

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO  
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-  
2 02.1, and 50-10.2-05 of the North Dakota Century Code, relating to the rights of  
3 health care facility residents.

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

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

7 **50-10.2-02. Residents' rights - Implementation.**

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

- 1 a. The right to civil and religious liberties, including knowledge of  
2 available choices, the right to independent personal decisions  
3 without infringement, and the right to encouragement and assistance  
4 from the staff of the facility to promote the fullest possible exercise of  
5 these rights.
- 6 b. The right to have private meetings, associations, and communications  
7 with any person of the resident's choice within the facility.
- 8 c. The right to participate in the community.
- 9 d. The right of each resident, the resident's immediate family, ~~any~~  
10 ~~existing legal guardian of the resident~~ representative, friends, facility  
11 staff, and other persons to present complaints on the behalf of the  
12 resident to the facility's staff, the facility's administrator,  
13 governmental officials, or to any other person, without fear of reprisal,  
14 interference, coercion, discrimination, or restraint. ~~The facility shall~~  
15 ~~adopt a grievance process and make the process known to each~~  
16 ~~resident and, if the resident is unable to understand, to the resident's~~  
17 ~~immediate family member or members and any existing legal~~  
18 ~~guardian of the resident. An individual making a complaint in good~~  
19 ~~faith is immune from any civil liability that otherwise might result from~~  
20 ~~making the complaint.~~
- 21 ~~d.e.~~ The right to send and receive unopened personal mail and electronic  
22 mail and the right of access to and use of telephones and electronic  
23 devices for private conversations.
- 24 e.f. The right to assured private visits, subject to restrictions to protect the  
25 health or safety of the resident, by one's spouse, partner, or significant  
26 other, or if both are residents of the same facility, the right to share a  
27 room, within the capacity of the facility, unless sharing a room is not  
28 medically advisable as documented in the medical records by the  
29 attending physician.

1 f.g. The right to manage one's own financial affairs if not under legal  
2 guardianship, or to delegate that responsibility in writing to the  
3 administrator or manager of the facility, but only to the extent of funds  
4 held in trust by the facility for the resident. ~~If such a trust is~~  
5 ~~established, then a written quarterly accounting of any transactions~~  
6 ~~made on behalf of the resident must be furnished along with an~~  
7 ~~explanation by the facility to the resident or the person legally~~  
8 ~~responsible for the resident.~~

9 ~~g.h.~~ The right to be fully informed in writing prior to or at the time of  
10 admission and during one's stay, of services provided and the charges  
11 for those services, including ancillary charges. ~~Residents, or their~~  
12 ~~legal guardians, must be informed at least thirty days prior to any~~  
13 ~~change in the costs or availability of the services. No facility may~~  
14 ~~demand or receive any advance payment or gratuity to assure~~  
15 ~~admission.~~

16 ~~h.i.~~ The right to be adequately informed of one's medical condition and  
17 proposed treatment and to participate in the planning of all medical  
18 treatment, including the right to refuse medication and treatment, to  
19 be discharged from the facility upon written request, and to be  
20 notified by the resident's attending physician of the medical  
21 consequences of any such actions.

22 ~~i.j.~~ The right to have privacy in treatment and in caring for personal needs;  
23 ~~to use personal belongings, to have security in storing and using~~  
24 ~~personal possessions, and to have confidentiality in the treatment of~~  
25 ~~personal and medical records. The resident has the right to view, and~~  
26 ~~authorize release of, any personal or medical records.~~

27 ~~j.k.~~ The right to keep and use personal possessions, including furnishings  
28 and clothing as space permits, unless keeping or using the personal

1           possession would infringe upon the rights, health, or safety of another  
2           resident.

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

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

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

- 18           (1) Medical reasons;
- 19           (2) The resident's welfare or ~~that of other residents~~ if the safety of an  
20           individual in the facility is endangered due to the clinical or  
21           behavioral status of the resident;
- 22           (3) Nonpayment of one's rent or fees; ~~or~~
- 23           (4) A temporary transfer during times of remodeling; or
- 24           (5) The facility ceases to operate.

25          m.o. The right to receive at least a thirty-day written advance notice of any  
26          transfer or discharge when the resident is being discharged to another  
27          facility or the resident's own home, or when the resident is being  
28          transferred or discharged because of a change in the resident's level  
29          of care; however, advance notice of transfer or discharge may be less

1 than thirty days if the resident has urgent medical needs that require a  
2 more immediate transfer or discharge, or a more immediate transfer  
3 or discharge is required to protect the health and safety of residents  
4 and staff within the facility.

5 n.p. The right to refuse to perform services on behalf of the facility, unless  
6 agreed to by the resident or legal guardian and established in the plan  
7 of care.

8 o.g. The right to a claim for relief against a facility for any violation of rights  
9 guaranteed under this chapter.

10 p.r. The right to have each facility display a notice that the following  
11 information is available for public review and make the information  
12 available on request:

- 13 (1) A complete copy of every inspection report, deficiency report,  
14 and plan of correction the facility received during the previous  
15 ~~two~~three years.
- 16 (2) The facility's grievance process.
- 17 (3) A copy of the statement of ownership, board membership, and  
18 partners.
- 19 (4) A statement of ownership setting forth any conflict of interest in  
20 the operation of the facility.

21 q.s. The right to a pharmacist of the resident's choice irrespective of the  
22 type of medication distribution system used by the facility, and to not  
23 be charged a fee or receive a financial incentive or disincentive for  
24 choosing a pharmacy other than the facility's preferred pharmacy. The  
25 resident may not be charged for repackaging if that cost can be  
26 included on the facility cost report.

27 r.t. The right to not be discriminated against by a facility in the admissions  
28 process or in the provision of appropriate care on the basis of the  
29 resident's source of payment to the facility. ~~Any applicant for~~

1 admission to a facility who is denied admission must be given the  
2 reason for the denial in writing upon request.

3 ~~s.u.~~ The right of residents and their families to organize, maintain, and  
4 participate in resident advisory and family councils.

5 ~~t.v.~~ The right of residents receiving services performed by a provider from  
6 outside the facility to be informed, on request, of the identity of the  
7 provider.

8 2. If there is a change in the resident rights, laws, or regulations, the facility  
9 shall promptly notify the resident, and, if the resident is unable to  
10 understand, a member of the resident's immediate family or the resident  
11 representative.

12 3. For involuntary transfer and discharge actions taken by a facility, the  
13 written transfer or discharge notice issued by the facility must include:

14 a. The reason for the transfer or discharge.

15 b. The effective date of transfer or discharge.

16 c. The location the resident is to be transferred or discharged to.

17 d. The name, mailing and electronic mail address, and telephone  
18 number of the office of the state long-term care ombudsman.

19 4. The facility shall protect the resident from retaliation. The facility shall  
20 adopt a grievance process and make the process known to each resident,  
21 the resident's immediate family member, and the resident representative. A  
22 person making a complaint in good faith is immune from any civil liability  
23 that otherwise might result from making the complaint.

24 5. If a trust is established by the facility to hold the resident's funds, the  
25 facility shall provide to the resident, resident representative, or an agent  
26 under a power of attorney for financial decisions a written quarterly  
27 accounting of any transactions made on behalf of the resident which  
28 includes an explanation of the transactions by the facility. The facility shall  
29 pay out in full, within thirty days, the resident's personal funds deposited

1 with the facility or refunds due to the resident upon discharge or eviction,  
2 and provide a final accounting of those funds to the resident, or in the case  
3 of death, in accordance with state law. Other refunds due to the resident  
4 upon discharge, eviction, or death, and refunds due as a result of an  
5 overpayment to the facility, must be paid out in full within thirty days from  
6 the resident's date of discharge from the facility, except that a refund due  
7 as a result of an overpayment to the facility must be paid in full within thirty  
8 days from the date the overpayment is discovered. If the facility fails to  
9 issue a refund within 30 days, the facility shall include a reasonable rate of  
10 interest on the amount of the refund when the payment is made.

11 6. The facility shall inform a resident, resident representative, an agent under  
12 a power of attorney for financial decisions, or immediate family member, at  
13 least thirty days before any change in the costs or availability of the  
14 services. A facility may not demand or receive advance payment or gratuity  
15 to assure admission or for the resident to be placed on a waiting list for  
16 admission.

17 7. A resident and the resident representative may view and authorize release  
18 of any personal or medical records.

19 8. The use of a physical or chemical restraint in an emergency or when  
20 necessary to protect the resident from injury to self or others must be  
21 authorized and documented by a physician, nurse practitioner, or  
22 physician's assistant for a limited period of time. A chemical restraint must  
23 be administered by a licensed nurse , physician, nurse practitioner, or  
24 physician's assistant. Except as provided in this subsection, a drug or  
25 physical restraint may not be used or threatened to be used for the purpose  
26 of punishment, for the convenience of staff, for behavior conditioning, as a  
27 substitute for rehabilitation or treatment, or for any other purpose not  
28 included in an approved treatment plan.

- 1        9. Upon request, a facility shall provide an applicant for admission to a facility  
2        who is denied admission the reason for the denial in writing. The facility  
3        shall note in the written denial when the denial is based on the special  
4        characteristics or service limitations of the facility.
- 5        10. A facility shall ensure a resident council meeting is attended by residents  
6        only or at the invitation of a resident.
- 7        11. Waiver of any of the rights guaranteed by this chapter may not be made a  
8        condition of admission to a facility or ongoing residence.
- 9        ~~3.12.~~ Each facility shall prepare a written plan and provide staff training to  
10       implement this chapter.
- 11       ~~4.13.~~ The department shall develop and coordinate with the facility licensing and  
12       regulatory agencies a relocation plan in the event a facility is decertified or  
13       unlicensed.