

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, 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.~~
- 20 3. "Conflict of interest" means any type of ownership in a facility or membership on the
21 governing body of a facility by a provider of goods or services to that facility or by a
22 member of that individual's immediate family.

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

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

1 **50-10.2-02. Residents' rights - Implementation.**

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

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

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

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

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

15 t-n. The right not to be transferred or discharged except for:

16 (1) Medical reasons;

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

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

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

22 (5) The facility ceases to operate.

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

- 1 b. The effective date of transfer or discharge.
- 2 c. The location the resident is to be transferred or discharged to.
- 3 d. The name, mailing and electronic mail address, and telephone number of the
4 office of the state long-term care ombudsman.
- 5 4. The facility shall protect the resident from retaliation. The facility shall adopt a
6 grievance process and make the process known to each resident, the resident's
7 immediate family member, and the resident representative. A person making a
8 complaint in good faith is immune from any civil liability that otherwise might result
9 from making the complaint.
- 10 5. If a trust is established by the facility to hold the resident's funds, the facility shall
11 provide to the resident, resident representative, or an agent under a power of attorney
12 for financial decisions a written quarterly accounting of any transactions made on
13 behalf of the resident which includes an explanation of the transactions by the facility.
14 The facility shall pay out in full, within thirty days, the resident's personal funds
15 deposited with the facility or refunds due to the resident upon discharge or eviction,
16 and provide a final accounting of those funds to the resident, or in the case of death, in
17 accordance with state law. Other refunds due to the resident upon discharge, eviction,
18 or death must be paid out in full within thirty days from the resident's date of discharge
19 from the facility.
- 20 6. The facility shall inform a resident, resident representative, an agent under a power of
21 attorney for financial decisions, or immediate family member, at least thirty days before
22 any change in the costs or availability of the services. A facility may not demand or
23 receive advance payment or gratuity to assure admission or for the resident to be
24 placed on a waiting list for admission.
- 25 7. A resident and the resident representative may view and authorize release of any
26 personal or medical records.
- 27 8. The use of a physical or chemical restraint in an emergency or when necessary to
28 protect the resident from injury to self or others must be authorized and documented
29 by a physician, nurse practitioner, or physician's assistant for a limited period of time. A
30 chemical restraint must be administered by a licensed nurse, physician, nurse
31 practitioner, or physician's assistant. Except as provided in this subsection, a drug or

1 physical restraint may not be used or threatened to be used for the purpose of
2 punishment, for the convenience of staff, for behavior conditioning, as a substitute for
3 rehabilitation or treatment, or for any other purpose not included in an approved
4 treatment plan.

5 9. Upon request, a facility shall provide an applicant for admission to a facility who is
6 denied admission the reason for the denial in writing. The facility shall note in the
7 written denial when the denial is based on the special characteristics or service
8 limitations of the facility.

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

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

13 ~~3-12.~~ Each facility shall prepare a written plan and provide staff training to implement this
14 chapter.

15 4-13. The department shall develop and coordinate with the facility licensing and regulatory
16 agencies a relocation plan in the event a facility is decertified or unlicensed.

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

19 **50-10.2-02.1. Authorized electronic monitoring - Penalty.**

20 1. A resident and the resident representative may treat the resident's living quarters as
21 the resident's home and, subject to rules to protect the privacy and safety of another
22 resident, may purchase and use a technology device of the resident's choice,
23 including a technology device that may facilitate virtual monitoring or virtual visitation
24 with family and other persons, provided operation and use of the technology device
25 does not violate an individual's right to privacy under state or federal law.

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

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

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

- 1 ~~3-4.~~ The facility shall cooperate to accommodate the placement of the authorized
2 electronic ~~monitoring~~recording device, unless doing so would place undue burden on
3 the facility.
- 4 ~~4-5.~~ Before placing and using the authorized electronic ~~monitoring~~recording device or
5 virtual monitoring device, a resident or resident representative shall obtain the signed
6 authorization of any other resident residing in the room in accordance with
7 subsection ~~4-3~~. The authorization may be signed by that resident's resident
8 representative.
- 9 a. The resident's or the resident representative's authorization may limit the use of
10 an authorized electronic ~~monitoring~~recording device to only audio
11 ~~monitoring~~recording or only video ~~monitoring~~recording and may limit the device's
12 time of operation, direction, and focus.
- 13 b. At any time, a resident or resident representative who did not request the
14 authorized electronic ~~monitoring~~recording device in the resident's room may
15 withdraw, in writing, the signed authorization for the use of the device. The
16 resident who requested the device or the resident's resident representative is
17 responsible for having the device disabled in compliance with the facility's
18 standards and regulations after receipt of the written withdrawal.
- 19 ~~5-6.~~ The facility shall make a reasonable attempt to accommodate a resident if a resident
20 or resident representative of a resident who is residing in a shared room wants to have
21 an authorized electronic ~~monitoring~~recording device placed in the room and another
22 resident living in the same shared room refuses to authorize the use of the authorized
23 electronic monitoring device.
- 24 ~~6-7.~~ If authorized electronic ~~monitoring~~recording is being conducted in the room of a
25 resident, and another resident will be moved into the room, the resident who
26 requested the device or the resident's resident representative is responsible for having
27 the existing authorized electronic ~~monitoring~~recording device disabled in compliance
28 with the facility's standards and regulations unless the new resident or the resident's
29 resident representative authorizes the device pursuant to subsections ~~4-3~~ and ~~4-5~~.
- 30 ~~7-8.~~ A facility may not refuse to admit an individual and may not remove a resident from a
31 facility because of authorized electronic ~~monitoring~~recording of a resident's room. A

1 person may not intentionally retaliate or discriminate against a resident for
2 authorization of authorized electronic ~~monitoring~~recording.

3 ~~8-9.~~ A facility clearly and conspicuously shall post a sign where authorized electronic
4 ~~monitoring~~recording is being conducted to alert and inform visitors.

5 ~~9-10.~~ A facility or staff of the facility may not access any video or audio recording created
6 through an authorized electronic ~~monitoring~~recording device placed in a resident's
7 room without the written consent of the resident or resident representative or court
8 order.

9 ~~10-11.~~ ~~A person~~An individual that intentionally hampers, obstructs, tampers with, or destroys
10 a recording or an authorized electronic ~~monitoring~~recording device or virtual
11 monitoring device placed in a resident's room, without the express written consent of
12 the resident or resident representative, is subject to a class B misdemeanor. ~~A-~~
13 ~~person~~An individual that places an electronic ~~monitoring~~recording device in the room
14 of a resident or which uses or discloses a tape or other recording made by the device
15 may be guilty of a crime or civilly liable for any unlawful violation of the privacy rights of
16 another. In any civil proceeding, administrative proceeding, or survey process, material
17 obtained through the use of an authorized electronic ~~monitoring~~recording device may
18 not be used if ~~a person~~an individual intentionally hampered, obstructed, or tampered
19 with the material without the express written consent of the resident or resident
20 representative, or if the material was obtained through the operation of an electronic
21 ~~monitoring~~recording device which was not compliant with this section.

22 ~~11-12.~~ A person may not intercept a communication or disclose or use an intercepted
23 communication of an authorized electronic ~~monitoring~~recording device or a virtual
24 monitoring device placed in a resident's room, without the express written consent of
25 the resident or the resident representative.

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

28 **50-10.2-05. Furnishing financial information.**

29 A facility may request that an applicant for admission, a resident of the facility, or the
30 applicant's or resident's legal representative furnish financial information regarding income and
31 assets, including information regarding any transfers or assignments of income or assets. A

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- 1 facility may deny admission to an applicant for admission who is unable to verify a viable
- 2 payment source.