

## **CHAPTER 23-16 LICENSING MEDICAL HOSPITALS**

### **23-16-01. Licensure of medical hospitals and state hospitals.**

After July 1, 1947, no person, partnership, association, corporation, limited liability company, county or municipal corporation, or agency thereof, which maintains and operates organized facilities for the diagnosis, treatment, or care of two or more nonrelated persons suffering from illness, injury, or deformity or where obstetrical or other care is rendered over a period exceeding twenty-four hours, may be established, conducted, or maintained in the state of North Dakota without obtaining annually a license therefor in the manner hereinafter provided in sections 23-16-02 and 23-16-03. Chiropractic hospitals, sanatoriums, and hospitals such as those for unmarried mothers maintained and operated by the department of health and human services are not required to obtain a license under this chapter.

In the case of emergency or transfer beds attached to and forming a part of a licensed medical doctor's office, the department of health and human services has the right of inspection, but no license may be required under the provisions of this chapter when the number of such beds does not exceed four.

#### **23-16-01.1. Moratorium on expansion of long-term care bed capacity.**

1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic care beds to nursing facility beds or relicenses nursing facility beds delicensed after July 31, 2011, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, 2021, and July 31, 2023. A nursing facility may not delicense nursing facility bed capacity, relicense nursing facility bed capacity, convert licensed nursing bed capacity to basic care bed capacity, revert licensed basic care bed capacity back to nursing facility bed capacity, or otherwise reconfigure licensed nursing facility bed capacity more than two times in a twelve-month period.
2. Transfer of licensed nursing facility bed capacity from a nursing facility to another entity is permitted. The nursing facility may transfer the bed capacity either as nursing facility bed capacity or basic care bed capacity. Transferred bed capacity must become licensed by an entity within seventy-two months of transfer. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the seventy-two-month period originally established at the time the nursing facility first transferred the licensed nursing facility bed capacity. The subsequent receiving entity must license the received bed capacity within the seventy-two-month period originally established at the time of the first transfer.
3. A nursing facility may convert licensed nursing facility bed capacity to basic care. If the converted beds remain in the same facility and are not transferred, the beds may revert to nursing facility status after one year of licensure as basic care beds.
4. Nursing facility beds that are converted to basic care may be transferred as basic care beds. However, upon the transfer, the basic care beds may not be relicensed as nursing facility beds.
5. If a federally recognized tribal nation acquires nursing facility beds, the tribal facility must meet state licensing requirements for those beds within seventy-two months of acquisition. A tribal facility may seek to participate in the medical assistance programs. Medical assistance payments may only be made to a Medicaid certified tribal facility that agrees to participate and adhere to all federal and state requirements of the medical assistance program, including participation, screening, ratesetting, and licensing requirements.
6. A nursing facility, upon prior written notice to the department of health and human services, may delicense a maximum of thirty percent of its licensed nursing facility bed capacity and have the delicensed nursing facility held for a period of forty-eight months. The total delicensed nursing facility bed capacity that may be held for a nursing facility at no time may be greater than fifty percent of the number of currently

licensed beds in the nursing facility. Delicensed nursing facility bed capacity in excess of fifty percent of the nursing facility's licensed capacity may not be held and is not eligible for the provisions of subsection 7. Delicensed bed capacity not sold or relicensed at the conclusion of the forty-eight-month holding period ceases to exist.

7. During the forty-eight-month holding period established at the time of delicensure, delicensed nursing facility bed capacity that is being held for the nursing facility may be:
  - a. Relicensed by the nursing facility. Relicensing of nursing facility bed capacity may not occur for six months from the time of delicensure.
  - b. Transferred to another entity as nursing facility bed capacity or basic care bed capacity. The receiving entity must license the transferred bed capacity as the type of bed capacity transferred within a seventy-two-month period established at the time of transfer. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the seventy-two-month period established at the time of transfer. The subsequent receiving entity must license the received bed capacity within the seventy-two-month period established at the time of transfer.
  - c. Licensed as basic care beds by the same facility. If the licensed basic care beds remain in the same facility and are not transferred, the beds may be reverted to licensed nursing facility bed capacity after twelve months.
8. Notwithstanding any other provision of this section, a nursing facility bed transferred before July 1, 2019, must be relicensed by the receiving entity within a seventy-two-month period established at the time of transfer.
9. Notwithstanding any other provision of this section, a nursing facility bed in the layaway program before July 1, 2019, may remain in the program for forty-eight months from the time the bed was first laid away.

#### **23-16-02. Existing medical hospitals.**

Institutions subject to this chapter which are already in operation at the time of enactment of this chapter must be given a reasonable time, not to exceed one year from the date of the enactment of this chapter, within which to comply with the rules, regulations, and minimum standards provided for herein.

#### **23-16-03. Application for license - License fee.**

Applicants for license shall file applications under oath with the department of health and human services upon forms prescribed. Applications must be signed by the owner, or in the case of a corporation by two of its officers, or in the case of a county or municipal unit by the head of the governmental department having jurisdiction over it. Applications must set forth the full name and address of the owner of the institution for which license is sought, the names of the persons in control thereof, and such additional information as the department of health and human services may require, including affirmative evidence of ability to comply with such minimum standards, rules, and regulations as may be lawfully prescribed pursuant to this section. An application for a license for facilities not owned by the state or its political subdivisions must be accompanied by the following fees:

1. For each licensed acute care bed, ten dollars.
2. For each licensed skill care bed, ten dollars.

License fees collected pursuant to this section must be deposited in the department of health and human services services operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

#### **23-16-04. Licenses.**

Licenses issued hereunder expire one year after date of issuance or upon such uniform dates annually, as the department of health and human services may prescribe by rule. Licenses must be issued only for the premises and persons named in the application and are

not transferable or assignable. Licenses must be posted in a conspicuous place on the licensed premises.

**23-16-05. Inspections, consultations, and approval of plans.**

The department of health and human services shall make or cause to be made such inspections as may be prescribed by regulation. The health council may prescribe by regulations that any licensee or prospective applicant desiring to make a substantial alteration or addition to its facilities or to construct new facilities shall, before commencing such alteration, addition, or new construction, submit plans and specifications therefor to the department of health and human services for preliminary inspection, recommendation, and approval.

**23-16-06. Authority to issue, deny, suspend, or revoke licenses.**

The department of health and human services shall issue licenses for the operation of institutions subject to this chapter which are found to comply with the provisions of this chapter and rules adopted by the department. The state health officer with the approval of the health council may, after a hearing, suspend or revoke licenses issued hereunder on any of the following grounds:

1. Violation of any of the provisions of this chapter or the rules and regulations promulgated pursuant thereto.
2. Permitting, aiding, or abetting the commission of any unlawful act.
3. Conduct or practices detrimental to the health or safety of patients and employees of said institutions; provided that this provision may not be construed to have any reference to practices authorized by law; and provided further that no license may be suspended or revoked for any trivial violation.

No application for a license may be denied, or any licenses suspended or revoked, except after a hearing before the health council held pursuant to written notice to the applicant or licensee, served by registered or certified mail, which notice must concisely state the grounds for such denial or for such proposed suspension or revocation and must fix the time and place of hearing which may not be less than thirty days after the date of the mailing of such notice. After such hearing, the council shall make an order, either denying the application for license or granting the same, or suspending or revoking such license, or dismissing the proceedings to suspend or revoke as the merits of the case warrant. The council shall send a copy of its order to the applicant or licensee by registered or certified mail, which must contain its findings and conclusions, and such order, except an order of dismissal, becomes final thirty days after the date of mailing unless the applicant or licensee appeals therefrom in the manner provided by section 23-16-10.

**23-16-07. Not applicable to certain laws.**

This chapter may not be construed in any way to restrict or modify any law pertaining to the placement and adoption of children or the care of unmarried mothers.

**23-16-08. Offering or advertising to dispose of infants prohibited.**

No hospital providing maternity care may in any way offer to dispose of any child or advertise that it will give children for adoption or hold itself out, directly or indirectly, as being able to dispose of children, however, such hospitals may inform an unmarried mother of child-placing agencies licensed by the department of health and human services.

**23-16-08.1. Access to pharmacist.**

Irrespective of the type of distribution system used, no person may refuse to allow a resident of a nursing home, as defined in subsection 3 of section 43-34-01, to choose a pharmacist of the resident's choice for the compounding and dispensing of drugs pursuant to chapter 43-15.

**23-16-09. Information confidential.**

Information other than reports relating to vital statistics received by the department of health and human services through inspection or otherwise, authorized under this chapter are confidential and may not be disclosed publicly except in a proceeding involving the question of license. No agent of the department of health and human services or of any board of health, may disclose individually identifiable health information of such an institution obtained in the course of a survey or inspection except in a judicial or administrative proceeding in response to an order of a court or administrative tribunal.

**23-16-10. Appeal.**

An appeal may be taken to the district court from any order of the state health officer or health council denying an application for a license to operate a medical hospital or related institution, or suspending or revoking a license, or from any order denying an application for a construction project. Any such appeal must be taken in the manner provided in chapter 28-32.

**23-16-11. Penalties.**

1. Any person establishing, conducting, managing, or operating any institution subject to this chapter, without first obtaining a license as required by this chapter, or who violates any of the provisions of this chapter is guilty of an infraction.
2. In addition to any criminal sanctions that may be imposed pursuant to law, any person maintaining or operating a nursing facility licensed by the department who is found guilty of knowingly violating any provision of this title or any rules adopted under this title, or any person maintaining or operating a nursing facility found to have deficiencies during a survey of the nursing facility, may be assessed a civil penalty not to exceed one thousand dollars for each violation and for each day the violation continues plus interest and any costs incurred by the department to enforce this penalty. This civil penalty may be imposed by a court in a civil proceeding or by the state health officer through an administrative hearing under chapter 28-32. If a civil penalty levied by the department after an administrative hearing is not paid within thirty days after a final determination that a civil penalty is owed, unless the determination of a civil penalty is appealed to a district court, the civil penalty and any costs incurred by the department to enforce the penalty may be withheld from payments due to the person or nursing facility from the department of health and human services. Any funds received as penalties must be applied to protect residents of the nursing facility, to relocate residents, to maintain operation of the nursing facility, and to reimburse residents for loss of personal funds.

**23-16-12. Injunction.**

The department of health and human services, in accordance with the laws of the state governing injunctions and other process, may maintain an action in the name of the state against any person, partnership, association, corporation, or limited liability company for establishing, conducting, managing, or operating any hospital within the meaning of the chapter without first having a license therefor as herein provided or without first obtaining from the department of health and human services written approval of plans and specifications for major alterations of, additions to, or construction of health facilities.

**23-16-13. Appropriation.**

Repealed by omission from this code.

**23-16-14. Participation in abortion - Not mandatory.**

No hospital, physician, nurse, hospital employee, nor any other person is under any duty, by law or contract, nor may such hospital or person in any circumstances be required to participate in the performance of an abortion, if such hospital or person objects to such abortion. No such person or institution may be discriminated against because the person or institution so objects. For purposes of this section, "abortion" means the act of using or prescribing any instrument,

medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable intrauterine pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the unborn child; remove a dead unborn child caused by spontaneous abortion; or treat a woman for an ectopic pregnancy.

**23-16-15. Umbilical cord blood donation.**

1. Unless it is medically inadvisable, a hospital shall allow a pregnant patient to arrange for the blood extracted from the umbilical cord of the patient's newborn child to be donated to a public cord blood bank. A patient who agrees to donate cord blood to a public cord blood bank may not be charged for the costs of collecting, storing, or transporting the cord blood.
2. A hospital is not required to collect cord blood if in the professional judgment of a licensed physician the collection of the cord blood would threaten the health of the mother or newborn child. This section does not require a hospital or hospital employee, including a physician, nurse, or other medical staff, to collect cord blood if the collection of cord blood conflicts with the bona fide religious practices and beliefs of the hospital or hospital employee. This section does not require a hospital to arrange for the donation of blood extracted from umbilical cords.

**23-16-16. Treatment of victims of sexual assault.**

1. As used in this section:
  - a. "Hospital" means an entity required to obtain a license under section 23-16-01.
  - b. "Sexual assault" has the same meaning as provided under section 12.1-20-07.
  - c. "Victim of sexual assault" means an individual who:
    - (1) States a sexual assault has been committed against the individual;
    - (2) Is accompanied by another individual who states a sexual assault has been committed against the accompanied individual; or
    - (3) Hospital personnel or a sexual assault nurse examiner have reason to believe is a victim of sexual assault.
2. A hospital may not require a victim of sexual assault to submit to a forensic examination or to report the alleged sexual assault to law enforcement.
3. A hospital without staff specially trained to perform a sexual assault forensic examination may coordinate with a community-based sexual assault nurse examiner nurse program or develop a sexual assault examiner nurse program to ensure all victims of sexual assault who want a sexual assault forensic examination or sexually transmitted infection treatment receive that examination or treatment.

**23-16-17. Air ambulances - Informed Decisions - Publication.**

1. Before a hospital refers a patient to an air ambulance service provider or initiates contact with an air ambulance service provider for air transport of the patient, the hospital shall inform the patient, or the patient's representative, of the air ambulance service provider's health insurance network status for the purpose of allowing the patient or the patient's representative to make an informed decision on choosing an air ambulance service provider or form of transportation.
2. A hospital is presumed in compliance with subsection 1 if the hospital provides the patient, or the patient's representative, the health insurance network status published by the insurance department under subsection 4.
3. A hospital is exempt from complying with this section if the hospital determines and documents that due to emergency circumstances, compliance might jeopardize the health or safety of the patient.

4. At least quarterly, the insurance department shall publish on the insurance department's website data regarding the health insurance network status of each air ambulance service provider authorized to operate in the state.

**23-16-18. Maintenance of certification.**

1. As used in this section:
  - a. "Continuing medical education" means continued postgraduate medical education required by the North Dakota board of medicine intended to educate medical professionals about new developments in the medical field.
  - b. "Maintenance of certification" means a process requiring periodic recertification examinations or other activities to maintain specialty medical board certification. Recertification may be provided by a medical professional organization, such as one or more of the medical specialty boards of the American board of medical specialties, the American osteopathic association, the national board of physicians and surgeons, or any other board a credentialing entity recognizes.
  - c. "Physician" means a physician licensed under chapter 43-17.
  - d. "Specialty medical board certification" means certification by a board specializing in one particular area of medicine and having requirements in addition to those the North Dakota board of medicine requires to practice medicine.
2. Except as provided in subsection 5, a physician may not be denied staff privileges or employment by a facility licensed under this chapter based solely on the physician's decision to not participate in maintenance of certification.
3. This section does not prevent a facility's credentialing committee from requiring a physician meet continuing medical education requirements as set by the physician's licensing board.
4. This section does not prohibit a facility licensed under this chapter from requiring a physician to undergo remedial or corrective courses or training as may be required by a quality improvement committee.
5. A facility licensed under this chapter may differentiate between physicians based on a physician's maintenance of certification if:
  - a. The facility's designation, certification, or accreditation is contingent on the facility requiring a specific maintenance of certification by physicians seeking staff privileges or credentialing at the facility and the differentiation is limited to those physicians whose maintenance of certification is required for the facility's designation, certification, or accreditation; or
  - b. The voting physician members of the facility's organized medical staff vote to authorize the differentiation and the facility's governing body approves the vote.
    - (1) The facility may establish terms applicable to the facility's differentiation, including appropriate grandfathering provisions, and allowing the differentiation to be rescinded at any time by a vote of the voting physician members of the facility's organized medical staff.
    - (2) This section may not be construed to require a new vote by the facility's medical staff.
    - (3) Notwithstanding paragraph 2, this section may not be construed to abrogate or supersede the ability of an organized medical staff and governing board of an individual facility to determine the facility's credentialing and privileging criteria with respect to board certification and the maintenance of certification requirements.
6. A facility licensed under this chapter may not consider maintenance of certification participation or status as a standard of care consideration in the course of a quality improvement assessment.