

**FIRST ENGROSSMENT  
with House Amendments**

**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 of  
2 the North Dakota Century Code, relating to the rights of health care facility residents.

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

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

6 **50-10.2-01. Definitions.**

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

- 8 1. "Authorized electronic ~~monitoring~~recording" means the placement and use of an  
9 authorized electronic ~~monitoring~~recording device, by a resident or resident  
10 representative, in the resident's room.
- 11 2. "Authorized electronic ~~monitoring~~recording device" means ~~video surveillance cameras,~~  
12 ~~monitoring devices, web-based cameras, video phones, or audio recording or~~  
13 ~~transmitting devices, or a combination of these devices,~~a device that is installed in the  
14 room of a resident which ~~are designed to acquire, transmit, broadcast, interact, or is~~  
15 intended to record or is recording and transmitting video, communications, or other  
16 sounds occurring in the room. ~~The term does not include still cameras or devices used~~  
17 ~~for the purpose of the resident having contact with another person but not for the~~  
18 ~~purpose of electronically monitoring a resident.~~
- 19 3. "Conflict of interest" means any type of ownership in a facility or membership on the  
20 governing body of a facility by a provider of goods or services to that facility or by a  
21 member of that individual's immediate family.
- 22 4. "Department" means the department of health and human services.

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

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

29           **50-10.2-02. Residents' rights - Implementation.**

- 30           1. All facilities shall, upon a resident's admission, provide in hand to the resident and a  
31           member of the resident's immediate family or ~~any existing legal guardian of the~~

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

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

- 1 e-f. The right to assured private visits, subject to restrictions to protect the health or  
2 safety of the resident, by one's spouse, partner, or significant other, or if both are  
3 residents of the same facility, the right to share a room, within the capacity of the  
4 facility, unless sharing a room is not medically advisable as documented in the  
5 medical records by the attending physician.
- 6 f-g. The right to manage one's own financial affairs if not under legal guardianship, or  
7 to delegate ~~that~~the responsibility in writing to the administrator or manager of the  
8 facility, but only to the extent of funds held in trust by the facility for the resident. ~~If~~  
9 ~~such a trust is established, then a written quarterly accounting of any transactions~~  
10 ~~made on behalf of the resident must be furnished along with an explanation by~~  
11 ~~the facility to the resident or the person legally responsible for the resident.~~
- 12 g-h. The right to be fully informed in writing prior to or at the time of admission and  
13 during one's stay, of services provided and the charges for those services,  
14 including ancillary charges. ~~Residents, or their legal guardians, must be informed~~  
15 ~~at least thirty days prior to any change in the costs or availability of the services.~~  
16 ~~No facility may demand or receive any advance payment or gratuity to assure~~  
17 ~~admission.~~
- 18 h-i. The right to be adequately informed of one's medical condition and proposed  
19 treatment and to participate in the planning of all medical treatment, including the  
20 right to refuse medication and treatment, to be discharged from the facility upon  
21 written request, and to be notified by the resident's attending physician of the  
22 medical consequences of any such actions.
- 23 i-j. The right to have privacy in treatment and in caring for personal needs, ~~to use~~  
24 ~~personal belongings, to have security in storing and using personal possessions,~~  
25 and to have confidentiality in the treatment of personal and medical records. ~~The~~  
26 ~~resident has the right to view, and authorize release of, any personal or medical~~  
27 ~~records.~~
- 28 j-k. The right to keep and use personal possessions, including furnishings and  
29 clothing as space permits, unless keeping or using the personal possession  
30 would infringe upon the rights, health, or safety of another resident.
- 31 l. The right to be treated courteously, fairly, and with the fullest measure of dignity.

- 1           ~~k.m.~~   The right to be free from mental and physical abuse, neglect, and financial  
2                         exploitation, and the right to be free from physical or chemical restraint except in  
3                         documented emergencies or when necessary to protect the resident from injury  
4                         to self or to others. ~~In such cases, the restraint must be authorized and~~  
5                         ~~documented by a physician for a limited period of time and, if the restraint is a~~  
6                         ~~chemical one, it must be administered by a licensed nurse or physician. Except~~  
7                         ~~as provided in this subdivision, drugs or physical restraints may not be used or~~  
8                         ~~threatened to be used for the purposes of punishment, for the convenience of~~  
9                         ~~staff, for behavior conditioning, as a substitute for rehabilitation or treatment, or~~  
10                        ~~for any other purpose not part of an approved treatment plan.~~
- 11          ~~t.n.~~    The right not to be transferred or discharged except for:
- 12                        (1)    Medical reasons;
- 13                        (2)    The resident's welfare or ~~that of other residents~~ the safety of an individual in  
14                                 the facility who is endangered due to the clinical or behavioral status of the  
15                                 resident;
- 16                        (3)    Nonpayment of one's rent or fees; ~~or~~
- 17                        (4)    A temporary transfer during times of remodeling; or
- 18                        (5)    The facility ceases to operate.
- 19          ~~m.o.~~    The right to receive at least a thirty-day written advance notice of any transfer or  
20                        discharge when the resident is being discharged to another facility or the  
21                        resident's own home, or when the resident is being transferred or discharged  
22                        because of a change in the resident's level of care; however, advance notice of  
23                        transfer or discharge may be less than thirty days if the resident has urgent  
24                        medical needs that require a more immediate transfer or discharge, or a more  
25                        immediate transfer or discharge is required to protect the health and safety of  
26                        residents and staff within the facility.
- 27          ~~n.p.~~    The right to refuse to perform services on behalf of the facility, unless agreed to  
28                        by the resident or legal guardian and established in the plan of care.
- 29          ~~e.g.~~    The right to a claim for relief against a facility for any violation of rights  
30                        guaranteed under this chapter.

- 1           p-r. The right to have each facility display a notice that the following information is  
2           available for public review and make the information available on request:
- 3           (1) A complete copy of every inspection report, deficiency report, and plan of  
4           correction the facility received during the previous ~~two~~three years.
- 5           (2) The facility's grievance process.
- 6           (3) A copy of the statement of ownership, board membership, and partners.
- 7           (4) A statement of ownership setting forth any conflict of interest in the  
8           operation of the facility.
- 9           q-s. The right to a pharmacist of the resident's choice irrespective of the type of  
10          medication distribution system used by the facility, and to not be charged a fee or  
11          receive a financial incentive or disincentive for choosing a pharmacy other than  
12          the facility's preferred pharmacy. The resident may not be charged for  
13          repackaging if that cost can be included on the facility cost report.
- 14          r-t. The right to not be discriminated against by a facility in the admissions process or  
15          in the provision of appropriate care on the basis of the resident's source of  
16          payment to the facility. ~~Any applicant for admission to a facility who is denied~~  
17          ~~admission must be given the reason for the denial in writing upon request.~~
- 18          s-u. The right of residents and their families to organize, maintain, and participate in  
19          resident advisory and family councils.
- 20          t-v. The right of residents receiving services performed by a provider from outside the  
21          facility to be informed, on request, of the identity of the provider.
- 22          2. If there is a change in the resident rights, laws, or regulations, the facility shall  
23          promptly notify the resident, and, if the resident is unable to understand, a member of  
24          the resident's immediate family or the resident representative.
- 25          3. For involuntary transfer and discharge actions taken by a facility, the written transfer or  
26          discharge notice issued by the facility must include:
- 27               a. The reason for the transfer or discharge.
- 28               b. The effective date of transfer or discharge.
- 29               c. The location the resident is to be transferred or discharged to.
- 30               d. The name, mailing and electronic mail address, and telephone number of the  
31               office of the state long-term care ombudsman.

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

1 punishment, for the convenience of staff, for behavior conditioning, as a substitute for  
2 rehabilitation or treatment, or for any other purpose not included in an approved  
3 treatment plan.

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

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

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

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

14 4-13. The department shall develop and coordinate with the facility licensing and regulatory  
15 agencies a relocation plan in the event a facility is decertified or unlicensed.

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

18 **50-10.2-02.1. Authorized electronic monitoring - Penalty.**

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

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

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

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



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

4           **3.** A facility shall permit a resident or the resident representative to conduct authorized  
5           electronic ~~monitoring~~recording of the resident's room through an authorized electronic  
6           ~~monitoring~~recording device if:

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

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

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

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

18           e. All costs, except for electricity, associated with the authorized electronic  
19           ~~monitoring~~recording device, including installation, operation, removal, repairs,  
20           room damage, and maintenance, are paid by the resident or resident  
21           representative who initiated the use of the authorized electronic  
22           ~~monitoring~~recording device; and

23           f. A signed authorization for the disclosure of protected health information, as  
24           defined by title 45, Code of Federal Regulations, part 160, section 103, compliant  
25           with the federal Health Insurance Portability and Accountability Act of 1996 [Pub.  
26           L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.] and consenting to the use of  
27           the device is given by each resident occupying the same room, or by that  
28           resident's resident representative in accordance with subsection 45.

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

- 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~~the 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~~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~~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~~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.