

NORTH DAKOTA ADMINISTRATIVE CODE
SECTIONS 33-03-24.1-01 and 33-03-24.1-23 (END OF LIFE SERVICE IN BASIC CARE)
REGULATORY ANALYSIS

Fiscal Note (NDCC 28-32-08.2): A fiscal note is not required as these rules have no fiscal effect.

Regulatory Analysis (NDCC 28-32-08(2)):

1. **Describe the classes of people likely to be affected by the proposed rule, including the classes bearing the cost of the proposed rule and classes benefiting from the proposed rule:** The people likely to be affected by the proposed rules include basic care facilities themselves, and basic care residents in need of end of life services who choose to remain in the facility. The revisions to these sections of the administrative code allow for all basic care facilities to provide end of life services to existing residents, and of other care givers to wrap around facility staff.
2. **Describe the probable impact, including the economic impact, of the proposed rule:** The probable impact of the proposed rule is the benefit this can provide of residents in basic care facilities who require end of life services, and this allows for basic care facilities to continue to service these residents when the resident requires more than a basic care level of service through use of wrap around services. This results in a positive economic impact both for the resident and the facility.
3. **Describe the estimated cost to the agency of implementation and enforcement of the proposed rule and any anticipated effect on state revenue:** There is no estimated additional costs to the agency for implementation of the proposed rules.
4. **Describe any alternative methods of achieving the purpose of the proposed rule that were considered by the agency and the reasons why the methods were rejected in favor of the proposed rule:** The Department has attempted to address concerns about provision of end of life services in basic care facilities in the past, however, some facilities were still not able to provide this level of care due to staffing and fire safety requirements. With the implementation of the new legislation, all basic care facilities have the potential to provide end of life services to existing residents and may use others to wrap around facility staff to assist with provision of care for the residents in need of end of life services.

Takings Assessment (NDCC 38-32-09): A takings assessment is not required as the rule did not result in a taking in the context of NDCC 28-32-09.

Small Entity Regulatory Analysis:

- 1. Was establishment of less stringent compliance and reporting requirements for small entities considered? To what result?** With the revisions proposed, compliance and reporting requirements for basic care facilities providing end of life services has become less stringent. This will decrease reporting workload for the facility.
- 2. Was establishment of less stringent schedules or deadline for compliance or reporting requirements considered for small entities? To what result?** Yes, less stringent reporting requirements have been established with the revision of these rules.
- 3. Was consideration or simplification of compliance or reporting requirements for small entities considered? To what result?** As stated in number 2, less stringent reporting requirements have been established for facilities related to provision of end of life services with the revision of these rules. This will result in less reporting workload for facilities providing these services.
- 4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rule? To what result?** The requirements for basic care facilities providing end of life services has been decreased with the revision of these rules based on legislation passed. As a result, all basic care facilities will have the potential to provide end of life services to their existing residents.
- 5. Was exemption of small entities from all or any part of the requirements in the proposed rule considered? To what result?** Facilities who choose to provide end of life services to their residents will need to comply with the requirements, however, the requirements have been decreased to the extent possible. As a result, all basic care facilities will have the option to provide end of life services.

Small Entity Impact Statement:

1. **Which small entities are subject to the proposed rules?** All basic care facilities licensed by the department of health.
2. **What are the administrative and other costs required for compliance with the proposed rule?** The cost for basic care facilities who retain residents in need of end of life care will be minimal. The facility will no longer be required to meet the health care occupancy for the building, and other individuals may be used to supplement facility staff to provide care for the resident requiring end of life care. The cost of the other staff may be paid for by the resident or family.
3. **What is the probable cost and benefit to private persons and consumers who are affected by the proposed rule?** Basic care facility residents, and their family members, may benefit from these proposed in that the resident requiring end of life services will be able to remain in the basic care facility while requiring skilled care. Basic care facility services are less than skilled nursing facility services, so may result in a cost savings for the resident and family.
4. **What is the probable effect of the proposed rule on state revenues?** Overall, no increase or decrease in state revenue will occur based on proposed rule.
5. **Is there any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule?** No less intrusive or less costly alternative method of achieving the purpose of the proposed rules was identified.

33-03-24.1-01. Definitions.

1. "Abuse" includes the willful infliction of mental, physical, sexual, and verbal abuse which could result in temporary or permanent mental, physical, emotional, or psychological injury or harm. Mental abuse includes humiliation, harassment, intimidation, threats of punishment, or deprivation. Physical abuse includes hitting, slapping, pinching, kicking, unreasonable confinement, and deprivation, by an individual, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. It also includes controlling behavior through corporal punishment. Sexual abuse includes sexual harassment, sexual coercion, sexual contact, or sexual assault. Verbal abuse includes any use of oral, written, or gestured language that includes disparaging and derogatory terms to residents or their families, used within their hearing distance to describe the residents, regardless of their age, ability to comprehend, or disability.
2. "Activities of daily living" means those personal, functional activities required by an individual for continued well-being, including eating, nutrition, dressing, personal hygiene, mobility, toileting, and behavior management.
 - a. "Assistance" means the resident is able to help with most of an activity, but cannot do it entirely alone. The resident may need prompting, encouragement, or the minimal hands-on assistance of the personal care attendant.
 - b. "Independent" means the resident can perform the activities of daily living without help.
3. "Activity staff" means an employee who is responsible for providing an activity program.
4. "Adult day care services" means the provision of basic care facility services to meet the needs of individuals who do not remain in the facility overnight.
5. "Basic care facility" means a facility licensed by the department under North Dakota Century Code chapter 23-09.3 whose focus is to provide room and board and health, social, and personal care to assist the residents to attain or maintain their highest level of functioning, consistent with the resident assessment and care plan, to five or more residents not related by blood or marriage to the owner or manager. These services shall be provided on a twenty-four-hour basis within the facility, either directly or through contract, and shall include assistance with activities of daily living and instrumental activities of daily living; provision of leisure, recreational, and therapeutic activities; and supervision of nutritional needs and medication administration.
6. "Capable of self-preservation" means a resident's ability, with or without assistance, to evacuate the facility or relocate from the point of occupancy to a point of safety in case of fire in compliance with the requirements of this chapter.
7. "Department" means the North Dakota state department of health.
8. "End-of-life care" means a program of palliative and supportive care for a resident with a ~~physician or nurse~~ licensed health care practitioner's order identifying a terminal illness or condition with a limited prognosis of six or fewer months to live ~~that~~

~~has elected to receive hospice services through a licensed and Medicare-certified hospice agency.~~

9. "Facility" means a basic care facility.
10. "Governing body" means the entity legally responsible for the operation of a basic care facility.
11. "Instrumental activities of daily living" includes preparing meals, shopping, managing money, housework, laundry, transportation, use of telephone, and mobility outside the basic care facility.
12. "Licensed health care practitioner" means an individual who is licensed or certified to provide medical, medically related, or advanced registered nursing care to individuals in North Dakota.
13. "Medication administration" means an act in which a drug or biological is given to a resident by an individual who is authorized in accordance with state laws and regulations governing such acts, and may include a licensed health care practitioner, licensed nurse, or medication assistant.
14. "Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful temporary or permanent taking or use of a resident's belongings or money, or both.
15. "Neglect" includes failure to carry out resident services as directed or ordered by the licensed health care practitioner or other authorized personnel, or failure to give proper attention to residents.
16. "Personal care" means assistance with activities of daily living and instrumental activities of daily living and general supervision of physical or mental well-being.
17. "Resident" means an individual admitted and retained in a facility in order to receive room and board and health, social, and personal care who is capable of self-preservation, and whose condition does not require continuous, twenty-four-hour a day onsite availability of nursing or medical care.
18. "Restricting device" means any device which limits a resident from freely exiting the facility or unit, including pressure devices which delay the time frame in which a door will open.
19. "Secured facility" means a facility that is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility that has restricting devices to restrict residents from freely exiting the building.
20. "Secured unit" means a specific area of the facility that is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care unit that has a restricting device separating the residents in the unit from the residents in the remainder of the facility.

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

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

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

Law Implemented: NDCC 23-09.3

33-03-24.1-23. ~~Optional~~ End-of-life care services.

~~A facility that intends to retain residents who require end-of-life care continues to be responsible for the care and services of all residents, must comply with the requirements of this section, and apply on a basic care application form and indicate a change in services provided. application as specified by the department, and receive written approval from the department prior to providing the services. The facility must meet the following requirements:~~

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

5. ~~The facility, in consultation with the resident or resident's designee, and licensed and Medicare-certified hospice agency in consultation with the resident shall develop and implement an interdisciplinary care plan that identifies how the resident's needs are met and includes the following:~~
 - a. ~~What services are to be provided;~~
 - b. ~~Who will provide the services, the facility or hospice agency;~~
 - c. ~~How the services will be provided;~~
 - d. ~~Delineation of the roles of facility staff and others the hospice agency in the provision of care and services for the resident in need of end-of-life care and care plan process;~~
 - e. ~~Documentation of the care and services that are provided with the signature of the person who provided the care and services; and~~
 - f. ~~A list of the current medications or biologicals the resident receives related to end-of-life care and who is authorized to administer the medications.~~

6. ~~The facility shall notify the department within forty-eight hours of election that the resident has elected hospice, the date the hospice was elected, and the name of the hospice agency serving the resident.~~

7. ~~The facility shall notify the department within forty-eight hours of the hospice resident's discharge, transfer, death, or when the resident is no longer capable of self-preservation.~~

8. ~~A facility that retains a resident requiring end-of-life care that is not capable of self-preservation shall be equipped with an approved automatic sprinkler system designed to comply with the national fire protection association standard 13 or 13R, or shall meet the national fire protection association 101 Life Safety Code, 2012 edition, health care occupancy requirements.~~

96. ~~Facility evacuation or E scores shall be completed at a minimum of weekly and when there is a significant change in the resident's capability for self-evacuation when a resident is receiving end-of-life care. A significant change for the resident is defined as any change in the resident's status or capabilities that results in a change in the E score for that resident. Facility staffing must be adjusted consistent with the E scores to maintain a slow evacuation capability. The fire evacuation needs of the resident receiving end-of-life care may be met by facility staff that wraps around hospice staff, family members, the resident's designee, or volunteers, or other nonfacility staff cannot replace required facility staff.~~

407. ~~A If a facility provides end-of-life care to residents, the facility approved to provide end-of-life care shall ensure training and competency evaluation is completed for all nursing and personal care staff members, and others, specific to the care and services necessary to meet the needs of the terminally ill resident, and the hospice philosophy and services. The training and competency evaluation may must be completed prior to caring for a resident in need of end-or-life care, and documented, by the facility registered nurse, a registered nurse consultant, or a hospice agency nurse. Nursing and personal care staff members shall complete the above training and competency evaluation:~~
 - a. ~~Prior to facility approval from the department to provide end-of-life care;~~
 - b. ~~Within thirty days of employment; and~~
 - c. ~~Annually.~~

- ~~11. A facility that intends to retain residents who require end-of-life care shall comply with the additional requirements in this section and request and receive approval on a printed new license from the department, prior to providing end-of-life care to residents.~~
- ~~128. The facility approved and licensed to retain residents in need of end-of-life care remains responsible for the appropriate delivery of end-of-life care in coordination with the licensed and Medicare-certified hospice agency. If the facility is unable, or becomes unable, to meet the needs of the resident requiring end-of-life care, the resident rescinds election of the hospice benefit, or the facility is unable to comply with these requirements, the facility shall promptly make arrangements to discharge or transfer the resident to a safe and appropriate placement location consistent with the level of care required to meet the resident's needs.~~

History: Effective July 1, 2015.

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

Law Implemented: NDCC 23-09.3-04, 23-09.3-09, 23-09.3-08.1