CHAPTER 23-09.3
BASIC CARE FACILITIES

23-09.3-01. Definitions.

As used in this chapter:

1. "Basic care facility" means a residence, not licensed under chapter 23-16 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 twenty-four-hour medical or nursing services and:
   a. Makes response staff available at all times to meet the twenty-four-hour per day scheduled and unscheduled needs of the individual; or
   b. Is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility.
2. "Department" means the state department of health.
3. "Services" includes responsibility for resident health and safety, assistance with activities of daily living and instrumental activities of daily living, provision of leisure, recreational, and therapeutic activities, supervision of nutritional needs, and medication administration.

23-09.3-01.1. Moratorium on expansion of basic care bed capacity.

1. Basic care beds may not be added to the state's licensed bed capacity during the period between August 1, 2015, and July 31, 2017, except when:
   a. A nursing facility converts nursing facility beds to basic care;
   b. An entity licenses bed capacity transferred as basic care bed capacity under section 23-16-01.1;
   c. An entity demonstrates to the state department of health and the department of human services that basic care services are not readily available within a designated area of the state or that existing basic care beds within a fifty-mile [80.47-kilometer] radius have been occupied at ninety percent or more for the previous twelve months. In determining whether basic care services will be readily available if an additional license is issued, preference may be given to an entity that agrees to any participation program established by the department of human services for individuals eligible for services under the medical assistance program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]; or
   d. The state department of health and the department of human services grant approval of new basic care beds to an entity. The approved entity shall license the beds within forty-eight months from the date of approval.
2. Transfers of basic care beds from one basic care facility to another entity is permitted. Transferred basic care beds must become licensed within forty-eight months of transfer. The entity receiving the transferred beds or any new facility may seek to participate in the basic care assistance program. If the entity can demonstrate that individuals can be cared for at a more independent level and that this service will delay entry into the nursing facility, the entity may be approved for basic care assistance funds.
3. If an Indian tribe acquires basic care beds, the tribal facility must meet state licensing requirements for those beds within forty-eight months of acquisition. A tribal facility may seek to participate in the basic care assistance program. Basic care assistance payments may only be made to a tribal facility that agrees to participate and adhere to all federal and state requirements of the basic care assistance program including participation, screening, ratesetting, and licensing requirements.

23-09.3-02. Residential areas - Nongeriatric persons.

A nursing home, intermediate care facility, basic care facility, or any combination of a nursing home, intermediate care facility, or basic care facility may establish residential areas specifically for inhabitation by nongeriatric persons subject to any reasonable rules adopted by the department.

23-09.3-03. Access to pharmacist.

Repealed by S.L. 2001, ch. 432, § 7.

23-09.3-04. Department to establish standards - Licensing - Inspection - Survey - Prosecute violations.

The department shall establish standards for basic care facilities. The department shall inspect all places and grant annual licenses to basic care facilities as conform to the standards established and comply with the rules prescribed, as provided in this chapter. The department shall implement a survey process for basic care facilities which for purposes of the life safety portions of the survey, all surveys must be announced; which for purposes of the health portions of the survey, half of the surveys must be announced; and which for purposes of complaints related to health and life safety, all surveys must be unannounced. As part of the survey process, the department shall develop, in consultation with basic care facilities, and shall implement a two-tiered system of identifying areas of noncompliance with the health portions of the survey. The department shall prosecute all violations of this chapter.

23-09.3-05. License required - Term - Revocation.

No person, institution, organization, limited liability company, or public or private corporation may keep, operate, conduct, or manage a basic care facility without holding a valid license issued by the department. The license is not valid for more than one year. Any license may be revoked by the department for violation of this chapter or the rules adopted by the department.

23-09.3-05.1. Application for license - License fee.

Applicants for a license shall file applications under oath with the state department of health upon forms prescribed. An application for a license for facilities not owned by the state or its political subdivisions must be accompanied by a fee of ten dollars per bed. License fees collected pursuant to this section must be deposited in the state department of health services operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

23-09.3-06. Injunction.

The department may apply to the district court of the county in which the basic care facility is located for, and the court has jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from establishing, conducting, managing, or operating any basic care facility without obtaining a license under this chapter.

23-09.3-07. Contents of license.

The license must show the name of the owner or manager of the basic care facility, its location, and the maximum number of persons that may be received and kept in the basic care facility at any one time.

23-09.3-08. Records kept by basic care facility.

A record of every individual admitted to any basic care facility must be kept at the place licensed by the owner or manager in the manner and form prescribed by the department.

23-09.3-08.1. Admission of residents to basic care facility - Restrictions.

A basic care facility may admit and retain only an individual for whom the facility provides, directly or through contract, appropriate services within the facility to attain or maintain the individual at the individual's highest practicable level of functioning. A basic care facility may

admit or retain only an individual whose condition and abilities are consistent with the national fire protection association 101 life safety code requirements.

23-09.3-09. Authority to adopt rules.

The department may adopt rules necessary to carry out its responsibilities under this chapter. Rules adopted by agencies prior to January 1, 1990, which relate to functions or agencies covered by this chapter, remain in effect until they are specifically amended or repealed by the department.

23-09.3-10. Rules on services to nongeriatric persons.

The department shall adopt rules under chapter 23-16 for patient and resident care and quality care review which are not in conflict with any federal laws, and as are necessary to ensure the appropriate medical, social, and psychological services to nongeriatric persons residing in a nursing home, intermediate care facility, basic care facility, or any combination of a nursing home, intermediate care facility, or basic care facility.

23-09.3-11. Department to furnish information when requested.

If called upon by any person, organization, corporation, limited liability company, or community interested in establishing a basic care facility, the department shall furnish information concerning the laws and rules governing operation of a basic care facility.

23-09.3-12. Penalty.

Any person who violates any provision of this chapter is guilty of a class B misdemeanor.