

Testimony
Senate Bill No. 2070
Senate Human Services Committee
Senator Lee, Chairman
January 14, 2025

Chairman Lee and members of the Senate 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 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 to protect 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 was alerted to system issues having a negative impact for residents. Thus began the process to update the North Dakota resident rights law to help address those issues and 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. All provided valuable feedback in the wording of the updates to clarify the rights of residents in long-term care facilities.

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 the term and definitions for "authorized electronic monitoring" and "authorized electronic monitoring device" replacing monitoring with recording. Page 2 lines 13-26 add definitions for "technology device" and "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 1 and line 5. The term, already defined in the law, includes a power of attorney agent for healthcare in addition to a legal guardian. Line 2 changes the timing of the first education of a resident to their rights to fourteen days from admission rather than thirty days. It is valuable for individuals and their resident representatives to be educated on the rights as soon as possible. There are clarifying clerical changes in the remainder of this subsection.

Page 3, line 16 proposes to remove the phrase “within the facility” relating to private meetings. Residents should be able to have private meetings and communications at any location.

Page 3, lines 17 and 18 proposes the right that residents have full access to the community, i.e. protecting their right to have visits, activities, etc. away from the facility.

Page 3, lines 24-28 are moved to subsection 6 on page 8, lines 7-11 to clarify the difference between residents’ rights and facility responsibilities in the execution of resident rights.

Page 4, lines 1-5, subdivision f proposes a language change to include partners and significant others, in addition to spouses, for the resident to have the right to choose private visits and room sharing with them.

Page 4, lines 6-17, portions of subdivisions g and h were moved to page 8, lines 12-26 to clarify the difference between residents' rights and facility responsibilities in the execution of resident rights.

Page 4, line 17, subdivision h adds the right to be informed about the billing system and processes. The Long-Term Care Ombudsmen provide education on the rate setting process, the billing process, and billing adjustments to multiple callers. The caller's express frustration at not being given explanations from the facilities that answer their billing questions.

Page 4, lines 23-24, subdivision j are moved to subdivision k to separate out two different topics. The second sentence of subsection j was moved to subsection 9 on page 8, lines 27 and 28 to clarify the difference between residents' rights and facility responsibilities in the execution of resident rights.

Page 5, lines 1 and 2, subdivision m propose adding in "neglect and financial exploitation." These terms were not previously included in this law. Lines 4-10, relating to the use of restraints, was moved to subsection 10 on page 8, lines 29-31 and page 9, lines 1-5 to clarify the difference between residents' rights and facility responsibilities in the execution of resident rights.

Page 5, lines 13-15 and 18, subdivision n add clarification to the valid reasons for resident transfer or discharge.

Page 6, line 4, subdivision r changes to making available three years of survey reports, rather than just two, to match with federal regulations for nursing homes.

Page 6, lines 10-14, subdivision s proposes language to strengthen the residents right to choose their pharmacy without financial penalty. The ombudsman program has been hearing 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.

Page 6, line 15, subdivision t is proposed to clearly state the resident's right to choose their physician. Often it is not understood by residents they have that choice and feel that they must, by default, choose the medical director of the facility.

Page 6, lines 18 and 19, subdivision u are moved to subsection 11 to clarify the difference between residents rights and facility responsibilities in the execution of resident rights.

Subsection 2, page 6, lines 24-26 proposes the requirement that immediate notice be given to residents and their resident representatives or family members when there are changes made to the resident rights law. It is important any changes be made known for full exercise of rights.

Subsection 3, pages 6 and 7 proposes new requirements in the transfer and discharge process taken by a facility. 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. Based on the transfer/discharge questions and concerns directed to

the ombudsmen it is hoped these additional criteria will further support residents in their transfer and discharge rights.

Page 6, lines 28-31 and Page 7, Lines 1-3, subdivision a of subsection 3 details information that must be included in a transfer or discharge notice for it to be valid.

Page 7, lines 5-12, subparagraphs (1) and (2) of subdivision b of subsection 3 would prevent a facility discharging a resident to a hospital or a non-permanent location unless those are choices made by the resident or resident representative.

Page 7, lines 13-20, subparagraphs (3) and (4) of subdivision b of subsection 3 set criteria so discharges are safe and orderly. This reduces the real threat of transfer trauma and premature death caused by the stress of a move.

Page 7, lines 21 and 22, subparagraph (5) of subdivision b of subsection 3 proposes that all levels of care, not just nursing facilities, must send a copy of any transfer or discharge notices to the Office of the Long-Term Care Ombudsman. Copies of these notices are reviewed by the ombudsmen to determine if advocacy should be offered to residents to navigate the transfer or discharge and/or to educate them on their rights when these actions are taken.

Page 7, lines 23-26, subparagraph (6) of subdivision b of subsection 3 refers the facility to comply with the requirements of subdivisions n and o of subsection 1 and this subsection regarding discharge if the resident cannot return to the facility.

Subsection 4, page 7, lines 27-31 spells out additional criteria to be considered in the resident choice of a physician to make sure the resident is given choice while making sure the physician of choice will comply with regulations.

Subsection 5, page 8, lines 1-6 is proposed to aid in the education and advocacy for residents and resident representatives. Lines 1-3 require the resident, etc. be notified of what level of care they are moving into. Many facilities may have assisted living, basic care and sometimes nursing home care in the same area or building with the same facility name. The rules for each level of care are different and changes the educate and advocacy options that are helpful. Service limitations, lines 3-6, are also important disclosures for residents to know so they can be aware of the possibility of a facility move if a resident declines and requires special considerations.

The first sentence of subsection 6, page 8, line 7 adds language to protect residents from retaliation. The rest of the subsection 6 is a clerical reordering of section 50-10.2-02, subdivision d of subsection 1 on page 3, to clarify the difference between residents' rights and facility responsibilities in the execution of resident rights.

Subsection 7, page 8, lines 12-15 is a clerical reordering of section 50-10.2-02, subdivision g of subsection 1 to clarify the difference between residents' rights and facility responsibilities in the execution of resident rights . Lines 16-21 propose a 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 receiving the payouts and refunds.

Subsection 8, page 8, lines 22-26 was moved from page 4, subdivision f of subsection 1 as a clerical reordering of section 50-10.2-02 to clarify the difference between residents' rights and facility responsibilities in the execution of resident rights. The final phrase on lines 25-26 was proposed so a resident could choose to be added to a waiting list for admission without advance payment.

Subsection 9, page 8, lines 27-28 was moved from page 4, subdivision j of subsection 1 for continuity. On line 27 it is proposed to add "and the resident representative" to extend the right to view and request records to that decision maker also.

Subsection 10, page 8, lines 29-31 and page 9, lines 1-5 was moved from page 5, subdivision m of subsection 1 as a clerical reordering of section 50-10.2-02 to clarify the difference between residents rights and facility responsibilities in the execution of resident rights.

Subsection 11, page 9, lines 6 and a portion of 7 was moved from page 6, subdivision u of subsection 1 as a clerical reordering of section 50-10.2-02 to clarify the difference between residents rights and facility responsibilities in the execution of resident rights. A portion of lines 7-9 are new, requiring it to be noted in the written denial when admission to a facility is denied due to special characteristics or service limitations. This aids in the understanding of an admission denial as it often questioned. Even when a written response is requested a general answer is given of "can't meet needs", which still leaves resident and family wondering what has to be different to gain admission to the facility.

Subsection 12, page 9, lines 10-11 is proposed language to safeguard private resident council meetings for residents to share their concerns and advocate for change. 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 13, page 9, line 13 adds that a resident **can't** be required to waive any of the rights in chapter 50-10.2 to stay in the facility.

Section 3, amends section 50-10.2-02.1 on pages 9-12. Subsection 1, page 9, lines 21-27 is new language proposing that a resident can purchase and use a technology device within their home at the facility, and that it can be used for virtual monitoring and virtual visitation. Privacy and safety must be protected for all residents and technology devices shall not be used to record.

Subsection 2, page 9, lines 28-31 and page 10, 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 is often combined with virtual visitation.

The remainder of the subsections in section 50-10.2-02.1 (3-13), which are the regulations for authorized electronic monitoring, remains the same except for changes to rename as authorized electronic recording, from authorized electronic monitoring, and to change from the use of authorized electronic monitoring device to authorized electronic recording device. The

Commented [MN1]: This section is a little unclear you may want to reword.

Commented [BK2R1]: Good point. Can edit to "Subsection 13, line 13 adds that a resident can't be required to waive any of the rights in NDCC 50-10.2 as a condition to stay in the facility."

Commented [BK3R1]: stay instead of say.

Commented [MN4R1]: I think what confuses me is what ongoing residence means.

Commented [BK5R1]: That is language added into the bill so that a resident can't be discharged for exercising their rights - ongoing residence.

Commented [MN6R1]: Okay thank you!

Commented [JT7R1]: @Backman, Karla R. - Could we add a statement to that effect? Essentially noting that "Ongoing residence" is a term used to describe xxx". Seems an important concept for the audience to grasp fully.

Commented [BK8R1]: I added in the edit I mentioned above. (I think I did - this process is a bit foreign to me.) Let me know if more explanation needed or if that will suffice.

Commented [TJ9R1]: Looks great. Thx.

Commented [BK10R1]: Thank you - all help much appreciated.

primary goal is still to protect privacy and confidentiality for all residents and their roommates when recording devices are in use.

Section 4, amends section 50-10.2-05, pages 12 and 13 adding the requirement that if admission is denied based on the inability to verify a viable payment source that information must be shared with the resident in writing. This provides the resident clearer direction on what needs to be resolved to be admitted to that facility.

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