

NORTH DAKOTA

Citation

Basic Care Facility, NDCC Chapter 23-09.3, NDAC Chapter 33-03-24.1
Assisted living residences, Chapter 50-32 (State Law); Chapter 75-03-34
(Administrative Rules)

General Approach and Recent Developments

A task force was formed to review rules for basic care facilities. Rather than revise the basic care facility rules, the Legislature decided to develop assisted living facility rules. Legislation took effect on August 1, 2003 replacing registration with a new licensing category. The Department of Human Services oversees licensing and rules for assisted living residences. Administrative rules were revised in August 2003 which further defines assisted living. The new rules went into effect in March 2004.

The new category addresses facilities marketed as assisted living that were previously not licensed. Private facilities were not required to be licensed as basic care facilities, as they were viewed as landlord/Admission/retention relationships. However, as more services were provided to individuals residing in such facilities, the State decided to promulgate regulations in 2001 in order to have some oversight of the industry. The State will continually review the regulations and make revisions as necessary as their knowledge of the industry grows.

Legislation authorizing coverage of Medicaid personal care services under the state plan in basic care facilities passed in 2001 (HB 1115). A moratorium on new basic care facilities is still in effect. However, dementia care facilities are exempt from the moratorium. Applications have been received from seven facilities. Four facilities have been approved by the State with 72 new dementia beds. The Department of Health establishes rules for basic care facilities.

Category	SUPPLY					
	2004		2002		2000	
	Facilities	Units	Facilities	Units	Facilities	Units
Basic care facilities	46	1,490	47	1,490	43	1,436
Assisted living facilities	42	1,361	NA	NA	NA	NA

Definition

Assisted living facility means any building or structure containing a series of living units operated as one entity to provide services for five or more individuals who are not related by blood or marriage to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate an individual's needs and abilities to maintain as much independence as possible. It does not include a

congregate housing facility or a facility that is licensed as a basic care facility. Assisted living facilities must be licensed.

Basic care residences means “a residence licensed by the Department...that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the residence and who, because of impaired capacity for independent living, require health, social or personal care services, but do not require regular 24-hour medical or nursing services, and makes response staff available at all times to meet the 24-hour scheduled and unscheduled needs of the individual; or, is kept, used, maintained, advertised, or held out publicly as an Alzheimer’s, dementia, or specialty memory care facility 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.”

The primary differences between assisted living residences and basic care facilities are in the way services are defined and delivered. In assisted living residences, tenants enter into a lease agreement with the residence, and purchase services a la carte based on their needs. The residence must disclose what services it will provide and the cost of those services. In basic care facilities, a resident purchases a bundled package which includes room, board, and services. Each resident may have different levels of need however the package of services is the same for everyone.

Unit Requirements

Assisted living residences: There are no unit requirements for assisted living residences. New rules define a living unit as a portion of an assisted living facility occupied as the living quarters of an individual who has entered into a lease agreement with an assisted living facility.

Basic care facility: Single rooms provide 100 square feet, double rooms at least 80 square feet per bed, and rooms for three or more, 70 square feet per bed. At least one toilet is required for every four residents, and one bath for every 15 residents.

Admission/Retention Policy

Assisted living. Participants in the Service Payments for Elderly and Disabled (SPED) program must have needs that can be met through the program. To qualify for services, residents must have impairments in four ADLs or impairments in five IADLs totaling eight points (or six points if the person lives alone) and cannot be eligible for the Medicaid HCBS waiver.

Basic care facility. While an admission policy is not outlined in the regulations, a resident is defined as 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, 24-hour a day on-site availability of nursing or medical care.

Nursing Home Admission Policy

In addition to criteria related to rehabilitative and medical needs, individuals are eligible for admission to a nursing facility if they need constant help 60 percent of the time with at least two ADLs (toileting, eating, transferring, and locomotion). Constant help means continual presence or help without which the activity would not be completed; the individual has dementia that requires a structured, professionally staffed environment; or the individual's needs help with two or more of the following: administration of medications, constant help 60 percent of the time with one of the above ADLs, feeding tubes, decubitus care, one or more unstable medical conditions requiring specific, individual services on a regular or continuing basis under the care of a registered nurse, or the person has restorative potential.

Services

Assisted living residences. State law allows assisted living facilities to provide health services to individuals for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability. Assisted living facilities must provide or assure the coordination of individualized support services which means services provided to individuals who may require assistance with activities of daily living of bathing, dressing, toileting, transferring, eating, medication management, and personal hygiene. The State does not require a minimum level of services to be provided to tenants residing in assisted living. Rather, tenants in assisted living facilities purchase services a la carte. Room is separate from food services, personal care, medication management, transportation, etc. A tenant pays for the services he or she desires, much like an individual living in his or her own home.

Basic care facilities provide a bundled set of services which includes room and board and personal care (ADLs, IADLs, and observation and documentation of changes in physical, mental, and emotional functioning, as needed); arrangements to seek health care when needed; arrangements for transfer and transportation as needed; assistance with functional aids, clothing, and personal effects as well as maintenance of personal living quarters; assistance with medication administration; and social services. Nursing services must be available to meet the needs of residents either by the facility directly or arranged by the facility through an appropriate individual or agency.

Basic care facilities may also provide adult day care and respite care services under the Medicaid waiver.

Dietary

Assisted living residences. There are no dietary requirements.

Basic care facilities. A minimum of three meals and snacks between meals and in the evening must be served that meet the recommended dietary allowances of the Food and Nutrition Board of the National Research Council. If the facility accepts people who need prescribed diets, those diets must be provided and planned and reviewed by a professional, consistent with rules set by the Dietetic Practice Board.

Agreements

Assisted living facilities must maintain a written agreement with each tenant that includes the rates for rent and services provided to the tenant, payment terms, refund policies, rate changes, tenancy criteria, and living unit inspections. Additionally, each facility must include in the resident agreement specific language regarding when a tenant must be discharged due to care needs beyond what the facility can safely provide. Agreements or contracts between the resident and the facility must be kept in the resident's record.

Provisions for Serving People with Dementia

Basic care facilities. In-service training must cover mental and physical health needs including behavior problems.

Medication Administration

Assisted living residences. Facilities must meet other state requirements and regulations for medication administration, including the Nurse Practice Act.

Basic Care Facilities must make available medication administration services. Aides who have passed required training may administer medications under supervision from a registered nurse.

Medicaid waiver program. The State's nurse practice act allows assistance with self-administration but not the direct administration except by licensed staff. No separate requirements outside the nurse practice act are included.

Public Financing

Assisted living facilities and basic care facilities. Tenants residing in licensed assisted living facilities are treated the same way as individuals residing in their own homes in relation to publicly-funded services. As a result, tenants in assisted living facilities may receive Medicaid waiver services if they are Medicaid eligible and meet nursing home level of care. Funding is also available through two state-funded programs: SPED and the expanded SPED.

The Medicaid waiver program is available to eligible tenants in assisted living facilities only. The Medicaid waiver program is not available to residents living in basic care facilities. Tenants in assisted living residences are able to receive any of the

services provided by the waiver program including personal care, respite, transportation, and adult day services. The State does not use the 300 percent eligibility percent option. The medically needy income standard is \$500. Low-income residents retain \$375 to pay for room and board and \$60 for personal needs and any remaining funds are applied to the cost of services. Facilities receive a maximum rate of \$80 per day, or a monthly cap of \$2,400 per 30-day month for services. Rates are based upon the tenant's plan of care. This rate covers direct services only and does not include reimbursement for case management. Room and board is not included in the charges allowed for Medicaid beneficiaries. Family supplementation is allowed.

The expanded SPED program is a companion program to the basic care program and serves eligible persons living in their own home. Participants must be Medicaid-eligible, and are moderately impaired, typically requiring some assistance with ADLs, supervision or a structured environment. Participants served by the expanded SPED program are not as impaired as participants in the SPED program or in nursing facilities.

The SPED program serves participants who are frailer than individuals in the expanded SPED program, but not nursing home eligible. Participants must meet program financial eligibility requirements including a \$50,000 liquid asset test, but do not have to be Medicaid eligible. Participants may be required to pay a portion of the costs of care. Contributions are based upon income levels and a sliding fee scale. Facilities receive a maximum rate for services of \$40 per day, or a monthly cap of \$1,200 per 30-day month for both the SPED and expanded SPED programs. Rates are based upon the tenant's plan of care. A point system is used to convert unmet service functional needs to a rate. (See table below.) The total points are multiplied by a factor of eight and divided by 30 to obtain a monthly payment rate.

The State is in the process of revising the point system (table below). Some point factors will go up, and some will go down based upon a retrospective review of plans of care and determination that some services take more time than others. The State anticipates the new point system will go into effect May 1, 2004.

MEDICAID PARTICIPATION					
2004		2002		2000	
Facilities	Participation	Facilities	Participation	Facilities	Participation
42	31*	NR	NR	6	47

* **NOTE:** Not all facilities contracting with Medicaid were serving beneficiaries.

Nursing Home Conversions

A conversion program was implemented in 2000. The State spent approximately \$3.9 million from July 1, 1999 to June 30, 2003 to develop alternatives to nursing facility care. This includes both loans and grants to 20 facilities. The legislature did not provide any additional funds for the FY 2003-2005 biennium.

Staffing

Assisted living. Staff must be able to deliver the necessary services required by plans of care.

Basic care facilities. There must be awake staff on duty 24 hours a day.

Training

Administrators of basic care facilities must attend at least 12 hours of continuing education annually. No other requirements are stated.

Basic care facilities. The facility shall design, implement, and document educational programs to orient new employees and develop and improve employees' skills to carry out their job responsibilities. On an annual basis, all employees shall receive in-service training in at least the following: fire and accident prevention and safety; mental and physical health needs of the residents, including behavior problems; prevention and control of infections, including universal precautions; and resident rights. The staff responsible for food preparation shall attend a minimum of two dietary educational programs per year. Staff responsible for activities shall attend a minimum of two activity-related educational programs per year.

Background Check

Basic care facilities: Each facility's personnel policies must include checking state registries and licensure boards prior to employment for findings of inappropriate conduct, employment, disciplinary actions, and termination.

Monitoring

Assisted living residences. The Department receives complaints by and on behalf of tenants. The Department must forward the complaints to the appropriate agency, entity, or program for investigation. The State contracts with the State Ombudsman Program for oversight and monitoring of assisted living facilities.

Basic care facilities. On-site, unannounced surveys are conducted by the Department to determine compliance with regulations. Plans of correction must be developed by the facility if deficiencies are found. Corrections must be completed within 60 days of the survey completion date unless the Department has approved an alternative schedule. The Department will follow up on all plans of correction. Enforcement actions include a ban or limitation on admissions, suspension or revocation of license, or denial of license.

Fees

The registration fee for assisted living facilities is \$75 annually. As of January 2004, basic care facilities must pay a \$10 per bed licensing fee.

NORTH DAKOTA POINT SYSTEM			
Activity	Value	Activity	Value
Taking medication	1	Foot care	10
Temperature\pulse\respiration\ blood pressure	1	Nail care	10
Managing money	1	Changing dressings	10
Communication	1	Apply elastic bandage	10
Shopping	15	Care of prosthetic	10
Housework	10	Medical gases	10
Laundry	10	Meal preparation	20
Mobility	6	Exercise	20
Transportation	6	Water bath/heat	20
Bathing	10	Ostomy care	20
Teeth/mouth care	20	Bowel program	20
Dress/undress	15	In-dwelling catheter	20
Toileting	15	Bronchial drainage	20
Transfer	10	Feeding/eating	20
Continence	15	Supervision level I	15
Eye care	10	Supervision level II	30
Skin care	10		

STATE RESIDENTIAL CARE AND ASSISTED LIVING POLICY: 2004

Files Available for This Report

Cover, Table of Contents, and Acknowledgments

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SECTION 1. Overview of Residential Care and Assisted Living Policy

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SECTION 2. Comparison of State Policies

HTML <http://aspe.hhs.gov/daltcp/reports/2005/04alcom2.htm>
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SECTION 3. State Summaries (All States)

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