

**Testimony**  
**Engrossed Senate Bill No. 2070**  
**House Human Services Committee**  
**Representative Ruby, Chairman**  
March 11, 2025

Chairman Ruby and members of the House Human Services Committee, I am Karla Backman, State Long-Term Care Ombudsman, with the Department of Health and Human Services (Department). I am testifying today in support of Engrossed Senate Bill No. 2070, which was introduced at the request of the Department.

As the State Long-Term Care Ombudsman, I have the honor and responsibility to advocate on issues that affect the health, safety, welfare, and rights of residents of long-term care facilities. Through contacts with residents, family members, facility staff, etc. the Long-Term Care Ombudsman program learned of system issues having a negative impact for residents. In response the program explored addressing some of the issues through updates to the North Dakota resident rights law. That led to the introduction of this bill. Over the past months three stakeholder meetings were held with long-term care providers. One stakeholder meeting was held with family members and two meetings with residents. The residents and family members participating in the stakeholder groups were in support of these updates to NDCC 50-10.2.

The proposed changes in Section 1 of this Bill amends section 50-10.2-01 of the North Dakota Century Code on page 1, lines 9-19 to update with the terms and definitions for “authorized electronic monitoring” and “authorized electronic monitoring device” replacing monitoring with the word recording.

Page 2, lines 14-27 add definitions for “technology device”, “virtual monitoring”, “virtual monitoring device” and “virtual visitation.” The goal is to make a distinction between devices used for communication and visitation activities and those used for recording within a resident’s home within the facility.

Section 2 of this Bill, subsection 1 of 50-10.2-02 proposes to update language to use the defined term of resident representative on page 3, line 4 and line 8. The term, already defined in the law, includes a power of attorney agent for healthcare in addition to a legal guardian. There are clarifying clerical changes in the remainder of this subsection.

Page 3, line 20, subdivision c establishes the right of residents to participate in the community. For example, attend community activities, have coffee time with friends at a local restaurant, etc.

Page 3, line 22 is another update to language to use the defined term of resident representative with the same reasoning as explained above.

Page 3, lines 25-30 are moved to subsection 4, on page 7, lines 5-9 to clarify between residents’ rights and facility responsibilities in the execution of resident rights.

Page 4, lines 4 and 5, in subdivision f proposes a language change to include partners and significant others, in addition to spouses, in the right of residents to private visits and room sharing with them subject to restrictions to protect the health or safety of the resident.

Page 4, lines 11-14 were moved to page 7, lines 10-13 to group the sections showing the facility responsibilities in the execution of resident rights. Page 4 lines 17-20 were also moved to page 7, lines 20-24 for the same reason.

Page 4, lines 26-27, subdivision j are moved to subdivision k, page 5, lines 1-3, to separate out two different topics. There is also clarification added regarding the use of possessions, furnishings and clothing that is it limited to the space available with safety considerations also. The second sentence of subsection j, page 4, lines 29-30 was moved to subsection 7 on page 7, lines 25-26, to group facility responsibilities in the execution of resident rights.

Page 5, lines 5 and 6, subdivision m proposes adding in "neglect and financial exploitation." These terms were not previously included in this law. Lines 8-14, relating to the authorization and use of restraints, was moved to subsection 8 starting on page 7, lines 27-31 and page 8, lines 1-4 to group facility responsibilities in the execution of resident rights.

Page 5, lines 17-19 subdivision n add safety as a factor to the valid reasons for resident transfer or discharge. Also on page 5, line 22 adds facility closure as a valid discharge reason.

Page 6, line 8, subdivision r requires each facility to provide three years of survey reports, rather than just two, to match with federal regulations for skilled nursing homes.

Page 6, lines 14-17, subdivision s proposes language to strengthen the residents right to choose their pharmacy without financial penalty. The ombudsman program has heard from residents they are being given notice that if they choose a pharmacy other than the facility's preferred pharmacy,

they will be billed additional monies – up to \$250, or not receive a discount – essentially paying extra to stay with their pharmacy of choice. There is language prohibiting a charge for repackaging if that can be included in the facility cost report. This aligns with administrative guidelines posted by the ND Board of Pharmacy.

Page 6, lines 20 and 21, subdivision t are moved to page 8 subsection 9, lines 5-8 to group together facility responsibilities in the execution of resident rights.

As previously stated, a lot of the changes being proposed in subsections 2 through 10 currently exists in state law and are being moved to group together facility responsibilities in the execution of resident rights. I will discuss the additional changes being proposed in subsections 2 through 10.

Subsection 2, page 6, lines 26-28 proposes the requirement that prompt notice be given to residents, or the resident's immediate family and their resident representative when changes are made to the resident rights law. It is important any changes be made known for full exercise of rights.

Subsection 3, pages 6, lines 29-31 and page 7, lines 1-4 proposes new requirements in the information details that must be included on a transfer and discharge notice for it to be valid. This information will help assure best practice in transfer and discharge planning. Admission, transfer, discharge, and eviction has been the number three complaint made to the ombudsman program the past three federal fiscal years. Plus, transfer/discharge was one of the top three topics for information and referral the past three years as well.

The first sentence of subsection 4, page 7, line 5 adds language that the facility shall protect residents from retaliation.

Subsection 5, page 7, lines 14-19 propose a 30-day time frame for payout of resident personal funds held by a facility as well as a time frame for refunds to be processed and paid. It is hoped this reduces the delays and conflicts experienced by residents and their resident representatives in accessing the payout and refund monies.

Subsection 6, page 7, the final phrase on lines 23-24 is proposed so a resident can be added to a waiting list for admission without advance payment.

Subsection 7, page 7, line 25 proposes to add “and the resident representative” to give the right to view and authorize release of records to that decision maker also.

Subsection 9, page 8, lines 6-8, proposes the requirement that it is noted in the written denial when admission to a facility is denied due to special characteristics or service limitations. This helps residents and families in understanding an admission denial. Often when a written response is requested the typical answer is “can’t meet needs of the resident”. This additional language can provide insight to the resident and family more specifics about what would need to be different to gain admission to the facility.

Subsection 10, page 8, lines 9-10 is proposed language so resident council meetings for residents can provide a private forum to collectively share their concerns and plan for change advocacy. Typical practice for a resident

council meeting should be that it is attended by and run by residents unless they make the choice to include staff or other individuals. Attendance for anyone other than residents should be by invitation only.

Subsection 11, page 8, line 12 adds that a resident's stay in the facility isn't jeopardized if they refuse to waive any of their rights granted in chapter 50-10.2.

Section 3, amends section 50-10.2-02.1 on pages 8-11. Subsection 1, page 8, lines 20-25 is new language proposing that a resident can purchase and use a technology device for use within their home at the facility, and that it can be used for virtual monitoring and virtual visitation with the provision that privacy is protected for all residents. Lines 26 and 27 show how subsections apply if a technology device or a virtual monitoring device is used to record.

Subsection 2, page 8, lines 28-31 and page 9, lines 1-3 adds statements to allow virtual monitoring. Current technology allows for drop-in calls and viewing of a resident in their room without a recording function attached. This can be used to check in on the resident and virtual visitation.

The remainder of the subsections in section 50-10.2-02.1 (3-13), which are the original regulations for authorized electronic monitoring, remains the same except for changes to rename authorized electronic monitoring to electronic recording, and to change from the use of authorized electronic monitoring device to authorized electronic recording device. It is simply a change in terminology with no changes to the protections of privacy and confidentiality for all residents when recording devices are in use.

That concludes my testimony, and I will do my best to answer questions from the committee. Thank you much for your time.