

North Dakota

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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.

Legislative and Regulatory Update North Dakota's 2019 legislature passed several laws affecting basic care facilities and assisted living facilities. One update extended the moratorium on expansion of the state's basic care bed capacity. The moratorium began August 1, 2017 and now extends through July 31, 2021 pursuant to House Bill (HB) 1355 (2019), except under certain circumstances outlined in 23-09.3-01.1.

SB 2113 requires assisted living and basic care facilities, along with other specified provider types, to permit a resident or resident's representative to conduct authorized electronic monitoring of the resident's room under certain circumstances.

HB 1126 revised statutory language for basic care facility end-of-life care. Pursuant to this bill, 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. The basic care facility, individual, or the individual's designee may contract

with a person or hospice agency to meet the needs of the individual.

Basic care facilities regulations were revised effective January 1, 2018. Revisions were made to the definitions section, including unsecured facility and unsecured unit. Updates were also made to the regulations for optional Alzheimer's, dementia, special memory care, or traumatic brain injury facility or unit services.

Effective January 1, 2018, the North Dakota Department of Health has revised the North Dakota Food Code by adopting the 2013 FDA Food Code by reference.

Definition

Basic Care Facility: Provides 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, for five or more residents not related to the owner or manager by blood or marriage. A basic care facility is licensed by the Department of Health under North Dakota Century Code chapter 23-09.3. These services must be provided on a 24-hour basis within the facility, either directly or through contract, and shall include assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs); 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, and by the Department of Health under North Dakota Century Code 23-09. 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: Tenants choose and pay for only those services needed or desired. An assisted living facility may provide assistance to adults who may have physical or cognitive impairments and who require at least a moderate level of assistance with one or more ADLs and assistance with IADLs.

Third Party Scope of Care

Basic Care Facility: Home health agencies may provide nursing services under contract with the facility. A facility that intends to retain residents who require end-of-life care may contract with a person or hospice agency to meet the individual's needs. The individual or the individual's designee may also contract with a person or hospice agency. The agreement must delineate responsibilities. As of the time of publication, the regulations have not yet been updated to reflect HB 1126.

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. 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: None specified

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, bath tub 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.

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

Life Safety

Basic Care Facility: In general, in basic care facilities, automatic sprinkler systems are required to protect construction types that

may be unprotected or of combustible materials. NFPA 13D, NFPA 13R, or NFPA 13 automatic sprinkler systems may be used. Smoke detectors are required in resident rooms, corridors, and common areas. There are exceptions where these requirements may not apply.

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. 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 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.

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

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.

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: Staff must be available 24 hours a day to meet the needs of the residents, not necessarily on site. A manager and direct care staff are required. There are no staffing ratios. If the facility provides medication administration, a registered nurse must be available to administer medications and/or to train and supervise certified medication assistants.

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 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.

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
Medicaid Policy and
Reimbursement**

None specified for either basic care or assisted living facilities.

A 1915(c) 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.

Citations

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North Dakota Legislative Branch, Chapter 23-09: Lodging Establishments and Assisted Living Facilities.

<http://www.legis.nd.gov/cencode/t23c09.pdf?20150112163253>

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<http://www.legis.nd.gov/cencode/t50c32.pdf>

North Dakota Legislative Branch, Chapter 33-03-24.1: Basic Care Facilities. [January 1, 2018]

<http://www.legis.nd.gov/information/acdata/pdf/33-03-24.1.pdf?20150112162840>

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).

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