

Sixty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2145

Introduced by

Senators K. Roers, Mathern, Patten

Representatives Keiser, Rohr, Westlind

1 A BILL for an Act to create and enact chapter 50-10.3 of the North Dakota Century Code,  
2 relating to access to long-term care facilities; and to declare an emergency.

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

4 **SECTION 1.** Chapter 50-10.3 of the North Dakota Century Code is created and enacted as  
5 follows:

6 **50-10.3-01. Definitions.**

7 As used in this chapter, unless the context clearly indicates otherwise:

- 8 1. "Declaration of disaster or emergency" means a disaster or emergency declared by  
9 the governor under chapter 37-17.1.
- 10 2. "Department" means the department of human services.
- 11 3. "Essential caregiver" means an individual identified by a resident of a long-term care  
12 facility or by the resident's designated decisionmaker to provide in-person physical,  
13 spiritual, or emotional support to the resident.
- 14 4. "Long-term care facility" means a skilled nursing facility, basic care facility, ~~assisted-~~  
15 living facility, or swing-bed hospital approved to furnish long-term services.

16 **50-10.3-02. Scope.**

17 This chapter does not supersede federal authority regarding long-term care facilities or  
18 prevent the department or state department of health from taking necessary actions to render  
19 the state eligible for federal funds or reimbursement services provided in long-term care  
20 facilities.

21 **50-10.3-03. Access to long-term care facilities for essential caregivers.**

- 22 1. The department, working jointly with the state department of health, the state long-  
23 term care ombudsman, residents and tenants, families of residents and tenants, and  
24 long-term care facility representatives, shall establish basic protocols to allow a

- 1           resident of a long-term care facility or the resident's designated decisionmaker  
2           designate one or more individuals as the resident's essential caregivers, including  
3           during a declaration of disaster or emergency.
- 4           a. If a declaration of disaster or emergency results in restricted access to a  
5           long-term care facility, the department shall review and update the protocols  
6           every thirty days during the period of restriction, including an assessment of the  
7           need for continuation of the restriction.
- 8           b. An essential caregiver shall meet the necessary qualifications to enter the long-  
9           term care facility to provide in-person physical, spiritual, or emotional support to a  
10           resident of a long-term care facility in accordance with the protocols established  
11           under this section.
- 12        2. The protocols must include:
- 13           a. Safety measures for an essential caregiver which may include restrictions on  
14           travel, enhanced testing for communicable diseases, and the necessary safety  
15           equipment required to protect the health and safety of the residents of the long-  
16           term care facility; and
- 17           b. Procedures to replace an essential caregiver due to necessary circumstances,  
18           including illness or death of the essential caregiver; and
- 19           c. A duration, not to exceed thirty days, during which a long-term care facility may  
20           enter a lockdown phase for the purpose of establishing safety measures for  
21           residents of the long-term care facility and essential caregivers.
- 22        **50-10.3-04. Additional safety requirements for residents of long-term care facilities.**
- 23        A long-term care facility may establish additional safety requirements to protect the  
24        residents of the long-term care facility if the requirements and cost are not so burdensome or  
25        onerous as to substantially prevent an essential caregiver from being able to provide in-person  
26        physical, spiritual, or emotional support to a resident of the long-term care facility. The facility  
27        may require an essential caregiver to provide personal protective equipment for the essential  
28        caregiver and undergo any related training or assume the cost of the personal protective  
29        equipment and any related training provided by the facility to allow the essential caregiver to  
30        provide in-person physical, spiritual, or emotional support to a resident of the long-term care  
31        facility.

1        **50-10.3-05. Suspension of access for essential caregivers.**

2        If a long-term care facility suspends access to the long-term care facility for an essential  
3 caregiver who violates the protocols established under section 50-10.3-03, the long-term care  
4 facility shall allow the resident, or the resident's designated decisionmaker, to immediately  
5 designate a replacement essential caregiver.

6        **50-10.3-06. Liability.**

7        A long-term care facility, facility employee, or facility contractor that, in good faith,  
8 implements or complies with this chapter may not be held civilly liable for damages, including  
9 punitive damages, for any act or omission related to the implementation of this chapter. This  
10 section does not apply to any act or omission that constitutes gross negligence or willful or  
11 wanton misconduct.

12        **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

