

**Testimony Relating to Resident Rights in Long Term Care**  
**Senate Human Services Committee**  
**January 14, 2025**  
**Senate Bill 2070**

My name is Nikki Wegner, and I am the President of the North Dakota (ND) Long Term Care Association. Thank you for the opportunity to testify on the proposed changes to resident rights regulations as outlined in Senate Bill 2070. Karla Backman, ND Long Term Care Ombudsman proposed changes to a small group of our members and association representatives through a series of meetings last year. While the goal was to reach a consensus, input from new perspectives in assisted living (AL) and basic care (BC) brought up valid concerns about several items in the bill. Additionally, the final version of this legislation includes a few new provisions that were not part of those earlier discussions and require further review.

Yesterday, we connected with Karla Backman to exchange perspectives on these issues, and while the dialogue was productive, we believe additional time is necessary to thoroughly review the proposed changes and build consensus on amendments in several areas. We remain committed to our shared goal of protecting resident rights and ensuring the best outcomes for those we serve.

However, our members have concerns about the unintended consequences this bill could have, particularly on AL and BC facilities. Many of the requirements added in this section mirror skilled nursing facility (SNF) regulations, such as those outlined in the [Code of Federal Regulations](#) and the [Appendix PP](#). While these standards are appropriate for SNFs as they are a higher level of care, they do not always align with the operational realities of AL or BC settings due to differences in scope, resources, and regulatory frameworks. Additionally, reiterating these regulations in this section for SNFs is unnecessary, as they are already well-defined in existing federal frameworks, which SNFs are required to follow.

These concerns highlight a disconnect between the bill's provisions and the practical needs of these diverse care settings. Addressing these issues is essential to ensure that any changes made truly support resident rights without imposing undue burdens or conflicting standards on facilities that operate under different frameworks.

With that said, I'll highlight the specific areas where our members have raised concerns and provide context for why we believe adjustments are necessary.

### **Page 3, line 2 – Explain the Bill of Rights**

We fully support the importance of explaining the Bill of Rights to residents, tenants, and their families. In fact, many facilities already go above and beyond by dedicating time each month to highlight and help residents understand specific rights and how they can exercise them. This approach fosters ongoing education and empowers residents in a way that is meaningful and manageable.

However, the mandate to orally explain the statement of resident rights within 14 days of admission could be overwhelming for new residents. If our shared goal is to ensure true understanding, this rigid timeline may not be the best approach, particularly for tenants and residents in AL and BC. Many of these individuals are in a transitional phase, adjusting to a new environment, and benefit from processes designed to allow them time to settle in.

The proposed change to 14 days would also introduce a new regulatory burden for AL and BC facilities. Current processes prioritize a gradual, resident-centered approach rather than overwhelming new residents with extensive paperwork and procedural explanations all at once. Implementing this rigid timeline could lead to unnecessary complications and stress for residents, tenants, and their families, as well as for facility staff.

We urge the committee to maintain the current 30-day timeline rather than reducing it to 14 days. This would allow facilities to continue their thoughtful, resident-focused practices while still meeting the intent of the regulation. Within this timeframe, facilities would ensure the statement of rights is orally explained to the resident or, if the resident is unable to understand, to their immediate family or legal guardian, and continue this explanation annually and when requested for as long as the resident remains in the facility.

### **Page 3, line 17-18 – Care Planning Protocols**

AL and BC facilities operate under different frameworks than SNFs, particularly when it comes to care planning. Unlike SNFs, ALs do not utilize care plans; instead, they rely on service agreements tailored to individual residents' needs. This distinction is critical when considering the impact of mandates like "full access to the community."

While we fully support the principle of community access, this language does not account for logistical realities, such as transportation challenges in rural areas. Mandating full access without flexibility places undue pressure on facilities that are

already working to provide meaningful opportunities for residents within their capabilities.

During our discussion, Karla assured us that the intent of this provision was not to create additional obligations for facilities. With this in mind, we recognize the need to work collaboratively to refine the language to better reflect the operational realities of AL and BC settings. This approach will help ensure the regulation achieves its intent without imposing unintended burdens on facilities or compromising the quality of care and services provided to residents.

#### **Page 4, line 28-29 – Personal Belongings**

The regulation states: *“The right to use personal belongings and to have security in storing and using personal possessions.”* While this language has existed in regulation previously, it was embedded within a broader context. Isolating it as a standalone provision raises concerns that it could be misinterpreted to imply that facilities must provide storage for larger personal items, such as garages for personal vehicles or additional storage spaces. This creates the potential for unrealistic expectations, especially for facilities operating within the constraints of existing space and resources.

To address this concern, we recommend clarifying the language to reflect reasonable accommodations that align with the practical capabilities of facilities while preserving the intent to protect and safeguard residents' personal belongings.

For example, language drawn from the [federal regulations](#) for SNFs may offer a more balanced approach:

*“The right to retain and use personal possessions, including furnishings and clothing, as space permits, unless doing so would infringe upon the rights or health and safety of other residents.”*

We urge the committee to consider this language to ensure the regulation is clear, practical, and appropriately aligned with facility operations while upholding the rights and dignity of residents.

#### **Page 6, line 15 – Right to Choose Physician**

The bill grants residents the right to choose any attending physician, on the surface that may sound good to you, however we believe it will be very challenging to implement. Rural providers face challenges when residents select physicians over an hour away, especially with limited transportation options. Facilities often cannot

ensure access to these physicians, who may be unable to practice outside their clinic or meet the standards required for long term care. These constraints make it difficult, if not impossible, for facilities to accommodate certain choices without potentially compromising the quality and safety of care provided.

To address this issue, we propose combining this provision with the language on page 7, lines 30–31, to be included with the process for situations where a chosen physician is unable to assure the provision of appropriate and adequate care. Additionally, we recommend clarifying the language to set clearer expectations for both residents and facilities.

### **Beginning on page 6, line 27 – Transfer and Discharge**

The requirement to provide documentation for all transfers, including voluntary ones, introduces unnecessary complexity, particularly for AL and BC facilities. For residents who voluntarily choose to leave or are temporarily transferred for medical care, such requirements are not necessary and may delay needed care.

Additionally, the provision mandating that facilities secure alternative placements for discharged residents places an unrealistic burden on AL facilities. These facilities lack the authority to guarantee placements, especially in cases involving non-payment or behavioral challenges. Discharge scenarios often involve factors beyond the facility's control, such as resident preferences or the limited availability of appropriate placements.

We would like the opportunity to work with Karla to refine this language to better reflect operational realities while still supporting the intent of ensuring residents' needs are met during transitions.

### **Page 7, line 16-20 – Mandate Orientation to New Setting**

We are finding it challenging to interpret the requirements mandating "orientation to a resident's new setting." For emergency transfers, such as hospitalizations, this requirement appears impractical and overly prescriptive. Emergency situations often demand swift action, making it difficult to comply with this mandate in a meaningful way.

We believe the intent of this provision is to support residents during transitions, and we would like to work on refining the language to ensure it is clear and practical for

residents, families, and facilities. By doing so, we can better align the mandate with the realities of emergency transfers while still meeting the needs of residents.

### **Page 8, line 31 – Physician Authorization**

Regarding the proposed regulation requiring physician authorization for the use of physical or chemical restraints in emergencies, we want to highlight a practical concern. Facilities, particularly those in rural areas, do not always have access to a physician 24/7. To ensure timely and effective care in emergency situations, we recommend adding flexibility to this requirement by allowing authorization from a nurse practitioner and physician's assistant. This adjustment would maintain the regulation's intent to safeguard residents while accounting for the realities of staffing and resource availability.

To address this concern, we propose this language in red:

The use of a physical or chemical restraint in an emergency or when necessary to protect the resident from injury to self or others must be authorized and documented by a physician, nurse practitioner, or physician's assistant for a limited period of time.

### **Page 13, lines 2-3 – Inform in Writing About Payment Source**

We recognize the importance of transparency in admission decisions and are committed to providing explanations to prospective residents when an inability to verify a viable payment source affects admission. However, mandating that this explanation be provided in writing is not necessary and could create undue administrative burdens, particularly for assisted living facilities, which are private pay and operate under different frameworks than other levels of care.

This requirement is also particularly sensitive for prospective residents of assisted living, as finances are often a private matter. Forcing a written explanation may inadvertently embarrass individuals who prefer discretion about their financial situation, potentially discouraging them from pursuing further discussions about their options.

Assisted living facilities already communicate with potential residents and their families regarding move-in decisions, often through direct conversations that allow for immediate clarification and discussion. Requiring a written explanation adds an unnecessary layer of formality that may not enhance understanding or resolution in these situations.

We believe this change is unnecessary, risks unintended consequences, and ask that it not be adopted into the Bill of Rights.

## **Closing**

The bill requires revisions to clarify expectations and avoid imposing unnecessary burdens on facilities. Clear, practical requirements are essential to supporting resident rights without creating logistical challenges that compromise care quality.

We recommend the committee delay action on this bill to allow for collaboration with the Department of Health and Human Services. This will help align proposed changes with existing practices and mitigate unintended consequences.

We support efforts to enhance resident rights, however this bill is not the best approach. We appreciate you considering giving the Department, the providers, and the Association time to make improvements and bring them back to you.

Thank you for your time and attention to this critical matter. I am happy to answer any questions you may have.

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