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.

33-07-03.2-03. APPLICATION FOR AND ISSUANCE OF 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...

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

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.

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.
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.

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.

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.

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 timeframes 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.

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.
CHAPTER 33-07-06
NURSE AIDE TRAINING, COMPETENCY EVALUATION, AND REGISTRY

33-07-06-02. Nurse aide training.
1. Any nurse aide employed by a nursing facility or pursuing nurse aide certification and entry on the nurse aid registry must successfully complete a department-approved training program consisting of a minimum of seventy-five hours and a department-approved competency evaluation or a department-approved competency evaluation.
2. Nurse aides employed by nursing facilities pursuing nurse aide certification must complete a minimum of sixteen hours of classroom training in the following areas from a department-approved nurse aide training program prior to any hands-on contact with residents or patients. The areas are:
   a. Communication and interpersonal skills;
   b. Infection control;
   c. Safety and emergency procedures, including the Heimlich maneuver;
   d. Promoting residents’ independence; and
   e. Respecting residents’ rights.
3. The remainder of the seventy-five hour approved training and competency evaluation program must be completed within four months of the date of first employment in the facility as a nurse aide and must include at least sixteen hours of supervised practical training.
4. Nurse aides may not perform tasks for which competence has not been determined unless under the direct supervision of a licensed nurse.
5. Nurses aides trained and determined proficient by the instructor to provide specific services to residents who have not completed the competency evaluation program shall provide these services under the general supervision of a licensed or registered nurse.
6. The nurse aide training program must ensure that nurse aides employed by or having an offer of employment from a nursing facility are not charged for any portion of the nurse aide training program including fees for textbooks or other required course materials.

33-07-06-03. Nurse aide competency evaluation programs.
1. The department-approved competency evaluation program must allow a nurse aide the option of establishing competency through written or oral and manual skills examination.
2. The written or oral examination must address all areas required in the department-approved training program.
3. The written or oral examination must be developed from a pool of test questions, only a portion of which may be utilized in any one examination.
4. The competency evaluation program must include a demonstration of the randomly selected tasks the individual will be expected to perform as part of the individual’s function as a nurse aide.
5. The competency evaluation program must provide for a system that prevents disclosure of both pool questions and the individual competency evaluations.
6. The competency evaluation program must ensure that nurse aides employed by or having an offer of employment from a facility are not charged for any portion of the competency evaluation program.

33-07-06-04. Administration of competency evaluation.
1. The competency evaluation must be administered and evaluated by the department or a department-approved entity that is neither a skilled nursing facility or a nursing facility licensed by the department.
2. The entity that administers the competency evaluation must advise the nurse aide in advance that a record of the successful completion of the evaluation will be included on the department’s nurse aide registry.
3. The skills demonstration portion of the test must be administered in the facility or laboratory setting comparable to the setting in which the nurse aide will function.
4. The skills demonstration portion of the test must be administered and evaluated by a registered nurse with at least one year of experience in providing care for the elderly or chronically ill of any age.
5. The department may permit the written or oral examination to be proctored by facility personnel if the department determines that the procedure adopted assures the competency evaluation is:
   a. Secure from tampering.
   b. Standardized and scored by a testing, educational, or other organization approved by the department.
   c. Exempt from any scoring by facility personnel.
6. The department shall retract the right to proctor nurse aide competency evaluations from facilities in which the department finds any evidence of impropriety, including tampering by facility personnel.

33-07-06-05. Withdrawal and approval of training program status.
1. The department shall withdraw approval of a facility based program when a determination has been made that the facility has been found to be out of compliance with significant federal certification or state licensure requirements. The facility may apply for reinstatement after providing evidence of remaining in compliance with significant requirements for a period of twenty-four consecutive months.
2. The department shall withdraw approval of a nurse aide training and competency evaluation program if the entity providing the program refuses to permit unannounced visits by the department to ascertain compliance with program requirements.
3. Approval of a nurse aide training and competency evaluation program shall be granted by the department for a period not to exceed two years.
4. The department may approve only nurse aide training and competency evaluation programs meeting at least the following criteria:
   a. Consists of no less than seventy-five hours of training.
   b. Includes training in at least the following subject areas:
      (1) Infection control.
      (2) Safety and emergency procedures.
      (3) Promoting resident or patient independence.
      (4) Respecting resident rights.
      (5) Basic nursing skills.
      (6) Personal care skills.
      (7) Mental health and social service needs.
      (8) Care of cognitively impaired residents or patients.
      (9) Basic restorative services.
      (10) Resident or patient rights.
(11) Communication and interpersonal skills.

33-07-06-06. Completion of the competency evaluation program.
1. To complete the competency evaluation successfully the individual shall, at a minimum, successfully demonstrate written or oral competence in the areas listed under subdivision b of subsection 4 of section 33-07-06-05 and successfully demonstrate competence in performing a random selection of personal care skills.
2. A record of successful completion of the competency evaluation for nurse aides seeking certification must be included in the nurse aide registry within thirty days of the date the individual was found to be competent.
3. If the individual fails to complete the evaluation satisfactorily, the competency evaluation program must advise the individual of the areas in which the individual was adequate, and that the individual has not more than three opportunities to take the examination.
4. If the individual seeking certification fails the examination on the third attempt, the individual must enroll in and complete a department approved training program prior to taking the competency evaluation again.

33-07-06-09. Registry renewal.
1. Registry status is limited to twenty-four months. Upon receipt of a completed renewal application, and verification of employment within the immediate past twenty-four months, the certified nurse aide will be issued a renewal certificate indicating current status.
2. An individual who has not performed at least eight hours of nursing or nursing-related services for pay within a continuous twenty-four month period, shall complete a department-approved training and competency evaluation program or a department-approved competency evaluation to obtain current registry status.