

March 19, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2070

Introduced by

Human Services Committee

(At the request of the Department of Health and Human Services)

1 A BILL for an Act to amend and reenact sections 50-10.2-01, 50-10.2-02, and 50-10.2-02.1, ~~and~~
2 ~~50-10.2-05~~ of the North Dakota Century Code, relating to the rights of health care facility
3 residents.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 50-10.2-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **50-10.2-01. Definitions.**

8 In this chapter, unless the context or subject matter otherwise requires:

- 9 1. "Authorized electronic ~~monitoring~~recording" means the placement and use of an
10 authorized electronic ~~monitoring~~recording device, by a resident or resident
11 representative, in the resident's room.
- 12 2. "Authorized electronic ~~monitoring~~recording device" means ~~video-surveillance cameras,~~
13 ~~monitoring devices, web-based cameras, video phones, or audio recording or~~
14 ~~transmitting devices, or a combination of these devices,~~a device that is installed in the
15 room of a resident which are designed to acquire, transmit, broadcast, interact, or is
16 intended to record or is recording and transmitting video, communications, or other
17 sounds occurring in the room. ~~The term does not include still cameras or devices used~~
18 ~~for the purpose of the resident having contact with another person but not for the~~
19 ~~purpose of electronically monitoring a resident.~~

- 1 3. "Conflict of interest" means any type of ownership in a facility or membership on the
- 2 governing body of a facility by a provider of goods or services to that facility or by a
- 3 member of that individual's immediate family.
- 4 4. "Department" means the department of health and human services.
- 5 5. "Facility" means a skilled nursing care facility, basic care facility, assisted living facility,
- 6 or swing-bed hospital approved to furnish long-term care services.
- 7 6. "Immediate family" means husband, wife, father, mother, brother, sister, son, daughter,
- 8 father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law,
- 9 stepchild, uncle, aunt, niece, nephew, or grandchild.
- 10 7. "Remodeling" means any alteration in structure, refurbishing, or repair that would:
- 11 a. Prevent the facility staff from providing customary and required care; or
- 12 b. Seriously endanger or inconvenience any resident with noise, dust, fumes,
- 13 inoperative equipment, or the presence of remodeling workers.
- 14 8. "Resident" means an individual residing in a facility.
- 15 9. "Resident representative" means a person authorized to act as a resident's agent
- 16 under power of attorney for health care or guardianship.
- 17 10. "Technology device" means a device capable of remote audio or video
- 18 communications which is used for the purpose of the resident having contact with
- 19 another person but not for the purpose of virtual monitoring or recording audio or video
- 20 of a resident and the resident's room. A technology device includes a cellular mobile
- 21 telephone used primarily for telephonic communication, an electronic tablet not used
- 22 for virtual monitoring or recording, and an assistive communication device.
- 23 11. "Virtual monitoring" means remote live action monitoring conducted without recording
- 24 of a resident by a third party via the placement and use of a virtual monitoring device
- 25 in the resident's room.
- 26 12. "Virtual monitoring device" means a device owned and operated by the resident or
- 27 resident representative placed in the resident's room which allows live action
- 28 monitoring without recording of a resident by a third party.
- 29 13. "Virtual visitation" means remote visitation between a resident and another individual
- 30 using a technology device.

1 **SECTION 2. AMENDMENT.** Section 50-10.2-02 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **50-10.2-02. Residents' rights - Implementation.**

4 1. All facilities shall, upon a resident's admission, provide in hand to the resident and a
5 member of the resident's immediate family or ~~any existing legal guardian of the~~
6 resident representative a statement of the resident's rights during the admission
7 process and while living in the facility. Within thirty days after admission, the statement
8 must be orally explained to the resident and, if the resident is unable to understand, to
9 the resident's immediate family member ~~or members and any existing legal guardian~~
10 ~~of the resident~~ representative, and thereafter annually so long as the resident remains
11 in the facility. The statement must include rights, responsibilities of both the resident
12 and the facility, and the facility rules governing resident conduct. ~~Facilities~~A facility
13 shall treat ~~residents~~a resident in accordance with provisions of the statement. The
14 statement must include provisions ensuring each resident the following minimum
15 rights:

- 16 a. The right to civil and religious liberties, including knowledge of available choices,
17 the right to independent personal decisions without infringement, and the right to
18 encouragement and assistance from the staff of the facility to promote the fullest
19 possible exercise of these rights.
- 20 b. The right to have private meetings, associations, and communications with any
21 person of the resident's choice within the facility.
- 22 c. The right to participate in the community.
- 23 d. The right of each resident, the resident's immediate family, any existing legal
24 guardian of the resident representative, friends, facility staff, and other persons to
25 present complaints on the behalf of the resident to the facility's staff, the facility's
26 administrator, governmental officials, or to any other person, without fear of
27 reprisal, interference, coercion, discrimination, or restraint. The facility shall adopt
28 a grievance process and make the process known to each resident and, if the
29 resident is unable to understand, to the resident's immediate family member or
30 members and any existing legal guardian of the resident. An individual making a

1 complaint in good faith is immune from any civil liability that otherwise might
2 result from making the complaint.

3 d.e. The right to send and receive unopened personal mail and electronic mail and
4 the right of access to and use of telephones and electronic devices for private
5 conversations.

6 e.f. The right to assured private visits, subject to restrictions to protect the health or
7 safety of the resident, by one's spouse, partner, or significant other, or if both are
8 residents of the same facility, the right to share a room, within the capacity of the
9 facility, unless sharing a room is not medically advisable as documented in the
10 medical records by the attending physician.

11 f.g. The right to manage one's own financial affairs if not under legal guardianship, or
12 to delegate ~~that~~the responsibility in writing to the administrator or manager of the
13 facility, but only to the extent of funds held in trust by the facility for the resident. If
14 such a trust is established, then a written quarterly accounting of any transactions
15 made on behalf of the resident must be furnished along with an explanation by
16 the facility to the resident or the person legally responsible for the resident.

17 g.h. The right to be fully informed in writing prior to or at the time of admission and
18 during one's stay, of services provided and the charges for those services,
19 including ancillary charges. ~~Residents, or their legal guardians, must be informed~~
20 ~~at least thirty days prior to any change in the costs or availability of the services.~~
21 ~~No facility may demand or receive any advance payment or gratuity to assure~~
22 admission.

23 h.i. The right to be adequately informed of one's medical condition and proposed
24 treatment and to participate in the planning of all medical treatment, including the
25 right to refuse medication and treatment, to be discharged from the facility upon
26 written request, and to be notified by the resident's attending physician of the
27 medical consequences of any such actions.

28 i.j. The right to have privacy in treatment and in caring for personal needs, ~~to use~~
29 ~~personal belongings, to have security in storing and using personal possessions,~~
30 and to have confidentiality in the treatment of personal and medical records. The

1 resident has the right to view, and authorize release of, any personal or medical-
2 records.

3 j-k. The right to keep and use personal possessions, including furnishings and
4 clothing as space permits, unless keeping or using the personal possession
5 would infringe upon the rights, health, or safety of another resident.

6 l. The right to be treated courteously, fairly, and with the fullest measure of dignity.

7 k-m. The right to be free from mental and physical abuse, neglect, and financial
8 exploitation, and the right to be free from physical or chemical restraint except in
9 documented emergencies or when necessary to protect the resident from injury
10 to self or to others. ~~In such cases, the restraint must be authorized and~~
11 ~~documented by a physician for a limited period of time and, if the restraint is a~~
12 ~~chemical one, it must be administered by a licensed nurse or physician. Except~~
13 ~~as provided in this subdivision, drugs or physical restraints may not be used or~~
14 ~~threatened to be used for the purposes of punishment, for the convenience of~~
15 ~~staff, for behavior conditioning, as a substitute for rehabilitation or treatment, or~~
16 ~~for any other purpose not part of an approved treatment plan.~~

17 l-n. The right not to be transferred or discharged except for:

18 (1) Medical reasons;

19 (2) The resident's welfare or ~~that of other residents~~ if the safety of an individual
20 in the facility who is endangered due to the clinical or behavioral status of
21 the resident;

22 (3) Nonpayment of one's rent or fees; ~~or~~

23 (4) A temporary transfer during times of remodeling; or

24 (5) The facility ceases to operate.

25 m-o. The right to receive at least a thirty-day written advance notice of any transfer or
26 discharge when the resident is being discharged to another facility or the
27 resident's own home, or when the resident is being transferred or discharged
28 because of a change in the resident's level of care; however, advance notice of
29 transfer or discharge may be less than thirty days if the resident has urgent
30 medical needs that require a more immediate transfer or discharge, or a more

1 immediate transfer or discharge is required to protect the health and safety of
2 residents and staff within the facility.

3 ~~n.p.~~ The right to refuse to perform services on behalf of the facility, unless agreed to
4 by the resident or legal guardian and established in the plan of care.

5 ~~e.g.~~ The right to a claim for relief against a facility for any violation of rights
6 guaranteed under this chapter.

7 ~~p.r.~~ The right to have each facility display a notice that the following information is
8 available for public review and make the information available on request:

9 (1) A complete copy of every inspection report, deficiency report, and plan of
10 correction the facility received during the previous ~~two~~three years.

11 (2) The facility's grievance process.

12 (3) A copy of the statement of ownership, board membership, and partners.

13 (4) A statement of ownership setting forth any conflict of interest in the
14 operation of the facility.

15 ~~e.s.~~ The right to a pharmacist of the resident's choice irrespective of the type of
16 medication distribution system used by the facility, and to not be charged a fee or
17 receive a financial incentive or disincentive for choosing a pharmacy other than
18 the facility's preferred pharmacy. The resident may not be charged for
19 repackaging if that cost can be included on the facility cost report.

20 ~~r.t.~~ The right to not be discriminated against by a facility in the admissions process or
21 in the provision of appropriate care on the basis of the resident's source of
22 payment to the facility. ~~Any applicant for admission to a facility who is denied~~
23 ~~admission must be given the reason for the denial in writing upon request.~~

24 ~~s.u.~~ The right of residents and their families to organize, maintain, and participate in
25 resident advisory and family councils.

26 ~~t.v.~~ The right of residents receiving services performed by a provider from outside the
27 facility to be informed, on request, of the identity of the provider.

28 2. If there is a change in the resident rights, laws, or regulations, the facility shall
29 promptly notify the resident, and, if the resident is unable to understand, a member of
30 the resident's immediate family or the resident representative.

- 1 3. For involuntary transfer and discharge actions taken by a facility, the written transfer or
2 discharge notice issued by the facility must include:
- 3 a. The reason for the transfer or discharge.
4 b. The effective date of transfer or discharge.
5 c. The location the resident is to be transferred or discharged to.
6 d. The name, mailing and electronic mail address, and telephone number of the
7 office of the state long-term care ombudsman.
- 8 4. The facility shall protect the resident from retaliation. The facility shall adopt a
9 grievance process and make the process known to each resident, the resident's
10 immediate family member, and the resident representative. A person making a
11 complaint in good faith is immune from any civil liability that otherwise might result
12 from making the complaint.
- 13 5. If a trust is established by the facility to hold the resident's funds, the facility shall
14 provide to the resident, resident representative, or an agent under a power of attorney
15 for financial decisions a written quarterly accounting of any transactions made on
16 behalf of the resident~~which includes,~~ including an explanation of the transactions by
17 the facility. The facility shall pay out in full,~~within thirty days, the:~~
- 18 a. A resident's personal funds deposited with the facility or refunds due to the
19 resident upon discharge or eviction within thirty days, and provide a final
20 accounting of those funds to the resident, or in the case of death, in accordance
21 with state law.
- 22 b. Refunds due as a result of an overpayment to the facility within thirty days from
23 the date the overpayment is discovered.
- 24 c. Other refunds due to the resident upon discharge, eviction, or death~~must be paid~~
25 ~~out in full~~ within thirty days from the resident's date of discharge from the facility.
- 26 6. The facility shall inform a resident, resident representative, an agent under a power of
27 attorney for financial decisions, or immediate family member, at least thirty days before
28 any change in the costs or availability of the services. A facility may not demand or
29 receive advance payment or gratuity to assure admission or for the resident to be
30 placed on a waiting list for admission.

1 7. A resident and the resident representative may view and authorize release of any
2 personal or medical records.

3 8. The use of a physical or chemical restraint in an emergency or ~~when~~if necessary to
4 protect the resident from injury to self or others must be authorized and documented
5 by a physician, nurse practitioner, or physician's assistant for a limited period of time. A
6 chemical restraint must be administered by a licensed nurse, physician, nurse
7 practitioner, or physician's assistant. Except as provided in this subsection, a drug or
8 physical restraint may not be used or threatened to be used for the purpose of
9 punishment, for the convenience of staff, for behavior conditioning, as a substitute for
10 rehabilitation or treatment, or for any other purpose not included in an approved
11 treatment plan.

12 9. Upon request, a facility shall provide an applicant for admission to a facility who is
13 denied admission the reason for the denial in writing. The facility shall note in the
14 written denial ~~when~~if the denial is based on the special characteristics or service
15 limitations of the facility.

16 10. A facility shall ensure a resident council meeting is attended by residents only or at the
17 invitation of a resident.

18 11. Waiver of any of the rights guaranteed by this chapter may not be made a condition of
19 admission to a facility or ongoing residence.

20 ~~3.12.~~ Each facility shall prepare a written plan and provide staff training to implement this
21 chapter.

22 ~~4.13.~~ The department shall develop and coordinate with the facility licensing and regulatory
23 agencies a relocation plan in the event a facility is decertified or unlicensed.

24 **SECTION 3. AMENDMENT.** Section 50-10.2-02.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **50-10.2-02.1. Authorized electronic monitoring - Penalty.**

27 1. A resident and the resident representative may treat the resident's living quarters as
28 the resident's home and, subject to rules to protect the privacy and safety of another
29 resident, may purchase and use a technology device of the resident's choice,
30 including a technology device that may facilitate virtual monitoring or virtual visitation
31 with family and other persons, provided operation and use of the technology device

1 does not violate an individual's right to privacy under state or federal law.

2 Subsections 3 through 12 apply if a technology device or a virtual monitoring device is
3 used to record.

4 2. A resident may use a device of the resident's choice that facilitates virtual monitoring,
5 provided:

6 a. The purchase, activation, installation, maintenance, repair, deactivation, and
7 removal of such device is at the expense of the resident; and

8 b. The device and ~~any~~ images obtained from the device are used by the resident
9 and any person communicating with the resident in a manner that does not
10 violate an individual's right to privacy under state or federal law.

11 3. A facility shall permit a resident or the resident representative to conduct authorized
12 electronic ~~monitoring~~recording of the resident's room through an authorized electronic
13 ~~monitoring~~recording device if:

14 a. The authorized electronic ~~monitoring~~recording device is placed in the resident's
15 room;

16 b. The electronic ~~monitoring~~recording device is placed in a fixed, stationary position;
17 ~~monitors~~records only the area occupied by the resident and not the area
18 occupied by the resident's roommate; and protects the privacy and dignity of the
19 resident;

20 c. The facility is given written notice of the placement and use which must include
21 an installation plan in compliance with the facility's standards and regulations the
22 facility ~~provides~~shall provide to the resident;

23 d. A video tape or recording created using an authorized electronic
24 ~~monitoring~~recording device records the date and time;

25 e. All costs, except for electricity, associated with the authorized electronic
26 ~~monitoring~~recording device, including installation, operation, removal, repairs,
27 room damage, and maintenance, are paid by the resident or resident
28 representative who initiated the use of the authorized electronic
29 ~~monitoring~~recording device; and

30 f. A signed authorization for the disclosure of protected health information, as
31 defined by title 45, Code of Federal Regulations, part 160, section 103, compliant

1 with the federal Health Insurance Portability and Accountability Act of 1996 [Pub.
2 L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.] and consenting to the use of
3 the device is given by each resident occupying the same room, or by that
4 resident's resident representative in accordance with subsection 45.

5 ~~2. A facility that uses an authorized electronic monitoring device in compliance with this~~
6 ~~chapter is not guilty of a crime or civilly liable under this code for a violation of a~~
7 ~~resident's privacy.~~

8 ~~3.4.~~ The facility shall cooperate to accommodate the placement of the authorized
9 electronic ~~monitoring~~recording device, unless doing so would place undue burden on
10 the facility.

11 ~~4.5.~~ Before placing and using the authorized electronic ~~monitoring~~recording device ~~or~~
12 virtual monitoring device, a resident or resident representative shall obtain the signed
13 authorization of any other resident residing in the room in accordance with
14 subsection 43. The authorization may be signed by ~~that~~the resident's resident
15 representative.

16 a. The resident's or the resident representative's authorization may limit the use of
17 an authorized electronic ~~monitoring~~recording device to only audio
18 ~~monitoring~~recording or only video ~~monitoring~~recording and may limit the device's
19 time of operation, direction, and focus.

20 b. At any time, a resident or resident representative who did not request the
21 authorized electronic ~~monitoring~~recording device in the resident's room may
22 withdraw, in writing, the signed authorization for the use of the device. The
23 resident who requested the device or the resident's resident representative is
24 responsible for having the device disabled in compliance with the facility's
25 standards and regulations after receipt of the written withdrawal.

26 ~~5.6.~~ The facility shall make a reasonable attempt to accommodate a resident if a resident
27 or resident representative of a resident who is residing in a shared room wants to have
28 an authorized electronic ~~monitoring~~recording device placed in the room and another
29 resident living in the same shared room refuses to authorize the use of the authorized
30 electronic monitoring device.

- 1 ~~6-7.~~ If authorized electronic ~~monitoring~~recording is being conducted in the room of a
2 resident, and another resident will be moved into the room, the resident who
3 requested the device or the resident's resident representative is responsible for having
4 the existing authorized electronic ~~monitoring~~recording device disabled in compliance
5 with the facility's standards and regulations unless the new resident or the resident's
6 resident representative authorizes the device pursuant to subsections ~~13~~ and ~~45~~.
- 7 ~~7-8.~~ A facility may not refuse to admit an individual and may not remove a resident from a
8 facility because of authorized electronic ~~monitoring~~recording of a resident's room. A
9 person may not intentionally retaliate or discriminate against a resident for
10 authorization of authorized electronic ~~monitoring~~recording.
- 11 ~~8-9.~~ A facility clearly and conspicuously shall post a sign where authorized electronic
12 ~~monitoring~~recording is being conducted to alert and inform visitors.
- 13 ~~9-10.~~ A facility or staff of the facility may not access any video or audio recording created
14 through an authorized electronic ~~monitoring~~recording device placed in a resident's
15 room without the written consent of the resident or resident representative or court
16 order.
- 17 ~~10-11.~~ ~~A person~~An individual that intentionally hampers, obstructs, tampers with, or destroys
18 a recording or an authorized electronic ~~monitoring~~recording device ~~or virtual~~
19 ~~monitoring device~~ placed in a resident's room, without the express written consent of
20 the resident or resident representative, is subject to a class B misdemeanor. ~~A-~~
21 ~~person~~An individual that places an electronic ~~monitoring~~recording device in the room
22 of a resident or which uses or discloses a tape or other recording made by the device
23 may be guilty of a crime or civilly liable for any unlawful violation of the privacy rights of
24 another. In any civil proceeding, administrative proceeding, or survey process, material
25 obtained through the use of an authorized electronic ~~monitoring~~recording device may
26 not be used if ~~a person~~an individual intentionally hampered, obstructed, or tampered
27 with the material without the express written consent of the resident or resident
28 representative, or if the material was obtained through the operation of an electronic
29 ~~monitoring~~recording device which was not compliant with this section.
- 30 ~~11-12.~~ A person may not intercept a communication or disclose or use an intercepted
31 communication of an authorized electronic ~~monitoring~~recording device ~~or a virtual~~

1 monitoring device placed in a resident's room, without the express written consent of
2 the resident or the resident representative.

3 ~~— **SECTION 4. AMENDMENT.** Section 50-10.2-05 of the North Dakota Century Code is~~
4 ~~amended and reenacted as follows:~~

5 ~~— **50-10.2-05. Furnishing financial information.**~~

6 ~~— A facility may request that an applicant for admission, a resident of the facility, or the~~
7 ~~applicant's or resident's legal representative furnish financial information regarding income and~~
8 ~~assets, including information regarding any transfers or assignments of income or assets. A~~
9 ~~facility may deny admission to an applicant for admission who is unable to verify a viable~~
10 ~~payment source.~~