

# **NORTH DAKOTA ADMINISTRATIVE CODE**

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**Prepared by the Legislative Council staff  
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**TITLE 30**  
**GAME AND FISH DEPARTMENT**



**APRIL 2023**

**CHAPTER 30-01-01**

**30-01-01-01. Organization and functions of the game and fish department.**

**1. Organization of department.**

- a. History. The first game and fish laws were established in Dakota Territory in 1861 but it was not until 1893 when the superintendent of irrigation and forestry was designated as game commissioner that a game and fish department was formed. In 1909 the game and fish board of control was established. The board continued to function as the agency controlling fish and game until 1929 when legislation was passed providing for a single commissioner charged with certain duties and powers to administer a game and fish department. The title commissioner was changed to director in 1991.
- b. Divisions. The department consists of the following five divisions:
  - (1) Administrative services.
  - (2) Enforcement.
  - (3) Fisheries.
  - (4) Conservation and communications.
  - (5) Wildlife.
- c. Director. The director is appointed by the governor. The director holds office for four years beginning on the first day of July after the governor's election and until a successor is appointed and qualified.

The director shall appoint a deputy director who may be removed at the director's pleasure. The director may also appoint a chief game warden, district game wardens, biologists, and technicians to enforce the game laws and to perform duties specified by the director.

The director is charged with ~~fourteen~~ statutory duties and has ~~twenty-seven~~ specific powers relating to the department and the resources it must manage. In addition to these specific duties and powers spelled out in North Dakota Century Code sections 20.1-02-04 and 20.1-02-05, the director has additional authority and power given by various sections of North Dakota Century Code title 20.1.

- d. Game and fish advisory board. There is an eight-member game and fish advisory board, each appointed for a four-year term by the governor. The board has the authority to advise the director regarding any policy of hunting, fishing, and trapping regulations, and may make general recommendations regarding the operation of the department and its programs which the director may carry out.
- e. Orders and proclamations of the governor. After investigation and recommendations by the director, the governor may open seasons for hunting, fishing, and trapping. The governor may determine in what manner, the numbers, the places, and at what times game, fish, or fur-bearers may be taken.

## 2. Functions of department divisions.

- a. Administrative services division. ~~The~~This division ~~of administration is divided into four programs -- accounting and basic operations, data processing, licensing, and planning.~~includes the following:
  - (1) ~~Accounting and basic~~Business operations. ~~The program is responsible~~Responsible for business operations, such as accounting and general office and facility management~~functions, grant management, federal aid coordination, etc.~~
  - (2) ~~Data processing. Coordination and technical support is provided for department personal computers and state mainframe computer activities.~~Data/technology. Responsible for department data and analytics. Provides coordination and management of department data, systems, and technical resources.
  - (3) ~~Licensing. All fishing, hunting, and boating licensing is handled as part of this program.~~Responsible for all licensing-related functions for fishing, hunting, trapping, and boating. This section includes department customer support services.
  - (4) ~~Planning. The planning program is responsible for establishing goals, objectives, and strategies for the department. It is a cooperative effort with the other divisions and is coordinated by a game and fish planner.~~Facilities management. Responsible for the management of facilities for the department headquarters and district offices throughout the state. Responsible for department print service management.
- b. Enforcement division. The law enforcement program enforces game and fish laws and rules and regulations necessary for proper management of fish and game resources. Enforcement officers called district game wardens have districts averaging approximately two thousand six hundred square miles [673396.92 hectares]. In addition to their enforcement activities, they must carry out education programs, and assist other divisions during busy periods of the year. ~~One of their major nonenforcement activities concerns alleviation of wildlife depredations on farmers' crops and feed supplies.~~
- c. Fisheries division. ~~The fisheries~~This division is divided into ~~three~~four programs--~~fish management, sport fisheries research, and lake/stream management.;~~
  - (1) Fish production. Fish are ~~provided for North Dakota waters through~~raised at two fish hatcheries and ~~by trapping~~stocked into waters of the state. Also, adult fish are trapped and ~~moving fish from one area to another~~transported into various waters.
  - (2) ~~Sport fish research. The program is responsible for all~~Fish management/research. Responsible for research and survey work connected with sport fishing. It gathers information about the status of lakes and fish populations and carries out management practices on lakes.

(3) ~~Lake/stream management. The lake management program provides~~Fisheries development. Provides public use facilities, lake improvement systems, ~~watershed development~~, lake and pond construction, and other developments on public fishing waters.

(4) Aquatic nuisance species. Implements measures to reduce the spread of aquatic nuisance species throughout the state. Measures include education, monitoring, and inspections.

d. Conservation and communications division. This division has three major sections:

(1) ~~Conservation section. Many state and federal agencies have programs that affect fish and wildlife habitat. The efforts of this section are directed toward compensation, alleviation of losses, or possibly enhancement of fish and wildlife by working with these agencies. Staff in this division also operate the department's nongame and endangered species programs. Since the enactment of the National Environmental Policy Act in 1970, state game and fish agencies across the nation are routinely asked to conduct environmental reviews on development projects that have a federal nexus (e.g. a project that is funded with federal money or occurs on federal land). Staff within the conservation section carry out those reviews. The conservation section also deals with all issues related to nongame wildlife and rare and declining species, including federally listed species.~~

(2) ~~Communications section. The section is divided into four programs -- public information resource specialists, department webmaster, North Dakota Outdoors magazine, and videography -- production of department videos. Responsible for department communication, including marketing/R3, digital media, North Dakota Outdoors/publications, and video production. Staff in this section write news releases, publish a monthly magazine, manage production of hunting guides and an annual private land open to sportsmen guide, produce weekly webcasts and television news segments, manage social media accounts, write blogs, manage the website, produce a bimonthly podcast, design brochures and publications, handling of phone and electronic mail inquiries from the public, manage the department's marketing efforts, and direct the agency's recruitment, retention, and reactivation of hunters and anglers.~~

(3) ~~Outreach section. This section includes~~Education. Includes hunter education, ~~project wildfur harvester education, bowhunter education~~, aquatic education, ~~becoming an outdoor woman~~, boating education, educator resources, national archery in the schools program, and public information outreach staff located statewide.

e. Wildlife division. ~~The wildlife~~This division is divided into three ~~programs -- lands and development, game management, private land habitat programs.~~sections:

(1) ~~Lands and development. The lands and development program is responsible~~Resource management. Responsible for all habitat development, and management and maintenance on wildlife management areas. ~~The program~~This involves tree plantings, herbaceous cover and food plantings, road construction, weed control, signing, water developments, and any other activity that ~~might enhance~~enhances these areas for wildlife, ~~the hunter~~hunting, and ~~the outdoors person who enjoys hiking, photography, and nature study~~other compatible uses.

(2) Game management. ~~Staff carry out~~Responsible for population surveys that are used to determine annual ~~hunting~~harvest seasons and conduct research with the objective of improving population management on various species of game.

~~Research is done with the objective of providing optimum hunting opportunities for the people~~citizens of the state.

- (3) ~~Private land habitat program. A private land habitat improvement program is funded from moneys derived from the interest earned on the game and fish fund, habitat stamp sales, and game and fish operating funds~~lands. Responsible for carrying out private land habitat improvements and hunting access programs. The program involves annual leasing and development of fish and wildlife habitat and hunting access on private land; and entering into cost-sharing agreements with landowners or partners to ~~help defray a portion of their share of~~develop conservation practices which benefit fish and wildlife. The ~~program~~section also carries out practices which will alleviate big game and predatory animal depredation.

3. **Inquiries.** General inquiries regarding the game and fish department may be addressed to the:

North Dakota Game and Fish Department  
100 North Bismarck Expressway  
Bismarck, North Dakota 58501-5095

Specific inquiries about division functions may be addressed to the chief of the division involved.

4. **Personnel roster.** A roster of personnel with the department may be found in the monthly issue of North Dakota Outdoors or on the department's web page.

**History:** Amended effective February 1, 1982; September 1, 1983; December 1, 1985; January 1, 1992; March 1, 2002; April 1, 2023.

**General Authority:** NDCC 20.1-02-04(2)

**Law Implemented:** NDCC 20.1-02-04(2)

## CHAPTER 30-03-01.1

### 30-03-01.1-04. License limitations.

Retail or wholesale bait vendor licenses are issued for a calendar year to one person only. An individual may be issued only one wholesale license per calendar year. The holder of a retail bait vendor license may sell legal live aquatic bait at retail only, at one specified selling location per license. A wholesale bait vendor may only sell legal live aquatic bait to licensed bait vendors or for permitted private fish pond stocking. A person licensed as a wholesaler in any state may not act as an assistant under a North Dakota wholesaler license. Any bait vendor who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee. Violations of state or federal game or fish laws may result in license denial, suspension, or revocation. An individual who has been convicted of a state or federal criminal game or fish violation in the last three years or whose license to hunt or fish is under suspension or revocation may not receive a wholesale ~~or retail~~ bait vendor license. As used in this rule, "conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of no lo contendere, a judgment of conviction even though the court suspended execution of a sentence in accordance with subsection 3 of North Dakota Century Code section 12.1-32-02, or a deferred imposition of sentence in accordance with subsection 4 of North Dakota Century Code section 12.1-32-02 or an equivalent statute. The term does not include a finding of guilt which is reversed on appeal.

**History:** Effective April 1, 2008; amended effective April 1, 2009; October 1, 2010; January 1, 2014; January 1, 2018; October 1, 2020; [April 1, 2023](#).

**General Authority:** NDCC 20.1-06-14

**Law Implemented:** NDCC 20.1-06-14

### 30-03-01.1-05. Assistants covered by license.

A licensed wholesale bait vendor may employ the assistance of up to six other persons to capture or sell and transport legal live aquatic bait in the manner approved by the director. [Assistants can only be listed on one valid licensed wholesale bait vendor application per calendar year. It is the licensee's responsibility to ensure all assistants possess a copy of the license.](#) All assistants must have [a copy of the license, paper or electronic form,](#) in their possession ~~department-issued documentation~~. The licensee is responsible for the actions of employees, including all agents or assistants acting under the licensee's license. An individual who has been convicted of a state or federal criminal game or fish violation in the last three years or whose license to hunt or fish is under suspension or revocation may not act as an assistant. Anyone who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2018; October 1, 2020; [April 1, 2023](#).

**General Authority:** NDCC 20.1-06-14

**Law Implemented:** NDCC 20.1-06-14

### 30-03-01.1-08. Interstate transport.

Only the following legal live aquatic bait may be imported into the state and only with a permit issued by the director and in the manner approved by the director: white suckers, [creek chubs](#), and leeches. It is illegal to import all other live aquatic bait. It is illegal to export live aquatic bait out of the state except with a permit issued by the director and only in the manner approved by the director. It is illegal to transport live aquatic bait through the state except with a permit issued by the director and only in the manner approved by the director. Permit applications must be received by the director a minimum of forty-eight hours prior to any planned import or export of legal live aquatic bait.

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2014; January 1, 2018; [April 1, 2023](#).

**General Authority:** NDCC 20.1-02-05(22), 20.1-06-01, 20.1-06-14

**Law Implemented:** NDCC 20.1-02-05(22), 20.1-06-01, 20.1-06-14

### **30-03-01.1-13. Prohibited waters for taking legal live aquatic bait.**

Licensees shall not be permitted to take legal live aquatic bait from the following:

1. Waters managed as recreational fisheries (except the Missouri River system where rainbow smelt may be taken) without a permit issued and, in the manner, approved by the director;
2. Waters designated by the department as infested with prohibited or regulated aquatic nuisance species (except the Missouri River system where rainbow smelt may be taken);
3. The United States fish and wildlife service's wildlife development areas, waterfowl production areas, or refuges;
4. The department's wildlife management areas (except the Missouri River system where rainbow smelt may be taken); or
5. Any waters that have been licensed as a private fish hatchery in the past three years.

Any bait vendor who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2014; January 1, 2018; April 1, 2023.

**General Authority:** NDCC 20.1-06-14, 20.1-17-01

**Law Implemented:** NDCC 20.1-06-04, 20.1-17-01, 20.1-17-06

### **30-03-01.1-15. Inspections and records.**

Equipment used to capture, transport, or hold, and shipments of, legal live aquatic bait are subject to inspections by duly appointed agents of the director.

For all retail vendors, each licensee shall keep current receipts of purchase at the retail licensee's point of sale for the calendar year in which they are licensed. Purchase receipts must be open to inspection by the department.

For all wholesale vendors, each licensee trapping, seining, or purchasing legal live aquatic bait for sale must accurately complete forms furnished by the department. Each wholesale licensee shall keep current, within a month, records at the wholesaler licensee's permanent business address. Records must be open to inspection by the department. A copy of these records for the calendar year shall be submitted to the director no later than thirtyninety days following expiration of the license. ~~Records must be retained by the licensee until submitted to the department.~~ A new wholesale bait vendor license may not be issued until records are submitted to the department.

Any bait vendor who violates this section is guilty of a noncriminal offense and shall pay a two hundred dollar fee.

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2014; January 1, 2018; April 1, 2023.

**General Authority:** NDCC 20.1-06-14

**Law Implemented:** NDCC 20.1-06-14

## CHAPTER 30-03-06

### 30-03-06-01. Equipment.

Upon entering or leaving any water body or while in transit, all watercraft, watercraft motors, watercraft trailers, docks, boatlifts, and recreational and commercial equipment used in fishing, hunting, and watercrafting or construction equipment shall be free of prohibited or regulated aquatic nuisance species, as defined in the state's aquatic nuisance species list. All equipment is subject to inspection by a ~~duly appointed agent of the director~~ North Dakota game and fish department employee. All docks, lifts, and related equipment must be dried and left out of the water for at least twenty-one days before they may be placed in another water.

**History:** Effective April 1, 2008; amended effective October 1, 2020; April 1, 2023.

**General Authority:** NDCC 20.1-17-01

**Law Implemented:** NDCC 20.1-17-04

### 30-03-06-05. Water prohibited.

1. Refer to the North Dakota game and fish department website for a listing of state waters infested with class I prohibited aquatic nuisance species. Fish transported and held in or on ice are allowed.
2. All water must be drained from all watercraft and recreational, commercial, and construction equipment bilges and confined spaces, livewells, and baitwells, when out of water or upon entering the state. Water used for instate transportation of legal live bait and legal live baitfish in bait buckets no larger than five gallons in volume is allowed to and from waters of the state not designated as infested with class I prohibited aquatic nuisance species. Refer to the current fishing proclamation for legal live bait and legal live baitfish definitions. Potable water and sewage water are excluded from this restriction.
3. Water may not be transported away from waters of the state designated as infested with class I prohibited aquatic nuisance species unless permitted by the ~~state water commission~~ department of water resources or otherwise authorized.
4. All drain plugs that may hold back water must be removed, and water draining devices must be open, on all watercraft and recreational, commercial, and construction equipment bilges and confined spaces, during any out-of-water transport of same.

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2016; April 1, 2016; April 1, 2023.

**General Authority:** NDCC 20.1-17-01

**Law Implemented:** NDCC 20.1-17-06

**ARTICLE 30-04  
FISH AND WILDLIFE MANAGEMENT**

|                 |   |
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| <u>30-04-09</u> | <u>Posting Lands in the State's Electronic Posting System</u>                                   |

**CHAPTER 30-04-03**

**30-04-03-17. Hunting guide and hunting outfitter examination.**

Any written examination required will be administered from at least one regional department office or electronically on the assigned time and date. Once an applicant has passed the written examination, the applicant must become licensed by the end of the following calendar year. To pass the written test, a score of eighty percent must be achieved. A person who fails to obtain the license by the end of the following calendar year or fails to maintain a hunting guide or hunting outfitter license for two calendar years or more after obtaining a license, in addition to the annual eligibility requirements, must retake the written examination before being issued another hunting guide or hunting outfitter license. A hunting guide or hunting outfitter, whose license has been revoked, in addition to the annual eligibility requirements, must successfully retake the written examination before being issued a new license under this section.

**History:** Effective April 1, 2006; amended effective April 1, 2023.

**General Authority:** NDCC 20.1-02-04(2), 20.1-03-38(1)

**Law Implemented:** NDCC 20.1-03-38

**CHAPTER 30-04-09**  
**POSTING LANDS IN THE STATE'S ELECTRONIC POSTING SYSTEM**

Section

30-04-09-01      Electronic Posting System

**30-04-09-01. Electronic posting system.**

1. Eligibility. North Dakota resident landowners or resident individuals authorized by the landowner must submit a valid driver's license or state identification in the state's electronic posting system to post lands electronically. The department may provide an automated service for nonresident landowners to submit their nonresident driver's license in the state's electronic posting system to post lands electronically. Any service fees required to validate a nonresident driver's license may be passed to the nonresident landowner.
2. State land parcels. Eligible landowners or individuals authorized by the landowner may electronically post county tax parcel records submitted to the state's land parcel program.
3. Annual enrollment. Landowners or individuals authorized by the landowner may enroll or renew eligible land parcels in the state's electronic posting system during the enrollment period of February first through July first of the same year. Lands posted in the state's electronic posting system during the enrollment period are valid from August first of the same year of the enrollment period and extend through July thirty-first of the following year.

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

**General Authority:** NDCC 20.1-01-17(b)

**Law Implemented:** NDCC 20.1-01-17(b)

## CHAPTER 30-05-01

### 30-05-01-02. Boat safety equipment.

The following equipment is required as indicated, and must be usable and in serviceable condition.

#### 1. Personal flotation devices - Penalty.

- a. All motorboats less than sixteen feet [4.8 meters] in length and all nonpowered boats must have one United States coast guard approved device labeled as type I, II, or III, or seventy or more Newtons aboard for each person. All motorboats sixteen feet [4.8 meters] or greater in length must have one United States coast guard approved device labeled as type I, II, or III, or seventy or more Newtons aboard for each person, and, in addition, one United States coast guard approved throwable type IV device. Any person who violates this subdivision is guilty of a noncriminal offense and shall pay a twenty-five dollar fee for each United States coast guard approved device not aboard as required for each person with a maximum fee of two hundred fifty dollars for a shortage of ten or more.
- b. All persons manipulating any water skis, surfboard, or similar device must wear a United States coast guard approved device labeled as type I, II, or III, or seventy or more Newtons. The only exception is that of a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under North Dakota Century Code section 20.1-13-11.

2. **Fire extinguishers.** Motorboats of less than twenty-six feet [7.8 meters] in length need no fire extinguishing equipment, unless the boat has a double bottom not sealed to the hull or not completely filled with flotation material; or unless it has closed stowage compartments in which combustible or flammable materials are stored; or unless it has closed compartments under thwarts and seats wherein portable fuel tanks may be stored; or unless it has closed living spaces; or unless it has permanently installed fuel tanks. If in any of these categories, it must have either a fixed fire extinguishing system in the machinery spaces, or at least one United States coast guard approved ~~B-15-B or 10-B~~ type portable extinguisher. Motorboats twenty-six [7.8 meters] to forty feet [12 meters] in length must have either two United States coast guard approved ~~B-15-B or 10-B~~ type portable extinguishers or one United States coast guard approved ~~B-II 20-B~~ type portable extinguisher, or a fixed fire extinguishing system in the machinery spaces and one United States coast guard approved ~~B-15-B or 10-B~~ type portable extinguisher. Motorboats forty feet [12 meters] or over in length must have either three United States coast guard ~~B-15-B or 10-B~~ type portable extinguishers, or one United States coast guard approved ~~B-II type portable extinguisher and one B-120-B and one 5-B or one 10-B~~ type portable extinguisher, or a fixed fire extinguishing system in the machinery spaces along with ~~one two 5-B or two 10-B or one 20-B~~ United States coast guard approved ~~B-II type or two B-I type~~ portable extinguishers, ~~or a fixed fire extinguishing system in the machinery spaces along with one United States coast guard approved B-II type or two B-I type portable extinguishers.~~ Extinguishers may not be more than twelve years old according to the date of manufacture stamped on the bottle.

3. **Backfire flame arrester.** One United States coast guard approved device is required on each carburetor of all gasoline powered engines, except outboard motors.
4. **Bells and whistles.** Boats sixteen feet [4.8 meters] to less than twenty-six feet [7.8 meters] in length require one hand, mouth, or power operated whistle audible at least one-half mile [.8 kilometer]. Boats twenty-six feet [7.8 meters] to less than forty feet [12 meters] in length require a hand or power operated whistle audible at least one mile [1.6 kilometers], and a bell which produces a clear, bell-like tone when struck. Boats over forty feet [12 meters] in length

require a power operated whistle audible at least one mile [1.6 kilometers] and a bell which produces a clear, bell-like tone when struck.

5. **Ventilation.** All motorboats with enclosed engine or fuel compartments, and using gasoline as a fuel, must have at least two ventilator ducts, fitted with cowls, or the equivalent, leading to each such compartment, to properly and efficiently ventilate the compartment.
6. **Lighting.** When operating between sunset and sunrise, all motorboats under twenty-six feet [6.8 meters] in length shall exhibit a twenty-point [225 degree] combination red and green bowlight visible for one mile [1.6 kilometers], ten points [112.5 degrees] to the left of the centerline of the boat being red, the ten points [112.5 degrees] to the right of the centerline being green, and a thirty-two-point [360 degree] white stern light, visible for two miles [3.2 kilometers], placed higher than the bowlight and unobstructed by occupants or portions of the vessel.

When operating between sunset and sunrise, all motorboats twenty-six feet [6.8 meters] in length or over shall exhibit a twenty-point [225 degree] white bowlight visible for two miles [3.2 kilometers], a ten-point [112.5 degree] red side light, visible for one mile [1.6 kilometers], on the left side of the vessel, a ten-point [112.5 degree] green side light, visible for one mile [1.6 kilometers] on the right side (the side lights shall be visible through an arc beginning parallel to the centerline of the vessel and extending ten points [112.5 degrees] toward the stern), and a thirty-two-point [360 degree] white stern light visible for two miles [3.6 kilometers], placed higher than the bowlight and unobstructed by occupants or portions of the vessel.

All nonpowered boats operating between sunset and sunrise shall have readily accessible a white light source which shall be temporarily exhibited in sufficient time to prevent a collision.

All vessels at anchor between sunset and sunrise must display a white light visible to a boat approaching from any direction.

7. Except as provided in subdivision a of subsection 1, any person who violates this section is guilty of a noncriminal offense and shall pay a twenty-five dollar fee.

**History:** Amended effective December 1, 1982; April 1, 1986; May 1, 1995; April 1, 2006; October 1, 2020; [April 1, 2023](#).

**General Authority:** NDCC 20.1-13-12

**Law Implemented:** NDCC 20.1-13-05

## CHAPTER 30-05-03

### 30-05-03-22. Violations are noncriminal.

Any person who violates any section of this chapter is guilty of a noncriminal offense and shall pay a ~~thirty-five~~seventy-five dollar fee.

**History:** Effective April 1, 1986; amended effective April 1, 2023.

**General Authority:** NDCC 20.1-02-05(24)

**Law Implemented:** NDCC 20.1-02-05(24)

**TITLE 33**  
**STATE DEPARTMENT OF HEALTH**



**APRIL 2023**

**ARTICLE 33-03  
STATE DEPARTMENT OF HEALTH**

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

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| 33-03-35-11 | <u>Dietary Services</u>                                |
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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.

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

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

**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.

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

**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.

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

**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 section 33-33-04.1 and the North Dakota Century Code chapters 19-02.1 and 23-09.

**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 identify and respond to patient needs, care plan accordingly, provide oversight related to care, and review and document the patient's individual needs and care provided.

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.

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

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