# CHAPTER 33-07-03.2
# NURSING FACILITIES



**33-07-03.2-01. Definitions.**

The following terms are defined for this chapter, chapter 33-07-04.2, and North Dakota Century Code chapter 23-16:

1. "Abuse" for the purposes of this chapter is defined in section 33-07-06-01.

2. "Adult day care" means the provision of facility services to meet the needs of individuals who do not remain in the facility overnight.

3. "Authentication" means identification of the individual who made the resident record entry by that individual in writing, and verification that the contents are what the individual intended.

4. "Bed capacity" means bed space designed for resident care.

5. "Department" means the state department of health.

6. "Discharge" means movement from a facility to a noninstitutional setting when the discharging facility ceases to be legally responsible for the care of the resident.

7. "Emanating services" means services which are provided from a facility to nonresidents.

8. "Facility" means a nursing facility.

9. "Governing body" means the individual or group in whom legal responsibility is vested for conducting the affairs of a private or governmental facility. Governing body includes, where appropriate, a proprietor, the partners of any partnership including limited partnerships, the board of directors and the shareholders or members of any corporation including limited liability companies and nonprofit corporations, a city council or commission, a county commission or social service board, a governmental commission or administrative entity, and any other person or persons vested with management of the affairs of the facility irrespective of the name or names by which the person or group is designated.

10. "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.

11. "Licensee" means the legal entity responsible for the operation of a facility.

12. "Medical staff" means a formal organization of licensed health care practitioners with the delegated authority and responsibility to maintain proper standards of medical care.

13. "Misappropriation of resident property" means the willful misplacement, exploitation, or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent. Willful for the purpose of this definition means to do so intentionally, knowingly, or recklessly.

    a. "Intentionally" means to do deliberately or purposely.

    b. "Knowingly" means to be aware or cognizant of what one is doing, whether or not it is one's purpose to do so.

    c. "Recklessly" means to consciously engage in an act without regard or thought to the consequences.

14. "Neglect" for the purposes of this chapter is defined in section 33-07-06-01.

15. "Nursing facility" means an institution or a distinct part of an institution established to provide health care under the supervision of a licensed health care practitioner and continuous nursing care for twenty-four or more consecutive hours to two or more residents who are not related to the licensee by marriage, blood, or adoption; and who do not require care in a hospital setting.

16. "Paid feeding assistant" means an individual who has successfully completed a department-approved paid feeding assistant training course and is paid to feed or provide assistance with feeding residents of a nursing facility.

17. "Rural area" means an area defined by the United States bureau of the census as a rural area.

18. "Secured unit" means a specific area of the facility that has a restricting device separating the residents in the unit from the residents in the remainder of the facility.

19. "Signature" means the name of the individual written by the individual or an otherwise approved identification mechanism used by the individual that may include the approved use of a rubber stamp or an electronic signature.

20. "Transfer" means movement from a facility to another institutional setting when the legal responsibility for the care of the resident changes from the transferring facility to the receiving institutional setting.

21. "Writing" means the use of any tangible medium for entries into the medical record, including ink or electronic or computer coding, unless otherwise specifically required.

**History:** Effective July 1, 1996; amended effective May 1, 2001; July 1, 2004.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-02. Conflict with federal requirements.**

If any part of this chapter or chapter 33-07-04.2 is found to conflict with federal requirements, the more stringent shall apply. Such a finding or determination shall be made by the department and shall not affect the remainder of this chapter or chapter 33-07-04.2.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-03. Application for and issuance of license.**

An entity meeting the definition of nursing facility in this chapter must obtain a license from the department to operate in North Dakota. No person or entity shall establish or operate a facility without first having obtained a license.

1. Any person or entity who owns or leases a facility and desires to maintain or operate it shall apply to the department for a license in the form prescribed and shall obtain an initial license before accepting residents for care or treatment.

    a. The department shall not approve an application for an initial license unless:

        (1) The application and all required attachments and statements submitted by the applicant meet the requirements of this chapter and chapter 33-07-04.2.

        (2) The department has conducted an inspection or investigation of the facility to determine compliance with this chapter and chapter 33-07-04.2.

        (3) The department has completed an investigation into the fitness of the applicant and determined the applicant to be fit based on the following:

            (a) Evidence provided by the applicant which identifies that financial resources and sources of revenue for the applicant's facility appear adequate to provide staff, services, and the physical environment sufficient to comply with North Dakota Century Code chapter 23-16, this chapter, and chapter 33-07-04.2;

            (b) The applicant has furnished the department with a signed and notarized statement describing and dating every proceeding, within five years of the date of the application, in which the applicant was involved that resulted in a limitation, suspension, revocation, or refusal to grant or renew a nursing facility license or resulted in a ban on Medicare or Medicaid admissions or a Medicare or Medicaid decertification action; and

            (c) The applicant shall furnish a signed and notarized statement to the department describing every criminal proceeding within five years of the date of the application in which the licensee or any of its shareholders owning interest of five percent or more, officers, directors, partners, or other controlling or managing persons, has been convicted or nolo contendere plea accepted, of a criminal offense related to the operation, management, or ownership of a nursing facility.

b. The initial license shall be valid for a period not to exceed one year and shall expire on December thirty-first of the year issued.

2. The department shall issue a renewal license when a facility is in substantial compliance with the provisions of these licensing requirements, as determined by periodic unannounced onsite surveys conducted by the department and other information submitted by the facility upon the request of the department. Renewal licenses shall expire on December thirty-first of each year. The application for renewal must be received by the department with sufficient time prior to the beginning of the licensure period to process.

3. The department may issue a provisional license, valid for a specific period of time not to exceed ninety days, when there are one or more serious deficiencies or a pattern of deficiencies related to compliance with these licensing requirements.

   a. A provisional license may be renewed at the discretion of the department, provided the licensee demonstrates to the department that it has made progress towards compliance and can effect compliance within the next ninety days. A provisional license may be renewed one time.

   b. When a facility operating under a provisional license notifies the department that it has corrected its deficiencies, the department will ascertain correction. Upon finding compliance, the department shall issue a renewal license.

4. In the case where two or more buildings operated under the same management are used in the care of residents, a separate license is required for each building.

5. Each license is valid only in the hands of the entity to whom it is issued and is not subject to sale, assignment, or other transfer, voluntary or involuntary, nor is a license valid for any premises other than those for which originally issued. The license must be displayed in a conspicuous place within the facility.

6. The facility shall notify the department in writing thirty days in advance of any of the following changes:

   a. Transfer or change of ownership.

   b. Transfer of operating rights, including a lease of the facility where the lessor retains no control of the operation or management of the facility.

   c. Change in bed capacity.

   d. Change in the name of the facility.

7. The facility shall notify the department in writing within thirty days of a change in administrator or nurse executive.

8. The department will review all reported allegations of resident abuse, neglect, and misappropriation of resident property by an individual used in a nursing facility to provide resident services. If there is reason to believe, either through oral or written evidence, that an individual used by a nursing facility to provide services to residents could have abused or neglected or misappropriated a resident's property, the department will investigate the allegation or refer the allegation to the appropriate licensure authority for followup.

9. If the department makes a preliminary determination that an individual used by a nursing facility to provide services to residents abused or neglected or misappropriated resident property, the individual will be notified and provided the same appeal and review rights provided to nurse aides on the registry identified in sections 33-07-06-10 and 33-07-06-11.

10. The department will maintain a registry of individuals used by the nursing facility to provide services to residents that the department has investigated and validated findings of resident abuse, neglect, or misappropriation of resident property.

**History:** Effective July 1, 1996; amended effective July 1, 2004.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-04. Waiver provision.**

Any provisions of this chapter or chapter 33-07-04.2 may be waived by the department for a specified period in specific instances, provided such a waiver does not adversely affect the health and safety of the residents and would result in unreasonable hardship upon the facility. A waiver may be granted for a specific period of time not to exceed one year and shall expire on December thirty-first of the year issued.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-05. Access and surveillance by the department.**

The department may evaluate a facility's compliance with this chapter or chapter 33-07-04.2 at any time through:

1. An announced or unannounced onsite review; or

2. A request for submission of written documentation verifying compliance.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-06. Plan of correction.**

1. A facility shall submit to the department a plan of correction addressing areas of noncompliance with the licensure requirements of this chapter and chapter 33-07-04.2.

2. A plan of correction must include:

   a. How the corrective action will be accomplished;

   b. How the facility will identify other residents or portions of the facility having the potential to be affected by the same deficient practice;

   c. What measures will be put into place or systemic changes made to ensure that the deficient practice will not recur; and

   d. How the facility will monitor its corrective actions to ensure that the deficient practice is being corrected and will not recur.

3. A plan of correction is required within ten calendar days of receipt of the deficiency statement and is subject to acceptance, acceptance with revisions, or rejection by the department.

4. Corrections must be completed within sixty days of the survey completion date, unless an alternative schedule of correction has been specified by the department.

**History:** Effective July 1, 1996.

**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-07. Governing body.**

The governing body is legally responsible for the quality of resident care services; for resident safety and security; for the conduct, operation, and obligations of the facility; and for ensuring compliance with all federal, state, and local laws.

1. The governing body shall establish, cause to implement, maintain, and as necessary, revise its practices, policies, procedures, and bylaws for the ongoing evaluation of the services operated or delivered by the facility and for the identification, assessment, and resolution of problems that may develop in the conduct of the facility. These policies, procedures, and bylaws must be in writing, dated, and made available to all members of the governing body and facility staff.

2. The governing body shall appoint a qualified administrator who is responsible for the management of the facility.

    a. The administrator shall hold a valid North Dakota nursing home administrator's license.

    b. In the absence of the administrator, an employee must be designated in writing to act on behalf of the administrator.

3. The governing body must ensure sufficient trained and competent staff is employed to meet the residents' needs. The governing body shall approve and ensure implementation of written personnel policies and procedures including:

    a. Written job descriptions for personnel positions in all service areas. Job descriptions must include definition of title, qualifications, duties, responsibilities, and to whom the position reports.

    b. Provisions for checking state registries and licensing boards for current licensure or registry status and history of disciplinary actions prior to employment.

    c. Procedures to ensure all personnel for whom licensure, certification, or registration is required have a valid and current license, certificate, or registration.

    d. Prohibitions on resident abuse, neglect, and misappropriation of resident property, and procedures for investigation, reporting, and followup action.

4. The governing body shall ensure the development and implementation of written policies and procedures for all services provided by the facility, including emanating services. These policies and procedures must be current and shall be revised when changes in standards of practice occur.

5. The governing body shall ensure the development and implementation of written resident care policies, procedures, and practices including:

    a. Admission or retention policies which ensure:

        (1) Only those persons whose needs can be met within the accommodations and services provided by the facility are admitted and retained by the facility.

        (2) Residents are admitted to the facility only by the order of a licensed health care practitioner.

(3) Resident information, including current medical findings, diagnosis, and orders from the licensed health care practitioner for immediate care of the resident are available to the facility prior to or at the time of admission.

(4) Other pertinent information including family history and past medical history is received from the licensed health care practitioner within forty-eight hours of admission.

(5) A physical examination of the resident is performed by the licensed health care practitioner within five days prior to admission or within forty-eight hours after admission, unless the licensed health care practitioner documents the current examination remains accurate.

(6) Each resident in the facility is under the supervision of a licensed health care practitioner.

(a) Licensed health care practitioners shall visit residents as often as medically indicated, but no less frequently than annually.

(b) Orders must be signed by the licensed health care practitioner at the time of each visit.

(c) Progress notes must be written or dictated at the time of each visit and signed within a time frame as determined by the facility, not to exceed thirty days.

b. A procedure whereby an ongoing evaluation of resident status and need for facility care is conducted and made a part of the resident record.

c. Arrangements are made in the form of a written contract for specific resident care services to be provided by outside resources if the specific resident care services required are not available by facility staff. Outside resource shall apprise the appropriate facility staff of recommendations, plans for implementation, and continuing assessment through dated, and signed reports.

d. Provisions to ensure resident rights are met in compliance with North Dakota Century Code chapter 50-10.2.

e. Prohibition of resident abuse, neglect, or misappropriation of resident property.

f. Provisions to ensure residents are free from physical restraints imposed or psychoactive drugs administered for the purpose of discipline or convenience that are not required to treat the resident's medical symptoms.

6. The governing body is responsible for services furnished in the facility whether or not they are furnished directly by the facility or by outside resources. The governing body shall ensure that a contractor of services furnishes such services that permit the facility to comply with all applicable laws, codes, rules, and regulations. The governing body shall:

a. Ensure the services performed under contract are provided in a safe and effective manner.

b. Maintain a copy of current contracts for all contracted services. The contracts must identify the scope and nature of the services provided.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-08. Physical environment.**

The facility must be constructed, arranged, and maintained to ensure the safety and well-being of the residents.

1. The physical plant must comply with the construction standards of chapter 33-07-04.2; and

2. The facility must provide an environment that is maintained, clean, comfortable, and appropriately responds to the physical, functional, and psychosocial needs of the residents. The facility must provide adequate space, lighting levels, ventilation, and safety measures consistent with the services being offered and the needs of the residents being served.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03
**Law Implemented:** NDCC 23-01-03, 23-16-01

**33-07-03.2-09. Emergency plan.**

The facility shall have a written procedure to be followed in case of emergencies. The emergency plan must specify persons to be notified, locations of alarm signals and fire extinguishers, evacuation routes, procedures for evacuating residents, and assignment of specific tasks, and responsibilities to the personnel of each shift.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-10. Quality improvement program.**

1. The facility shall develop and implement a quality improvement program, approved by the governing body, for assessing and improving the quality of services and care provided to residents. The written program must describe objectives, organization, scope, and mechanisms for overseeing and reporting the effectiveness of monitoring, evaluation, and improvement activities.

2. The quality improvement program must include a written plan for all services including indicators of care that are important to the health and safety of the residents.

3. The indicators of the written quality improvement plan must relate to quality of services and care provided to residents and must be objective, measurable, and based on current standards of practice.

4. Written documentation of quality improvement activities, including infection control, must be prepared and reported to the governing body.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-06

**33-07-03.2-11. Infection control program.**

The facility shall develop and implement a facilitywide program, approved by the governing body, for surveillance, prevention, and control of infections. This program must be consistent with the centers for disease control and prevention standards specific to disease control. The responsibilities of the program include:

1. Establishment of an infection control plan that includes the use of techniques and precautions in accordance with the standards of practice for each department or service.

2. Establishment of policies and procedures for reporting, logging, surveillance, monitoring, and documentation of infections, and the development and implementation of systems to collect and analyze data and activities to prevent and control infections.

3. Development and implementation of policies and procedures including:

   a. The criteria to determine admission eligibility of an individual with a contagious or infectious disease; and

   b. The immediate isolation of all residents in whom the condition jeopardizes the safety of the resident or other residents.

4. Assignment of the responsibility for management of infection surveillance, prevention, and control to a qualified person or persons.

5. Maintenance of proper facilities and appropriate procedures used for disposal of all infectious and other wastes.

6. Development and implementation of a process for inspection and reporting of any employee with an infection who may be in contact with residents, their food, or laundry.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03
**Law Implemented:** NDCC 23-01-03, 23-16-01

**33-07-03.2-12. Education programs.**

The facility shall design, implement, and document educational programs to orient new employees and keep all staff current on new and expanding programs, techniques, equipment, and concepts of quality care. The following topics must be covered with all staff annually:

1. Safety and emergency procedures, including procedures for fire and other disasters.

2. Prevention and control of infections, including universal precautions.

3. Resident rights.

4. Advanced directives.

5. Care of the emotionally disturbed and confused resident.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-13. Medical services.**

1. The facility shall have a licensed physician who is specified as the medical director or a medical staff organized under bylaws and rules approved by and responsible to the governing body. The medical director or medical staff shall be responsible for the quality of all medical care provided to residents and for the ethical and professional practices of its members.

2. The duties and responsibilities of the medical director or medical staff must be delineated in a formal agreement with the governing body.

3. The medical director or medical staff shall be involved in the development of written medical staff policies which are approved by the governing body, which delineate the responsibilities of licensed health care practitioners.

4. The medical director or a member of the medical staff shall participate in the quality improvement and infection control program meetings.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-14. Nursing services.**

1. Nursing services must be under the direction of a nurse executive (director of nursing) who is employed by the facility and is a registered nurse licensed to practice in North Dakota.

2. The nurse executive must have written administrative authority, responsibility, and accountability for the integration of nursing services consistent with the overall facility plan and philosophy of resident care. The nurse executive shall retain administrative responsibility to:

   a. Ensure development, maintenance, implementation, and revision of nursing service objectives, standards of practice, policy and procedure manuals, and written job descriptions for each level of nursing personnel, including unlicensed staff.

   b. Ensure a resident assessment is completed and a comprehensive care plan is established in coordination with the resident or legal representative within the required time frames.

   c. Ensure care plans are implemented so as to assist each resident to attain and maintain their highest level of functioning.

3. The facility shall have sufficient qualified nursing personnel on duty at all times to meet the nursing care needs of the residents including:

   a. At least one registered nurse on duty eight consecutive hours per day, seven days a week; and

   b. At least one licensed nurse on duty and designated to work charge twenty-four hours a day seven days a week.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 28-32-02(1)
**Law Implemented:** NDCC 23-01-03

**33-07-03.2-15. Resident assessment and care plan.**

1. The facility shall complete and maintain an up-to-date comprehensive resident assessment for each resident by using the resident assessment instrument, the utilization guidelines, the minimum data set of core elements and common definitions, and the resident assessment protocol summary with triggers as specified by the department and approved by health care financing administration and published in the state operations manual.

2. In coordination with the resident or resident's legal representative and staff providing resident care services, a comprehensive written resident care plan for each resident must be developed and maintained consistent with each resident's individual needs and licensed health care practitioner's plan of medical care. An initial care plan must be implemented upon admission and revised within seven days after the completion of the resident assessment instrument.

3. A care plan must be individualized to meet the needs of the resident and must include problem and strength identification, measurable resident-centered goals, plans of action, and

which professional service is responsible for each element of care. Goals must be measurable, behavior oriented, time-limited, and achievable.

4. Resident assessment and quarterly assessment information on each resident must be submitted electronically to a location specified by the department in a time frame specified by the department.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-16. Dietary services.**

The facility shall provide for the dietary needs of the residents and provide dietary services in conformance with the food service sanitation manual issued by the department. Dietary services must include:

1. A qualified director of dietary services must be designated to be responsible for the dietary service of the facility.

   a. A director of dietary services is:

      (1) A dietitian licensed to practice in North Dakota and registered by the academy of nutrition and dietetics or its predecessor or successor organization;

      (2) A graduate of a dietetic technician or dietetic assistant training program approved by the academy of nutrition and dietetics or it predecessor or successor organization;

      (3) A certified dietary manager, certified by the certifying board for dietary managers;

      (4) A graduate of a state-approved course that provides ninety or more hours of instruction in dietary service supervision in a health care institution with consultation from a licensed and registered dietitian; or

      (5) An individual trained and experienced in food service supervision and management in a military service equivalent to the program described in paragraph 2 or 4.

   b. If the director of dietary services is not a licensed and registered dietitian, regularly scheduled consultation from a consultant licensed and registered dietitian must be obtained at least monthly.

2. Dietary service personnel and all personnel who are actively engaged in assisting residents with eating must be in good health and practice hygienic food handling techniques.

3. Menus for all diets must be planned in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of science. Sufficient food must be prepared as planned for each meal to meet the nutritional needs of residents.

   a. Menus must be written at least one week in advance. The current week's menus must be located in the dietary services area for easy use by dietary services staff.

   b. When changes in the menu are necessary, substitutions must provide equal nutritive value. The change and the reason for the change must be noted in writing on the menu.

   c. Menus of food served must be filed and maintained for thirty days.

   d. Menus must be adjusted to address the requests of the residents when possible.

4. Therapeutic diets when prescribed by the licensed health care practitioner.

5. At least three meals or the equivalent must be served daily, at regular times.

    a. There must be no more than a fourteen-hour span between a substantial evening meal and breakfast unless a nourishing snack is provided at bedtime. Up to sixteen hours may elapse between a substantial evening meal and breakfast the following day if the residents agree to this meal span and a nourishing evening snack is served.

    b. A substantial evening meal is an offering of three or more menu items at one time, one of which includes a high quality protein item such as meat, fish, egg, or cheese.

    c. Snacks must be offered at bedtime daily.

6. A current diet manual, approved by the medical staff or medical director, must be readily available.

7. Providing each resident with food prepared by methods that conserve nutritive value, flavor, and appearance. The food must be attractively served at the proper temperatures and in a form to meet individual needs. Equipment must be provided and procedures established to:

    a. Maintain hot food above one hundred forty degrees Fahrenheit [60 degrees Celsius] during dishing.

    b. Ensure that cold foods leave the kitchen at no more than forty-five degrees Fahrenheit [7.22 degrees Celsius].

8. Table service for all who can and will eat at a table. For those not eating at a table, the proper eating equipment must be available and used.

9. Facilities for the general dietary needs of the residents, and for the maintenance of sanitary conditions in the storage, preparation, service and distribution of food.

**History:** Effective July 1, 1996; amended effective April 1, 2013.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-16.1. Paid feeding assistants.**

Any individual employed by a facility, or under contract, to feed or assist with the feeding of nursing facility residents must either have successfully completed a department-approved paid feeding assistant training course or be a certified nurse aide.

1. Instructors of a department-approved paid feeding assistant course must meet the following requirements:

    a. The primary instructor of the program must be a licensed health care professional with experience in the feeding of nursing facility residents.

    b. Certified nurse aides and paid feeding assistants may not be used as instructors in a department-approved paid feeding assistant course.

2. A department-approved paid feeding assistant course must have a curriculum which contains, at a minimum, eight hours of training.

3. The course must, at a minimum, include the following:

    a. Feeding techniques.

b. Assistance with feeding and hydration.

c. Communication and interpersonal skills.

d. Appropriate responses to resident behavior.

e. Safety and emergency procedures, including the Heimlich maneuver.

f. Infection control.

g. Resident rights.

h. Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting those changes to the supervisory nurse.

4. The instructor must verify in writing the successful completion of the course, including a competency evaluation of feeding skills, by the individual. The process for evaluation of successful completion of the course must be included in the materials submitted to the department for review and approval.

5. The nursing facility must maintain a record of all individuals used by the nursing facility as paid feeding assistants who have successfully completed a department-approved paid feeding assistant training course.

6. The nursing facility must ensure that paid feeding assistants feed only residents who have no complicated feeding problems. Complicated feeding problems include difficulty swallowing, recurrent lung aspirations, and tube or parenteral intravenous feedings.

7. The charge nurse must assess the residents to determine which residents may be fed by a paid feeding assistant. This assessment must be documented and the use of the paid feeding assistant to feed the resident must be included in the residents' plan of care.

8. The nursing facility must ensure that paid feeding assistants work under the supervision of a registered nurse or a licensed practical nurse. In an emergency, a paid feeding assistant must call a supervisory nurse for help using the resident call system if the nurse is not present during the feeding of a resident.

9. The nursing facility must ensure that the ongoing competency of paid feeding assistants is evaluated and documented at least annually.

10. The initial department approval of a paid feeding assistant course shall be determined based on the review of the information submitted by the nursing facility for compliance with these requirements.

11. The nursing facility must notify the department and receive approval of any subsequent changes in the curriculum or primary instructor of the course.

12. The department shall determine continued compliance with these requirements during an onsite visit to the nursing facility.

13. Failure to comply with these requirements may result in loss of department approval for a paid feeding assistant course to be offered by the nursing facility.

**History:** Effective July 1, 2004.
**General Authority:** NDCC 28-32-02
**Law Implemented:** NDCC 23-16-01

**33-07-03.2-17. Resident record services.**

The governing body of the facility shall establish and implement policies and procedures to ensure the facility has a resident record service with administrative responsibility for resident records.

1. A resident record must be maintained and kept confidential for each resident admitted to the facility. The resident record shall be complete, accurately and legibly documented, and readily accessible.

    a. The resident or the resident's legal representative have the right to view and authorize release of their medical information.

    b. The facility shall develop policies which address access to resident records.

    c. Resident records may be removed from the facility only upon subpoena, court order, or pursuant to facility policies when a copy of the original record is maintained at the facility.

2. All records of discharged residents must be preserved for a period of ten years from date of discharge. Records of deceased residents must be preserved to seven years.

    a. In the case of minors, records must be retained for the period of minority and ten years from the date of live discharge. Records of deceased residents who are minors must be preserved for the period of minority and seven years.

    b. It is the governing body's responsibility to determine which records have research, legal, or medical value and to preserve such records beyond the above-identified time frames until such time the governing body determines the records no longer have a research, legal, or medical value.

3. If the facility does not employ an accredited record technician or registered record administrator, an employee of the facility must be assigned the responsibility for ensuring that records are maintained, completed, and preserved. The designated employee shall receive consultation at least annually from an accredited record technician or registered record administrator.

4. Each resident record must include:

    a. The name of the resident, personal licensed health care practitioner, dentist, and designated representative or other responsible person, admitting diagnosis, final diagnosis, condition on discharge, and disposition.

    b. Initial medical evaluation including medical history, physical examination, and diagnosis.

    c. A report from the licensed health care practitioner who attended the resident in the hospital or other health care setting, and a transfer form used under a transfer agreement.

    d. Licensed health care practitioner's orders, including all medication, treatments, diet, restorative plan, activities, and special medical procedures.

    e. Licensed health care practitioner's progress notes describing significant changes in the resident's condition, written at the time of each visit.

    f. Current comprehensive resident assessment and plan of care.

    g. Quarterly reviews of resident assessments and nurse's notes containing observations made by nursing personnel for the past year.

h. Medication and treatment records including all medications, treatments, and special procedures performed.

i. Laboratory and x-ray reports.

j. Consultation reports.

k. Dental reports.

l. Social service notes.

m. Activity service notes.

n. Resident care referral reports.

5. All entries into the resident record must be authenticated by the individual who made the written entry, as defined by facility policy and applicable state laws and regulations, and must at a minimum include the following:

a. All entries the licensed health care practitioner personally makes in writing must be signed and dated by the licensed health care practitioner.

b. Telephone and verbal orders may be used provided they are given only to qualified licensed personnel and reduced to writing and signed or initialed by a licensed health care practitioner responsible for the care of the patient.

c. Signature stamps may be used consistent with facility policies as long as the signature stamp is used only by the licensed health care practitioner whose signature the signature stamp represents. Written assurance must be on file from the licensed health care practitioner to indicate the practitioner is the sole user of the signature stamp.

d. Electronic signatures may be used if the facility's medical staff and governing body adopt a policy permitting authentication by electronic signature. The policy must include:

(1) The staff within the facility authorized to authenticate entries in resident records using an electronic signature.

(2) The safeguards to ensure confidentiality, including:

(a) Each user must be assigned a unique identifier generated through a confidential access code.

(b) The facility shall certify in writing each identifier is kept strictly confidential. This certification must include a commitment to terminate the user's use of that particular identifier if it is found the identifier has been misused. Misused means the user has allowed another individual to use the user's personally assigned identifier, or the identifier has otherwise been inappropriately used.

(c) The user must certify in writing the user is the only individual with user access to the identifier and the only individual authorized to use the signature code.

(d) The facility shall monitor the use of the identifiers periodically and take corrective action as needed. The process by which the facility will conduct the monitoring must be described in policy.

(3) A process to verify the accuracy of the content of the authenticated entries, including:

(a) A system that requires completion of certain designated fields for each type of document before the document may be authenticated, with no blanks, gaps, or obvious contradictory statements appearing within those designated fields. The system must require that correction or supplementation of previously authenticated entries must be made by additional entries, separately authenticated and made subsequent in time to the original entry.

(b) An opportunity for the user to verify the accuracy of the document and to ensure the signature has been properly recorded.

(c) As part of the quality improvement activities, the facility shall periodically sample records generated by the system to verify accuracy and integrity of the system.

(4) A user may terminate authorization for use of an electronic signature upon written notice to the staff member in charge of resident records.

(5) Each report generated by the user must be separately authenticated.

(6) A list of confidential access codes must be maintained under adequate safeguards by facility administration.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-18. Pharmaceutical services.**

The facility shall provide pharmaceutical services to meet resident needs.

1. The facility shall obtain the services of a licensed pharmacist who shall develop policies and procedures for the provision of pharmaceutical services within the facility consistent with chapter 61-03-02, state laws, and federal laws. These policies and procedures must be approved by medical staff or medical director and governing body and must include provisions for:

   a. The procurement, storage, dispensing, labeling, administration, and disposal of drugs and biologicals.

   b. Allowing the resident to be totally responsible for the resident's own medication based on request of the resident, assessment of the functional capability of the resident by facility nursing staff, documentation of the assessment and resultant recommendations, and specific approval and order of the licensed health care practitioner. The facility must provide a secure storage area for medications self-administered by the resident.

2. The pharmacist shall review each resident's medications monthly and report any discrepancies to the nurse executive or the resident's licensed health care practitioner.

3. All medications administered to a resident must be ordered in writing by a licensed health care practitioner. Telephone and verbal orders may be given to qualified licensed personnel and must be immediately reduced in writing, signed, and dated by the individual receiving the order, and countersigned or initialed by the licensed health care practitioner.

4. When ordered, medications not specifically limited as to time or number of doses must be automatically stopped in accordance with a written policy. The resident's attending licensed health care practitioner must be notified of stop order policies and contacted promptly for a

decision concerning renewal of such orders so continuity of the resident's therapeutic regimen is not inadvertently interrupted.

5. Standing orders for drugs must specify the circumstances for drug dosage, route, duration, and frequency of administration. The order must be reviewed annually and, if necessary, renewed. When a standing order is implemented for a specific resident, it must be entered in the resident's record, dated, and signed by the licensed health care practitioner who prescribed the order.

6. All medications must be administered by individuals authorized to do so in accordance with state laws and regulations governing such acts. Each dose administered must be properly recorded in the resident record.

7. All medications administered by facility staff must be stored in a locked area or locked cart.

    a. Medications requiring refrigeration must be kept in a separate refrigerator which is locked or in a separate refrigerator in a lockable medication room near the nurses' station.

    b. Medications for "external use only" must be kept in a locked area and separate from other medications.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-19. Social services.**

The governing body shall ensure social services are provided to ensure each resident attains and maintains their highest level of physical, mental, and psychosocial functioning.

1. The facility shall have one or more designated staff members trained in the assessment of residents' psychosocial needs and in the provision of services to meet those needs. If a designee is not a qualified social worker as defined in North Dakota Century Code chapter 43-41, the designee shall receive onsite consultation from a qualified social worker on a quarterly basis.

2. If the facility does not provide social services directly, the facility must have a contract with an agency or individual qualified to provide such services.

3. The facility shall have policies and procedures for the delivery of social services.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-20. Activity services.**

The facility shall provide an ongoing program of activity services to meet the needs and interests of each resident which promotes or maintains each resident's physical, mental, and psychosocial well-being.

1. The facility shall employ a qualified activity coordinator who is responsible for the direction and supervision of the resident activity services. A qualified activity coordinator is:

    a. An individual certified as a therapeutic recreation specialist by a recognized accrediting body;

b. An individual who is eligible for certification as a therapeutic recreation specialist by a recognized accrediting body for the first year the individual is eligible;

c. An individual who is activity director certified by a recognized accrediting body;

d. An individual who is activity consultant certified by a recognized accrediting body;

e. A qualified occupational therapist as defined in North Dakota Century Code chapter 43-40;

f. A certified occupational therapy assistant;

g. An individual who has the equivalent of two years of full-time experience in a social or recreational program within the last five years, one of which was in a resident activity program in a health care setting; or

h. An individual who has completed an activity training program approved by the department as meeting the requirements in section 33-07-03.2-22; and

(1) Has one year of full-time experience in the past five years in an activity program in a health care setting; or

(2) Receives monthly onsite consultation for a minimum of one year after the completion of the program from an individual meeting the qualifications described in subdivision a, d, e, f, or g.

2. The facility shall have sufficient activity staff to provide an ongoing program of meaningful, stimulating, therapeutic, and leisure time activities to meet the needs and suited to the interests of each resident.

3. The facility shall have policies and procedures for the delivery of activity services.

4. Each resident's activity plan must be developed in accordance with instructions of the licensed health care practitioner.

5. The activity plan must be coordinated with the resident's overall plan of care and altered as needed.

6. Activity notes, including observations of resident's participation in activity programs, must be recorded and retained in the resident's record.

7. Resident's request to see clergy must be honored and space must be provided for privacy during these visits.

8. The facility must have adequate equipment and material to support independent and group activities.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-21. Approved activity training program.**

Only programs that the department determines to meet the criteria in this section and approves in writing will be considered to be an approved activity training program.

1. A department-approved activity training program must have a curriculum which contains, at a minimum, one hundred eighty hours, ninety of which are theory and ninety of which are practical training hours.

2. The primary instructor of a program shall have:

   a. A bachelor's degree or be activity consultant certified;

   b. Have current activity experience as a director or as a practicing consultant; and

   c. Have experience in teaching adults.

3. Supplemental instructors shall have a minimum of one year of experience in their field.

4. The theory portion of the program shall include, at a minimum, the topics identified in the basic education course for activity professionals developed by the national association of activity professionals and the national certification council for activity professionals.

5. Training on nursing and nursing-related services, including transferring, positioning, toileting, and feeding, may not be included in the curriculum of an activity training program.

6. At the completion of the program, the instructor must verify in writing to the department the successful completion of the program for each participant.

7. A listing of state-approved activity training programs and the date of approval will be maintained by the department.

8. An approved activity training program may include only those topics which were submitted to and approved by the department for inclusion. Changes which are made to the program must be approved by the department prior to implementation or the program will no longer be considered to be approved.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-22. Specialized rehabilitative services.**

Specialized rehabilitative services shall, at a minimum, include physical therapy, speech and language pathology, occupational therapy, and health services for mental illness and mental retardation and shall:

1. Be provided upon a written order of a licensed health care practitioner, who shall be responsible for the general medical direction of such services as part of the total care of the resident.

2. Be provided directly by facility staff or obtained through contract with outside resources.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-23. Diagnostic services.**

The facility shall provide or have arrangements for obtaining diagnostic services consistent with the needs of the resident.

1. If the facility provides any clinical laboratory testing services to residents, regardless of the frequency or the complexity of the testing, the governing body is required to obtain and maintain compliance with the applicable parts of the clinical laboratory improvement amendments of 1988, 42 CFR part 493.

2. If the facility provides radiology or other diagnostic services to residents, these services must be provided in accordance with the current standards of practice and state and federal regulations.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-24. Housekeeping, maintenance, and laundry services.**

The facility shall provide housekeeping and maintenance services necessary to maintain a sanitary and comfortable environment and laundry services, including personal laundry services, to meet the needs of the residents.

1. The facility shall employ sufficient housekeeping and maintenance personnel to maintain the interior and exterior of the facility in a safe, clean, orderly, and attractive manner. The facility shall establish, implement, and update policies and procedures consistent with current standards of practice including procedures to ensure:

    a. The facility is kept free from offensive odors, accumulations of dirt, rubbish, dust, and safety hazards;

    b. Floors are regularly cleaned, polishes on floors provide a nonslip finish, and throw or scatter rugs have a nonslip backing;

    c. Walls and ceilings are maintained, cleaned, and painted as needed;

    d. The grounds are kept free from refuse and litter; and

    e. Poisons and chemical compounds must be stored away from resident and food preparation and storage areas.

2. The facility shall be maintained free from insects and rodents.

    a. Pest control services must be provided by the facility or by contract with a pest control company.

    b. Windows and doors must be appropriately screened to exclude insects.

    c. Harborages and entrances for insects and rodents must be eliminated.

3. The facility shall have available at all times a sufficient supply of linen in good condition for the care and comfort of residents and ensure there is sufficient trained staff and facilities available to provide these services in a manner that controls the spread of infection.

    a. Clean linen and clothing must be stored in clean, dry, dust-free, and easily accessible areas.

    b. Soiled linen must be sorted and stored in well-ventilated areas, separate from clean laundry spaces, and must not be permitted to accumulate.

        (1) Soiled linen and clothing must be stored separately in suitable bags or containers.

(2) Potentially infectious soiled linen must be handled with particular attention to avoid contamination of clean linen.

(3) Soiled linen may not be sorted, laundered, rinsed, or stored in bathrooms, resident rooms, kitchens, or food storage areas.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-25. Adult day care services.**

1. Any facility seeking to develop an adult day care service shall contact the department and receive advance approval as a condition of licensure.

2. A facility may use existing space and equipment to deliver adult day care services provided services to the residents of the facility are not diminished and their needs are being acceptably addressed with the following exceptions:

   a. The facility shall provide dining space for congregate dining of adult day care participants in addition to space required under section 33-07-04.2-06.

   b. The facility shall provide activity space in addition to space required under section 33-07-04.2-06.

   c. The facility shall provide an area allowing privacy for adult day care participants to allow for rest periods.

3. A facility accepting persons for adult day care shall develop policies and procedures covering all aspects of adult day care including:

   a. Medications and treatments shall be provided by facility staff only by order of a licensed health care practitioner, and records must be maintained of services provided to individual adult day care participants.

   b. Individuals having a communicable disease shall not participate in the adult day care program.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02

**33-07-03.2-26. Secured units.**

Secured units, such as those designed for residents with Alzheimer's disease or other dementias, must comply with the following:

1. Prior to admission or within seven days of admission, a multidisciplinary team shall evaluate the appropriateness of a resident's placement in a secured unit. The multidisciplinary team shall, at a minimum, consist of a registered nurse and a licensed social worker who will be providing service to the resident in the secured unit, the resident's licensed health care practitioner, and the resident or the individual who has legal status to act on behalf of the resident;

2. Licensed health care practitioner orders for placement in a secured unit must be documented in the resident's record and must be reviewed during the licensed health care practitioner's regular visits;

3. Placement in a secured unit may not be used as a punishment or for the convenience of the staff; and

4. A resident in a secured unit shall have access to the same services as other residents in the facility including provisions for routine and ongoing access to the outdoors as appropriate based on the resident's past history, personal preferences, and current condition.

**History:** Effective July 1, 1996.
**General Authority:** NDCC 23-01-03, 28-32-02
**Law Implemented:** NDCC 23-16-01, 28-32-02