system. An automatic sprinkler system with a minimum of a thirty-minute water supply must be permitted. The sprinkler system supervision must be in accordance with the type of sprinkler system that is installed and the testing for the system must be in accordance with National Fire Protection Association 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2011 edition. Attics used for storage or fuel-fired equipment must be protected with automatic sprinklers. Attics not used for storage or fuel-fired equipment must be provided with one of the following:
  - a. Protected throughout by a heat detection system arranged to activate the building fire alarm system;
  - b. Protected with automatic sprinkler system;
  - c. Must be noncombustible construction; or
  - d. Constructed of fire-retardant-treated wood.
6. Any space where there is a storage or activity having fuel conditions exceeding those of a one- or two-family dwelling and that possesses the potential for a fully involved fire must have a one-hour fire resistance rating. These spaces must also be provided with an automatic fire detection system connected to the fire alarm system and the area must have automatic sprinkler protection.
7. Interior wall and ceiling finish materials must be class A, class B, or class C.
8. The facility shall maintain a written plan that specifies action and procedures for responding to emergency situations, such as fire; severe weather; loss of utility services, such as heat, water, sewer, or electricity; communicable disease outbreaks; or a missing individual. The plan must be developed with the assistance and advice of the local fire or rescue authority or any other appropriate resource. An accident or incident report must be maintained for at least one year. A copy of the plan must be readily available at all times.
9. The emergency plan must be clearly communicated to all staff during orientation. Each staff must be knowledgeable of and must implement the emergency plan. The duties and responsibilities under the emergency plan must be reviewed by the staff not less than every twelve months. The emergency plan must include:
  - a. Assignment of staff to specific tasks and responsibilities in case of an emergency situation;
  - b. Instructions relating to the use of alarm systems and signals;

- c. Systems for notification of appropriate entities outside of the facility;
  - d. Information on the location of emergency equipment in the facility;
  - e. Specification of evacuation routes and procedures; and
  - f. A requirement that emergency egress drills must be conducted not less than six times per year on a bimonthly basis, with not less than two drills conducted during the night when patients and families may be sleeping. These records must include dates, times, duration, names of staff participating, and a brief description of the drill, including the escape path used and evidence of simulation of a call to the fire department. The emergency drills must be permitted to be announced to the patients and families in advance. These emergency drills must be conducted without disturbing patients and families by choosing the location of the simulated emergency in advance and by closing the doors in the vicinity prior to initiation of the drill. The purpose of an emergency drill is to test the efficiency, knowledge, and response of staff in implementing the emergency plan. Its purpose is not to disturb or excite patients and their families. Patients and families are not required to actively participate in the drill.
10. Portable fire extinguishers must be maintained in a fully charged and operable condition and must be kept in their designated locations at all times when they are not being used. Fire extinguishers must be installed so the maximum travel distance to an extinguisher is seventy-five feet and must be located along normal paths of travel, including exits from areas.
11. A facility may be directed to remove or correct other hazardous conditions not covered in this chapter if the department considers the conditions to have the potential to cause injury or illness to the patients or staff.

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**General Authority:** NDCC 23-17.7-03

**Law Implemented:** NDCC 23-17.7-03

**33-03-35-08. General building requirements.**

1. The facility shall design and equip areas for the comfort and privacy of each patient and patient's family. Each dwelling unit must have:
- a. A bed, a mattress, appropriate bedding, a bedside stand, and a chair appropriate to the needs and comfort of the patient. All furniture and furnishings must be well-constructed, comfortable, in good repair, kept clean, and maintained in a serviceable condition.
  - b. Physical space for private patient and family visiting.
  - c. Physical space to ensure visual privacy for personal care.
  - d. Accommodations for the patient's family to remain with the patient. When sleeping accommodations, including a recliner, sleep chair, or sleep sofa, are in the patient room, adequate space for circulation when the furnishing is fully open must be provided so staff can access the patient in case of an emergency. Storage space must be provided to accommodate and secure overnight guests' belongings.
  - e. If a hardwired communication system is used in patient dwelling units, each patient must be provided with a call device. Calls must be initiated by a patient activating a device that sends a call signal to the staff call station or a hand-held mobile device carried by a staff member.

- f. Bedroom windows must have window shades and provision shall be made for patient and family to completely darken the patient's room.
2. A facility shall allow patients to bring items from home to place in the bedroom to the extent the facility and space allows.
3. The facility shall provide space for storage of clean linen, clean supplies, patient care equipment, housekeeping, and cleaning supplies.
4. Grab bars must comply with all local, state, and federal requirements. Grab bars must be installed in all patient toilet rooms, showers, and bathing facilities. Toilets used by patients must allow sufficient clearance on both sides to enable physical access and maneuvering by caregivers who may have to assist patients in wheelchair-to-toilet transfers and returns.
5. Ground fault circuit interrupters must be provided for outlets within six feet of the outside edge of a sink.
6. A convenience portable space heater, portable halogen lamp, household-type electric blanket, or household-type heating pad may not be used in a facility.
7. The storage and transfilling of oxygen cylinders or containers must meet the requirements of the National Fire Protection Association 99, Standard for Health Care Occupancies, 2012 edition.
8. Electrically powered exhaust ventilation must be provided in all soiled areas, wet areas, toilet rooms, and storage rooms. Clean storage rooms may also be ventilated by supplying and returning air from the building's air-handling system. The facility shall provide for adequate ventilation to assure an odor-free, comfortable environment.
9. Office space and other areas must be furnished with desks, chairs, lamps, cabinets, benches, worktables, or other furnishings essential to the proper use of the area.
10. Families shall have showering capabilities in a dedicated toilet room.
11. Staff shall have showering capabilities in a dedicated staff toilet room.
12. An essential electrical source must provide lighting for at least a ninety-minute duration during an interruption of the normal electrical supply. Illumination must be automatic and is permitted to be met by means, such as:
  - a. Two separate electric lighting systems with independent wiring. One system is permitted to be supplied from an outside source, such as a public utility service, and the other from an electric generator on the premises driven by an independent source of power; or
  - b. An electric circuit, or circuits, used only for means of egress illumination, with two independent electric sources arranged so that, on the failure of one, the other will automatically and immediately operate. One such source is permitted to be a connection from a public utility, or similar outside power source, and the other an approved storage battery with suitable provisions to keep it automatically charged.
13. Emergency lighting for safe egress and access shall be evaluated for all facilities. Each patient bedroom must have general lighting and night lighting.
14. Functional testing shall be conducted monthly for not less than thirty minutes for generators and not less than thirty seconds for battery-powered lighting. Functional testing shall also be conducted annually for a minimum of ninety minutes.

**History:** Effective April 1, 2023.

**General Authority:** NDCC 23-17.7-03

**Law Implemented:** NDCC 23-17.7-03

**33-03-35-09. Patient records.**

1. The facility shall keep accurate, current, and confidential records of all patients.
2. The facility shall provide for secure maintenance and storage of all patient records.
3. Patient records must include:
  - a. Complete identification of each patient, including information on the patient's next of kin and responsible person.
  - b. Initial and subsequent assessments of each patient.
  - c. The current person-centered care plan.
  - d. The current hospice care plan.
  - e. Complete documentation of all services rendered.
  - f. An admission note.
  - g. A medication administration record documenting medication administration consistent with applicable state laws, rules, and practice acts.
  - h. Consent and authorization forms.
  - i. A discharge note, including disposition of the patient's personal effects, money, or valuables deposited with the facility.
4. The facility shall maintain patient records for a period of not less than five years from the date of discharge or death.

**History:** Effective April 1, 2023.

**General Authority:** NDCC 23-17.7-03

**Law Implemented:** NDCC 23-17.7-03

**33-03-35-10. Pharmacy and medication administration services.**

1. The facility shall coordinate with the licensed hospice provider for the administration and provision of pharmaceutical services consistent with the drug therapy needs of the patient.
2. The facility shall provide assistance to the patient in obtaining necessary medications and medical supplies.
3. Drugs and biologicals must be administered by an individual certified or licensed to administer medications or the patient, family member, or other caregiver as specified in the patient's plan of care.
4. The facility shall provide a secure area for medication storage and shall have policies and procedures for the control, storage, handling, administration, recordkeeping, and disposal of medication, including medications the patient brought from home.
5. All medications used by patients 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.

**History:** Effective April 1, 2023.

**General Authority:** NDCC 23-17.7-03

**Law Implemented:** NDCC 23-17.7-03

### **33-03-35-11. Dietary services.**

The facility shall meet the dietary needs of the patients, provide dietary services, and the sanitary requirements for food establishments in compliance with chapter 33-33-04.1.

**History:** Effective April 1, 2023.

**General Authority:** NDCC 23-17.7-03

**Law Implemented:** NDCC 23-17.7-03

### **33-03-35-12. Housekeeping and laundry services.**

The facility shall provide housekeeping and maintenance services necessary to maintain the interior and exterior of the facility in a safe, clean, orderly, and comfortable manner and provide sanitary laundry services, including personal laundry services for patients.

**History:** Effective April 1, 2023.

**General Authority:** NDCC 23-17.7-03

**Law Implemented:** NDCC 23-17.7-03

### **33-03-35-13. Admission criteria.**

Admission and discharge planning for hospice patients must be coordinated with a licensed hospice program.

**History:** Effective April 1, 2023.

**General Authority:** NDCC 23-17.7-03

**Law Implemented:** NDCC 23-17.7-03

### **33-03-35-14. Staffing.**

1. The facility shall maintain a sufficient number of qualified staff and volunteers who are trained and competent to provide the care and services necessary to meet the needs of the terminally ill patient.
2. The facility shall employ or contract with a registered nurse to supervise patient care to meet the needs of the patients at all times, either directly or indirectly. The facility shall employ, contract, or utilize volunteer services of a licensed nurse to respond to patient needs.
3. When utilizing volunteer services:
  - a. The facility shall provide for appropriate orientation and training that is consistent with acceptable standards of end-of-life care. There must be an orientation that identifies the tasks the volunteer is expected to perform. The orientation program must include, at a minimum:
    - (1) The facility goals, services, and philosophy;
    - (2) Confidentiality and protection of patient and family rights;
    - (3) Procedures to be followed in an emergency and following the death of a patient; and

- (4) Guidance related specifically to individual responsibilities.
- b. The facility shall establish a process to assure volunteers are effectively performing the duties and responsibilities assigned.
- c. A facility shall ensure a volunteer only provides direct patient care when the following provisions are met:
  - (1) Tasks and responsibilities are specified in writing and do not exceed the volunteer's capability;
  - (2) Care is consistent with the hospice service plan;
  - (3) The volunteer shall be appropriately licensed, registered, or certified, if required;
  - (4) Services rendered must be recorded in the patient's record;
  - (5) The volunteer shall have a clear understanding of the volunteer's duties and responsibilities; and
  - (6) Volunteers shall be informed to whom they report and whom to contact if assistance is needed in carrying out their responsibilities.

**History:** Effective April 1, 2023.

**General Authority:** NDCC 23-17.7-03

**Law Implemented:** NDCC 23-17.7-03

### **33-03-35-15. Patient and family rights.**

The facility shall develop, adopt, and implement a statement of the rights and responsibilities of hospice patients and members of the hospice patient's family. This statement must be provided to the patient or family member designated by the patient prior to or at the time of admission to the facility. The statement must include provisions assuring each patient and family the following minimum rights:

1. The right to be clearly informed of the responsibilities of the facility for care of the patient and family, including services to be provided.
2. The right to be fully informed, at the time of admission, of the materials and equipment available to the patient and family, any financial policies, and estimated cost.
3. The right to privacy in treatment and in caring for personal needs, and confidentiality in the treatment of personal and service records.
4. The right to be informed of any change in patient status.
5. The right to be treated courteously, fairly, and with the fullest measure of dignity.

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**General Authority:** NDCC 23-17.7-03

**Law Implemented:** NDCC 23-17.7-03