

2025 SENATE HUMAN SERVICES

SB 2070

2025 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Fort Lincoln Room, State Capitol

SB 2070
1/14/2025

Relating to the rights of health care facility residents.

10:02 a.m. Chairman Lee opened the hearing.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

Discussion Topics:

- Clarified bill language and intent
- Preferred Pharmacy
- Right to choose physician
- Residents' rights
- Discharge of residents
- Quality of care
- Abuse and Neglect
- Authorized recording/monitoring device

10:03 a.m. Karla Backman, State Long-Term Care Ombudsman of Department of Health and Human Services, testified in favor and submitted testimony #28868.

10:37 a.m. Marina Spahr, Director of the Medicaid Fraud Control Unit, testified in support and submitted testimony #28976.

10:46 a.m. Nikki Wegner, President of ND Long Term Care Association, testified in opposition and submitted testimony #28915.

Additional written testimony:

Joyce Linnerud Fowler, Senior Executive Housing and Assisted Living at Bethany Retirement Living submitted testimony in opposition #28940.

Michelle Slaughter, LBSW Social Service Director at Marian Manor Health Care Center, submitted testimony in opposition #28941.

Jim Cornelius, Administrator at Benedictine Living Community, submitted testimony in opposition #28942.

Robert Sheckler, Administrator at Strasburg Care Center, submitted testimony in opposition #28944.

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11:04 a.m. Chairman Lee closed the hearing.

Andrew Ficek, Committee Clerk



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.

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.

Nikki Wegner MS, OTR/L, President
North Dakota Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501
(701) 222-0660
nikki@ndltca.org

Testimony Relating to Rights of Health Care Facility Residents
Senate Human Services Committee
January 14, 2025
Senate Bill 2070

Chair Lee and members of the Senate Human Services Committee, my name is Joyce Linnerud Fowler, I am the Senior Executive Housing and Assisted Living at Bethany Retirement Living in Fargo, ND. Thank you for the opportunity to testify in opposition to Senate Bill 2070.

Upon review of Senate Bill 2070 it is clear that although Basic Care (BC) and Assisted Living (AL) are included in the definition of facility, the BC/AL level of care was not considered in the proposed updates. Furthermore, aspects of the proposed updates lack clarity and have potential negative impact to existing service delivery.

Some examples of concern include:

Page 3 lines 17 and 18 “The right to have full access to the community, unless otherwise indicated through the care planning process.” This line lacks definition and speaks to care planning processes which is typically not a process in AL. Intent and clarity are of concern.

Page 6 lines 12 – 14 addresses the cost of repackaging medication, inclusion of cost in rate structure and references cost reports. AL and BC primarily use Med Aide 1 level staffing to assist with medication administration. It is critical to AL/BC that meds are appropriately packaged to allow for safe administration. AL is primarily private pay there is no cost reporting process. Including repackaging costs in rates

would be cumbersome for providers to assess and would increase rates unnecessarily for all residents vs residents who have few or no medical administration assistance. It does not appear that AL and BC were taken into consideration for this section.

Page 6 line 3 – Page 7 line 26 addresses transfer and discharge of residents. This section lacks language to distinguish between voluntary and involuntary transfer or discharge. AL and BC level of care is very much a home like setting for residents. Most residents are self-directed in terms of care and services they wish to have including deciding if or when they seek medical attention outside of the facility or if they choose to move back to a private residence or move to a different facility. Not making the distinction between voluntary and involuntary transfer and discharge shows again how AL/BC were not considered in proposed changes. Furthermore language in this section is significantly different than existing regulation in AL and BC.

Page 9 line 6-9 states facility must provide written denial letters to potential residents who are denied admission if asked. Of concern is language added to rules that are specific to “health care facility residents” are now extended to those who are not residents. People who are not current residents of a health care facility should not be included in the rules. Is that not outside of the scope of the Century Code?

In conclusion, we appreciate the opportunity to engage with the Long-Term Care Ombudsman earlier this year to review potential updates. However, I was not part of the small group invited to those discussions, and it was evident that the perspective of assisted living was not adequately considered. Additionally, this bill includes provisions that

were not part of the drafts discussed during those meetings. Many of these additions are already addressed under skilled nursing facility regulations and are not practical or appropriate for assisted living, basic care, or swing bed settings, which are also governed by this law. We respectfully urge the committee to consider these concerns and allow further collaboration with the Long-Term Care Ombudsman to develop consensus-driven updates that address the unique needs of all care settings impacted.

Thank you for your time and consideration.

Joyce Linnerud Fowler, Senior Executive Housing and Assisted Living
701.239.3439
jlinnerud@bethanynd.org
Bethany Retirement Living
201 South University Drive
Fargo, ND 58103

Testimony Relating to Rights of Health Care Facility Residents
Senate Human Services Committee
January 14, 2025
Senate Bill 2070

Chair Lee and members of the Senate Human Services Committee, my name is Michelle Slaughter, LBSW, and I am the Social Service Director at Marian Manor Health Care Center in Glen Ullin. Thank you for the opportunity to testify in opposition to Senate Bill 2070.

I am providing written testimony regarding proposed changes to Resident Rights. One of the proposed changes is the right of the resident to choose an attending physician. This proposed change is concerning as Marian Manor is approximately 60 miles from Bismarck. To allow residents to choose an attending physician in Bismarck would place a great strain on our ability to transport residents to see their chosen attending physician in Bismarck and to the other residents who have other specialty medical appointments in Bismarck. Our facility van already makes multiple trips to Bismarck for our residents to see specialists, to add more appointments on to this schedule for residents to see an attending physician of their choice, would cause an even greater strain on our availability of transport drivers.

In closing, while we appreciate the opportunity to work with the Long-Term Care Ombudsman earlier this year on potential updates, the concern I have outlined today was not addressed during those discussions. Furthermore, several proposed changes in this bill overlap with existing regulations for skilled nursing facilities but fail to reflect the practical realities of assisted living or basic care, which are also

impacted by this section of the law. We ask the committee to take these points into consideration and allow time for further collaboration with our providers, our association, and the Long-Term Care Ombudsman to ensure that any changes are carefully tailored to meet the diverse needs of all care settings covered under this legislation. Thank you for your attention and consideration.

Thank you for your consideration.

Michelle Slaughter, LBSW
Marian Manor Health Care Center
socworker@marianmanorhc.com
701-348-3107 ext. 122

Testimony Relating to Rights of Health Care Facility Residents
Senate Human Services Committee
January 14, 2025
Senate Bill 2070

Chair Lee and members of the Senate Human Services Committee, my name is Jim Cornelius and I am the administrator at Benedictine Living Community | Wahpeton in Wahpeton. Thank you for the opportunity to testify in opposition to Senate Bill 2070.

We provide a continuum of care including: Skilled Nursing Facility, Assisted Living, Basic Care and Home Health service in rural North Dakota, while some communities have unlimited options to choose from for a physician or a pharmacist services, Wahpeton has limited opportunity for the residents to meet the requirements in implementing these initiatives in the updated health care facility rights. We give each person the opportunity to utilize any of the four pharmacies in our community, but two will provide 24 hours a day- 7 days a week service, the other two may and may not provide weekend services if needed.

I do oppose the Section 2. Amendment 50-10.2-02 Residents' Rights – Implementation "s." The right to a pharmacist of resident's choice and to not be charged for the type of medication distribution system used by the facility. In Wahpeton, one of four pharmacies will take other pharmacies medications and package them to our system, so that won't give them a choice in our community. Plus, the pharmacy is reluctant to card some other pharmacies medications, so that leaves us with medications in bottles that would leave is vulnerable to many

medication errors with the meds not in our medication distribution system. You need to understand rural towns in North Dakota don't have many choices for physicians and pharmacists, so please don't limit us, when we, as the provider, don't have choices either.

We respectfully urge the committee to consider these concerns and allow us time to collaborate with the Long-Term Care Ombudsman to try and reach consensus so we can ensure that any changes to the law are tailored to the unique needs of all of the care settings covered in this section. Thank you for your consideration.

Jim Cornelius, LNHA
Executive Director
Benedictine Living Community | Wahpeton
1307 N 7th St
Wahpeton, ND 58075
701-642-3588

Testimony Relating to Rights of Health Care Facility Residents
Senate Human Services Committee
January 14, 2025
Senate Bill 2070

Chair Lee and members of the Senate Human Services Committee, my name is Robert Sheckler, and I am the administrator at Strasburg Care Center in Strasburg. Thank you for the opportunity to testify in opposition to Senate Bill 2070.

Please let me express that I appreciate and respect Resident Rights and certainly want to preserve and protect them. With that said, I have a few concerns regarding Senate Bill 2070. As you know, our facility is located in a very rural area. Our closest service hospital is a Critical Access Hospital. Critical Access Hospitals are not required to be staffed 24/7/365 with a physician. Instead, they must have a physician available to consult with. Thus, when we call the provider on call, it is oftentimes a mid-level practitioner instead of a physician. One of the primary providers in our facility is a Nurse Practitioner, who knows our residents very well.

An area of concern I have is addressed in Section 2, item 10, page 8, line 29, which requires that physical or chemical restraints that may be needed in an emergency must be authorized by a physician. This presents a problem, in that we would be mandated to have the hospital pass the information on to the on-call physician, so we can get the necessary order. In turn, the emergent situation is left unchecked and staff and other residents may be endangered.

In conclusion, while we appreciated the opportunity to collaborate and review suggested Resident Rights changes earlier this year with the Long-Term Care Ombudsman, this current bill includes multiple provisions that were not part of those discussions. Additionally, many of these proposed changes are already addressed in existing regulations for skilled nursing facilities and would not be appropriate or practical for assisted living, basic care, or swing bed settings, which this section of the law also governs.

We respectfully urge the committee to consider these concerns and grant us time to collaborate with the Long-Term Care Ombudsman prior to this bill moving forward. This will give us time to try and reach consensus on the areas of concern, so we can ensure that any changes to the law are tailored to the unique needs of the care settings covered in this section. Thank you for your consideration.

A handwritten signature in black ink that reads "Robert Sheckler". The signature is fluid and cursive, with a long, sweeping horizontal line extending from the end of the name.

Robert Sheckler
Administrator, Strasburg Care Center
rsheckler@strasburgcarecenter.org
701-336-2651

Chairman Lee and Members of the Committee:

My name is Marina Spahr, and I am the Director of the Medicaid Fraud Control Unit. I am here today representing the Office of the Attorney General and the Medicaid Fraud Control Unit. I am providing testimony regarding SB#2070. The Office of the Attorney General is in support of this bill, but that support is contingent on the inclusion of two critical amendments.

The first amendment requested by the Office of the Attorney General is the removal of the waiver of criminal and civil liability. This waiver language, located on page 10, lines 29-31, is overly broad and requires reexamination. As currently written, the language grants 'facilities' immunity from any criminal and civil liability for violations of privacy rights concerning patients, so long as the facility has a policy permitting the use of authorized electronic recording or monitoring devices. This approach is problematic for several reasons.

Patients, both pursuant to this bill and other existing laws enjoy numerous privacy rights that extend beyond the scope of recording or monitoring devices. Granting such a sweeping waiver undermines these rights and creates significant legal and ethical concerns. For example, limiting liability in this manner makes it impossible to anticipate every situation that might arise, leaving critical gaps in accountability and enforcement. This waiver could essentially tie the hands of oversight bodies such as the Medicaid Fraud Control Unit and eliminate recourse for egregious violations of privacy or care standards.

The Office of the Attorney General is unequivocally opposed to waiving criminal liability. Criminal liability exists to address conduct that must be investigated and prosecuted if it occurs. Immunizing facilities from such liability undermines the very principles of justice and accountability, sending a dangerous message that unlawful behavior may go unchecked.

With regard to civil liability, there have been instances where limitations have been applied, but these limitations have not extended to investigations and enforcement actions conducted by the Medicaid Fraud Control Unit (MFCU). An example of such tailored language is contained in N.D.C.C. 32-48-08 which states "This chapter does not apply to enforcement actions under chapters 50-24.8, 51-08.1, and 51-15." The Office of the Attorney General recommends the complete removal of the liability waiver sentences; however, at a minimum, incorporating

language similar to that in N.D.C.C. 32-48-08 would help ensure that essential investigations and enforcement efforts are not impeded.

In summary, the Office of the Attorney General strongly urges the Committee to eliminate the waiver of criminal and civil liability from SB#20270. Such a provision is overly broad, undermines patient rights, and limits critical enforcement tools needed to protect vulnerable individuals in long-term care facilities. Ensuring accountability and preserving the integrity of investigations should remain paramount as this legislation is considered.

The second requested amendment is a clarification that monitoring devices may also be used to record. Currently, the bill states on page 9, lines 26 and 27, “The resident and the resident representative may not record virtual monitoring and virtual visitation.” While recording is permitted, it is not allowed when the resident uses a monitoring device, which creates an inconsistent distinction. Allowing monitoring devices to record is consistent with the purpose of patient rights, transparency, and oversight. Additionally, this restriction could inadvertently impact legitimate law enforcement activities. Clarifying this language would ensure that such recordings are permissible and do not hinder investigative or protective efforts.

Thank you for your time and consideration. I welcome any questions the Committee may have.

Marina Spahr, January 14 2025

2025 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Fort Lincoln Room, State Capitol

SB 2070
1/21/2025

Relating to the rights of health care facility residents.

3:04 p.m. Chairman Lee opened the hearing.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

Discussion Topics:

- Assisted living terms and conditions
- Electronic recording devices
- Patient access to judicial review

3:04 p.m. Karla Backman, State Long-Term Care Ombudsman, testified in neutral, and submitted testimony #30573.

3:20 p.m. Shelly Peterson, Long-Term Care Association, testified in neutral.

3:24 p.m. Senator Roers moved amendment LC#25.8092.01001.

3:24 p.m. Senator Hogan seconded the motion.

Senators	Vote
Senator Judy Lee	Y
Senator Kent Weston	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Desiree Van Oosting	Y

3:25 p.m. Motion passed 6-0-0.

3:25 p.m. Senator Roers moved Do Pass as amended.

3:25 p.m. Senator Hogan seconded the motion.

Senators	Vote
Senator Judy Lee	Y
Senator Kent Weston	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Desiree Van Oosting	Y

Senate Human Services Committee
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Page 2

3:26 p.m. Motion passed 6-0-0.

3:26 p.m. Senator Roers will carry the bill.

3:26 p.m. Chairman Lee closed the hearing.

Andrew Ficek, Committee Clerk

January 21, 2025

QW 1/21/25
1 of 13

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

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.~~

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

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

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

1. All facilities shall, upon a resident's admission, provide in hand to the resident and a member of the resident's immediate family or ~~any existing legal guardian of the resident representative~~ a statement of the resident's rights during the admission process and while living in the facility. Within ~~thirty~~fourteen days after admission, the statement must be orally explained to the resident and, if the resident is unable to understand, to the resident's immediate family member ~~or members and any existing legal guardian of the resident representative~~, and thereafter annually so long as the resident remains in the facility. The statement must include rights, responsibilities of both the resident and the facility, and the facility rules governing resident conduct. ~~Facilities~~A facility shall treat ~~residents~~a resident in accordance with provisions of the statement. The statement must include provisions ensuring each resident the following minimum rights:
 - a. The right to civil and religious liberties, including knowledge of available choices, the right to independent personal decisions without infringement, and the right to encouragement and assistance from the staff of the facility to promote the fullest possible exercise of these rights.
 - b. The right to have private meetings, associations, and communications with any person of the resident's choice within the facility.
 - c. The right to have full access to participate in the community, unless otherwise indicated through the care planning process.
 - d. The right of each resident, the resident's immediate family, ~~any existing legal guardian of the resident representative~~, friends, facility staff, and other persons to present complaints on the behalf of the resident to the facility's staff, the facility's administrator, governmental officials, or to any other person, without fear of reprisal, interference, coercion, discrimination, or restraint. ~~The facility shall adopt a grievance process and make the process known to each resident and, if the resident is unable to understand, to the resident's immediate family member or members and any existing legal guardian of the resident. An individual making a~~

1 ~~complaint in good faith is immune from any civil liability that otherwise might~~
2 ~~result from making the complaint.~~

3 ~~d.e.~~ The right to send and receive unopened personal mail and electronic mail and
4 the right of access to and use of telephones and electronic devices for private
5 conversations.

6 ~~e.f.~~ The right to assured private visits, subject to restrictions to protect the health or
7 safety of the resident, by one's spouse, partner, or significant other, or if both are
8 residents of the same facility, the right to share a room, within the capacity of the
9 facility, unless sharing a room is not medically advisable as documented in the
10 medical records by the attending physician.

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

17 ~~g.h.~~ The right to be fully informed in writing prior to or at the time of admission and
18 during one's stay, of services provided ~~and~~ the charges for those services,
19 including ancillary charges. ~~Residents, or their legal guardians, must be informed~~
20 ~~at least thirty days prior to any change in the costs or availability of the services.~~
21 ~~No facility may demand or receive any advance payment or gratuity to assure~~
22 ~~admission; and information regarding the billing system and processes.~~

23 ~~h.i.~~ The right to be adequately informed of one's medical condition and proposed
24 treatment and to participate in the planning of all medical treatment, including the
25 right to refuse medication and treatment, to be discharged from the facility upon
26 written request, and to be notified by the resident's attending physician of the
27 medical consequences of any such actions.

28 ~~i.j.~~ The right to have privacy in treatment and in caring for personal needs, ~~to use~~
29 ~~personal belongings, to have security in storing and using personal possessions,~~
30 and to have confidentiality in the treatment of personal and medical records. The

- 1 resident has the right to view, and authorize release of, any personal or medical
2 records.
- 3 j.k. The right to keep and use personal belongings and to have security in storing
4 and using personal possessions, including furnishings and clothing as space
5 permits, unless keeping or using the personal possession would infringe upon the
6 rights, health, or safety of another resident.
- 7 l. The right to be treated courteously, fairly, and with the fullest measure of dignity.
- 8 k.m. The right to be free from mental and physical abuse, neglect, and financial
9 exploitation, and the right to be free from physical or chemical restraint except in
10 documented emergencies or when necessary to protect the resident from injury
11 to self or to others. ~~In such cases, the restraint must be authorized and~~
12 ~~documented by a physician for a limited period of time and, if the restraint is a~~
13 ~~chemical one, it must be administered by a licensed nurse or physician. Except~~
14 ~~as provided in this subdivision, drugs or physical restraints may not be used or~~
15 ~~threatened to be used for the purposes of punishment, for the convenience of~~
16 ~~staff, for behavior conditioning, as a substitute for rehabilitation or treatment, or~~
17 ~~for any other purpose not part of an approved treatment plan.~~
- 18 l.n. The right not to be transferred or discharged except for:
19 (1) Medical reasons;
20 (2) The resident's welfare or that of other residents if the safety of an individual
21 in the facility is endangered due to the clinical or behavioral status of the
22 resident;
23 (3) Nonpayment of one's rent or fees; or
24 (4) A temporary transfer during times of remodeling; or
25 (5) The facility ceases to operate.
- 26 m.o. The right to receive at least a thirty-day written advance notice of any transfer or
27 discharge when the resident is being discharged to another facility or the
28 resident's own home, or when the resident is being transferred or discharged
29 because of a change in the resident's level of care; however, advance notice of
30 transfer or discharge may be less than thirty days if the resident has urgent
31 medical needs that require a more immediate transfer or discharge, or a more

1 immediate transfer or discharge is required to protect the health and safety of
2 residents and staff within the facility.

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

5 ~~e.g.~~ The right to a claim for relief against a facility for any violation of rights
6 guaranteed under this chapter.

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

9 (1) A complete copy of every inspection report, deficiency report, and plan of
10 correction the facility received during the previous ~~two~~three years.

11 (2) The facility's grievance process.

12 (3) A copy of the statement of ownership, board membership, and partners.

13 (4) A statement of ownership setting forth any conflict of interest in the
14 operation of the facility.

15 ~~e.s.~~ The right to a pharmacist of the resident's choice irrespective of the type of
16 medication distribution system used by the facility, and to not be charged a fee or
17 receive a financial incentive or disincentive for choosing a pharmacy other than
18 the facility's preferred pharmacy. The resident may not be charged for
19 repackaging if that cost can be included in the facility rate or on the facility cost
20 report.

21 ~~t.~~ ~~The right of the resident to choose an attending physician.~~

22 ~~r.u.~~ The right to not be discriminated against by a facility in the admissions process or
23 in the provision of appropriate care on the basis of the resident's source of
24 payment to the facility. ~~Any applicant for admission to a facility who is denied~~
25 ~~admission must be given the reason for the denial in writing upon request.~~

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

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

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

3. ~~The~~For involuntary transfer and discharge actions taken by a facility:

~~a. Must include a, the~~ written transfer or discharge notice issued by the facility
~~shall which includes~~ must include:

~~(1)~~a. The reason for the transfer or discharge.

~~(2)~~b. The effective date of transfer or discharge.

~~(3)~~c. The location the resident is to be transferred or discharged to.

~~(4)~~d. The name, mailing and electronic mail address, and telephone number of the office of the state long-term care ombudsman.

~~b. Must comply with the following terms and conditions:~~

~~(1) The discharge location may not be a hospital location unless a bed hold has been declined or the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility shall document the danger that failure to transfer or discharge would pose.~~

~~(2) The discharge location may not be a nonpermanent location, including a homeless shelter or motel room, unless the resident has stated that a nonpermanent location is their choice of discharge location and that preference is documented in the resident's chart.~~

~~(3) Provide discharge planning for a safe and orderly discharge, which includes planning with the resident on preferences of location to move to and assisting with securing admission to a facility if needed.~~

~~(4) Provide and document sufficient preparation and orientation to the resident, the resident representative, or the resident's immediate family to ensure safe and orderly transfer or discharge from the facility. The orientation must be provided in a form and manner the resident, resident representative, or immediate family can understand.~~

~~(5) Provide a copy of the notice to the office of the state long-term care ombudsman.~~

- 1 ~~(6) If a facility determines a resident who was transferred with an expectation of~~
2 ~~returning to the facility cannot return to the facility, the facility shall comply~~
3 ~~with the requirements of subdivisions n and o of subsection 1 and this~~
4 ~~subsection regarding discharge.~~
- 5 4. ~~A facility shall inform the resident if the facility determines the physician chosen by the~~
6 ~~resident is unable or unwilling to assure provision of appropriate and adequate care~~
7 ~~and treatment. The facility shall discuss alternative physician participation with the~~
8 ~~resident and honor the resident's preferences, if any, among options. If the resident~~
9 ~~subsequently selects another attending physician, the facility shall honor that choice.~~
- 10 ~~5. The facility shall provide the resident, and a member of the resident's immediate family~~
11 ~~or the resident representative, a written statement before admission identifying the~~
12 ~~level of licensed long-term care to which the resident will be admitted. The facility also~~
13 ~~shall disclose and provide to a resident or potential resident, resident representative,~~
14 ~~or immediate family member before admission, notice of special characteristics or~~
15 ~~service limitations of the facility.~~
- 16 ~~6. The facility shall protect the resident from retaliation. The facility shall adopt a~~
17 ~~grievance process and make the process known to each resident, the resident's~~
18 ~~immediate family member, and the resident representative. A person making a~~
19 ~~complaint in good faith is immune from any civil liability that otherwise might result~~
20 ~~from making the complaint.~~
- 21 7.5. ~~If a trust is established by the facility to hold the resident's funds, the facility shall~~
22 ~~provide to the resident, resident representative, or an agent under a power of attorney~~
23 ~~for financial decisions a written quarterly accounting of any transactions made on~~
24 ~~behalf of the resident which includes an explanation of the transactions by the facility.~~
25 ~~The facility shall pay out in full, within thirty days, the resident's personal funds~~
26 ~~deposited with the facility or refunds due to the resident upon discharge or eviction,~~
27 ~~and provide a final accounting of those funds to the resident, or in the case of death, in~~
28 ~~accordance with state law. Other refunds due to the resident upon discharge, eviction,~~
29 ~~or death must be paid out in full within thirty days from the resident's date of discharge~~
30 ~~from the facility.~~

1 8.6. The facility shall inform a resident, resident representative, an agent under a power of
2 attorney for financial decisions, or immediate family member, at least thirty days before
3 any change in the costs or availability of the services. A facility may not demand or
4 receive advance payment or gratuity to assure admission or for the resident to be
5 placed on a waiting list for admission.

6 9.7. A resident and the resident representative may view and authorize release of any
7 personal or medical records.

8 10.8. The use of a physical or chemical restraint in an emergency or when necessary to
9 protect the resident from injury to self or others must be authorized and documented
10 by a physician, nurse practitioner, or physician's assistant for a limited period of time. A
11 chemical restraint must be administered by a licensed nurse ~~or~~ physician, nurse
12 practitioner, or physician's assistant. Except as provided in this subsection, a drug or
13 physical restraint may not be used or threatened to be used for the purpose of
14 punishment, for the convenience of staff, for behavior conditioning, as a substitute for
15 rehabilitation or treatment, or for any other purpose not included in an approved
16 treatment plan.

17 11.9. Upon request, a facility shall provide an applicant for admission to a facility who is
18 denied admission the reason for the denial in writing. The facility shall note in the
19 written denial when the denial is based on the special characteristics or service
20 limitations of the facility.

21 12.10. A facility shall ensure a resident council meeting is attended by residents only or at the
22 invitation of a resident.

23 13.11. Waiver of any of the rights guaranteed by this chapter may not be made a condition of
24 admission to a facility or ongoing residence.

25 3.14.12. Each facility shall prepare a written plan and provide staff training to implement this
26 chapter.

27 4.15.13. The department shall develop and coordinate with the facility licensing and regulatory
28 agencies a relocation plan in the event a facility is decertified or unlicensed.

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

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

1. A resident and the resident representative may treat the resident's living quarters as the resident's home and, subject to rules to protect the privacy and safety of another resident, may purchase and use a technology device of the resident's choice, including a technology device that may facilitate virtual monitoring or virtual visitation with family and other persons, provided operation and use of the technology device does not violate an individual's right to privacy under state or federal law. ~~The resident and the resident representative may not record~~ Subsections 3 through 12 apply if a technology device or a virtual monitoring and virtual visitation device is used to record.
2. A resident may use a device of the resident's choice that facilitates virtual monitoring, provided:
 - a. The purchase, activation, installation, maintenance, repair, deactivation, and removal of such device is at the expense of the resident; and
 - b. The device and any images obtained from the device are used by the resident and any person communicating with the resident in a manner that does not violate an individual's right to privacy under state or federal law.
3. A facility shall permit a resident or the resident representative to conduct authorized electronic ~~monitoring~~ recording of the resident's room through an authorized electronic ~~monitoring~~ recording device if:
 - a. The authorized electronic ~~monitoring~~ recording device is placed in the resident's room;
 - b. The electronic ~~monitoring~~ recording device is placed in a fixed, stationary position; ~~monitors~~ records only the area occupied by the resident and not the area occupied by the resident's roommate; and protects the privacy and dignity of the resident;
 - c. The facility is given written notice of the placement and use which must include an installation plan in compliance with the facility's standards and regulations the facility ~~provides~~ shall provide to the resident;
 - d. A video tape or recording created using an authorized electronic ~~monitoring~~ recording device records the date and time;

- 1 e. All costs, except for electricity, associated with the authorized electronic
2 ~~monitoring~~recording device, including installation, operation, removal, repairs,
3 room damage, and maintenance, are paid by the resident or resident
4 representative who initiated the use of the authorized electronic
5 ~~monitoring~~recording device; and
- 6 f. A signed authorization for the disclosure of protected health information, as
7 defined by title 45, Code of Federal Regulations, part 160, section 103, compliant
8 with the federal Health Insurance Portability and Accountability Act of 1996 [Pub.
9 L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.] and consenting to the use of
10 the device is given by each resident occupying the same room, or by that
11 resident's resident representative in accordance with subsection ~~46~~5.
- 12 ~~2.4. A facility that uses~~allows the use of an authorized electronic monitoring~~recording~~
13 ~~device or a virtual monitoring device in compliance with this chapter is not guilty of a~~
14 ~~crime or civilly liable under this code for a violation of a resident's privacy.~~
- 15 ~~3.5.4.~~ The facility shall cooperate to accommodate the placement of the authorized
16 electronic ~~monitoring~~recording device, unless doing so would place undue burden on
17 the facility.
- 18 ~~4.6.5.~~ Before placing and using the authorized electronic ~~monitoring~~recording device ~~or~~
19 virtual monitoring device, a resident or resident representative shall obtain the signed
20 authorization of any other resident residing in the room in accordance with
21 subsection ~~43~~. The authorization may be signed by that resident's resident
22 representative.
- 23 a. The resident's or the resident representative's authorization may limit the use of
24 an authorized electronic ~~monitoring~~recording device to only audio
25 ~~monitoring~~recording or only video ~~monitoring~~recording and may limit the device's
26 time of operation, direction, and focus.
- 27 b. At any time, a resident or resident representative who did not request the
28 authorized electronic ~~monitoring~~recording device in the resident's room may
29 withdraw, in writing, the signed authorization for the use of the device. The
30 resident who requested the device or the resident's resident representative is

1 responsible for having the device disabled in compliance with the facility's
2 standards and regulations after receipt of the written withdrawal.

3 ~~5.7.6.~~ The facility shall make a reasonable attempt to accommodate a resident if a resident
4 or resident representative of a resident who is residing in a shared room wants to have
5 an authorized electronic ~~monitoring~~recording device placed in the room and another
6 resident living in the same shared room refuses to authorize the use of the authorized
7 electronic monitoring device.

8 ~~6.8.7.~~ If authorized electronic ~~monitoring~~recording is being conducted in the room of a
9 resident, and another resident will be moved into the room, the resident who
10 requested the device or the resident's resident representative is responsible for having
11 the existing authorized electronic ~~monitoring~~recording device disabled in compliance
12 with the facility's standards and regulations unless the new resident or the resident's
13 resident representative authorizes the device pursuant to subsections ~~13~~ and ~~46~~5.

14 ~~7.9.8.~~ A facility may not refuse to admit an individual and may not remove a resident from a
15 facility because of authorized electronic ~~monitoring~~recording of a resident's room. A
16 person may not intentionally retaliate or discriminate against a resident for
17 authorization of authorized electronic ~~monitoring~~recording.

18 ~~8.10.9.~~ A facility clearly and conspicuously shall post a sign where authorized electronic
19 ~~monitoring~~recording is being conducted to alert and inform visitors.

20 ~~9.11.10.~~ A facility or staff of the facility may not access any video or audio recording created
21 through an authorized electronic ~~monitoring~~recording device placed in a resident's
22 room without the written consent of the resident or resident representative or court
23 order.

24 ~~10.12.11.~~ ~~A person~~An individual that intentionally hampers, obstructs, tampers with, or destroys
25 a recording or an authorized electronic ~~monitoring~~recording device or virtual
26 monitoring device placed in a resident's room, without the express written consent of
27 the resident or resident representative, is subject to a class B misdemeanor. A
28 ~~person~~An individual that places an electronic ~~monitoring~~recording device in the room
29 of a resident or which uses or discloses a tape or other recording made by the device
30 may be guilty of a crime or civilly liable for any unlawful violation of the privacy rights of
31 another. In any civil proceeding, administrative proceeding, or survey process, material

1 obtained through the use of an authorized electronic ~~monitoring~~recording device may
2 not be used if ~~a person~~an individual intentionally hampered, obstructed, or tampered
3 with the material without the express written consent of the resident or resident
4 representative, or if the material was obtained through the operation of an electronic
5 ~~monitoring~~recording device which was not compliant with this section.

6 ~~11.13.12.~~ A person may not intercept a communication or disclose or use an intercepted
7 communication of an authorized electronic ~~monitoring~~recording device or a virtual
8 monitoring device placed in a resident's room, without the express written consent of
9 the resident or the resident representative.

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

12 **50-10.2-05. Furnishing financial information.**

13 A facility may request that an applicant for admission, a resident of the facility, or the
14 applicant's or resident's legal representative furnish financial information regarding income and
15 assets, including information regarding any transfers or assignments of income or assets. A
16 facility may deny admission to an applicant for admission who is unable to verify a viable
17 payment source. ~~The facility shall inform the resident in writing if the inability to verify a viable~~
18 ~~payment source is the reason for denial of admission.~~

**REPORT OF STANDING COMMITTEE
SB 2070**

Human Services Committee (Sen. Lee, Chairman) recommends **AMENDMENTS** ([25.8092.01001](#)) and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2070 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2070

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

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

1. All facilities shall, upon a resident's admission, provide in hand to the resident and a member of the resident's immediate family or ~~any existing legal guardian of the resident~~ representative a statement of the resident's rights during the admission process and while living in the facility. Within ~~thirty~~fourteen days after admission, the statement must be orally explained to the resident and, if the resident is unable to understand, to the resident's immediate family member ~~or members~~ and ~~any existing legal guardian of the resident~~ representative, and thereafter annually so long as the resident remains in the facility. The statement must include rights, responsibilities of both the resident and the facility, and the facility rules governing resident conduct. ~~Facilities~~A facility shall treat ~~residents~~a resident in accordance with provisions of the statement. The statement must include provisions ensuring each resident the following minimum rights:
 - a. The right to civil and religious liberties, including knowledge of available choices, the right to independent personal decisions without infringement, and the right to encouragement and assistance from the staff of the facility to promote the fullest possible exercise of these rights.
 - b. The right to have private meetings, associations, and communications with any person of the resident's choice within the facility.
 - c. The right to ~~have full access to~~ participate in the community.
~~unless otherwise indicated through the care planning process.~~
 - d. The right of each resident, the resident's immediate family, ~~any existing legal guardian of the resident~~ representative, friends, facility staff, and other persons to present complaints on the behalf of the resident to the facility's staff, the facility's

administrator, governmental officials, or to any other person, without fear of reprisal, interference, coercion, discrimination, or restraint. ~~The facility shall adopt a grievance process and make the process known to each resident and, if the resident is unable to understand, to the resident's immediate family member or members and any existing legal guardian of the resident. An individual making a complaint in good faith is immune from any civil liability that otherwise might result from making the complaint.~~

- d.e. The right to send and receive unopened personal mail and electronic mail and the right of access to and use of telephones and electronic devices for private conversations.
- e.f. The right to assured private visits, subject to restrictions to protect the health or safety of the resident, by one's spouse, partner, or significant other, or if both are residents of the same facility, the right to share a room, within the capacity of the facility, unless sharing a room is not medically advisable as documented in the medical records by the attending physician.
- f.g. The right to manage one's own financial affairs if not under legal guardianship, or to delegate that responsibility in writing to the administrator or manager of the facility, but only to the extent of funds held in trust by the facility for the resident. ~~If such a trust is established, then a written quarterly accounting of any transactions made on behalf of the resident must be furnished along with an explanation by the facility to the resident or the person legally responsible for the resident.~~
- g.h. The right to be fully informed in writing prior to or at the time of admission and during one's stay, of services provided and; the charges for those services, including ancillary charges. ~~Residents, or their legal guardians, must be informed at least thirty days prior to any change in the costs or availability of the services. No facility may demand or receive any advance~~

~~payment or gratuity to assure admission; and information regarding the billing system and processes.~~

- ~~h.i.~~ The right to be adequately informed of one's medical condition and proposed treatment and to participate in the planning of all medical treatment, including the right to refuse medication and treatment, to be discharged from the facility upon written request, and to be notified by the resident's attending physician of the medical consequences of any such actions.
- ~~h.j.~~ The right to have privacy in treatment and in caring for personal needs, ~~to use personal belongings, to have security in storing and using personal possessions,~~ and to have confidentiality in the treatment of personal and medical records. ~~The resident has the right to view, and authorize release of, any personal or medical records.~~
- ~~j-k.~~ The right to keep and use personal belongings and to have security in storing and using personal possessions, including furnishings and clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.
- ~~l.~~ The right to be treated courteously, fairly, and with the fullest measure of dignity.
- ~~k-m.~~ The right to be free from mental and physical abuse, neglect, and financial exploitation, and the right to be free from physical or chemical restraint except in documented emergencies or when necessary to protect the resident from injury to self or to others. ~~In such cases, the restraint must be authorized and documented by a physician for a limited period of time and, if the restraint is a chemical one, it must be administered by a licensed nurse or physician. Except as provided in this subdivision, drugs or physical restraints may not be used or threatened to be used for the purposes of punishment, for the convenience of staff, for behavior conditioning, as a substitute~~

~~for rehabilitation or treatment, or for any other purpose not part of an approved treatment plan.~~

~~l.n.~~ The right not to be transferred or discharged except for:

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

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

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

~~o.q.~~ The right to a claim for relief against a facility for any violation of rights guaranteed under this chapter.

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

- (1) A complete copy of every inspection report, deficiency report, and plan of correction the facility received during the previous ~~two~~ three years.
- (2) The facility's grievance process.

- (3) A copy of the statement of ownership, board membership, and partners.
 - (4) A statement of ownership setting forth any conflict of interest in the operation of the facility.
- ~~q.s.~~ The right to a pharmacist of the resident's choice irrespective of the type of medication distribution system used by the facility, and to not be charged a fee or receive a financial incentive or disincentive for choosing a pharmacy other than the facility's preferred pharmacy. The resident may not be charged for repackaging if that cost can be included in the facility rate or on the facility cost report.
 - ~~t.~~ ~~The right of the resident to choose an attending physician.~~
 - ~~r.u.~~ The right to not be discriminated against by a facility in the admissions process or in the provision of appropriate care on the basis of the resident's source of payment to the facility. Any applicant for admission to a facility who is denied admission must be given the reason for the denial in writing upon request.
 - ~~s.v.u.~~ The right of residents and their families to organize, maintain, and participate in resident advisory and family councils.
 - ~~t.w.v.~~ The right of residents receiving services performed by a provider from outside the facility to be informed, on request, of the identity of the provider.
 2. If there is a change in the resident rights, laws, or regulations, the facility shall promptly notify the resident, and, if the resident is unable to understand, a member of the resident's immediate family or the resident representative.
 3. ~~The~~For involuntary transfer and discharge actions taken by a facility:
 - ~~a.~~ Must include a, the written transfer or discharge notice issued by the facility ~~which includes~~shall include:
 - ~~(1)~~a. The reason for the transfer or discharge.
 - ~~(2)~~b. The effective date of transfer or discharge.
 - ~~(3)~~c. The location the resident is to be transferred or discharged to.

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

b. Must comply with the following terms and conditions:

- (1) The discharge location may not be a hospital location unless a bed hold has been declined or the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility shall document the danger that failure to transfer or discharge would pose.
- (2) The discharge location may not be a nonpermanent location, including a homeless shelter or motel room, unless the resident has stated that a nonpermanent location is their choice of discharge location and that preference is documented in the resident's chart.
- (3) Provide discharge planning for a safe and orderly discharge, which includes planning with the resident on preferences of location to move to and assisting with securing admission to a facility if needed.
- (4) Provide and document sufficient preparation and orientation to the resident, the resident representative, or the resident's immediate family to ensure safe and orderly transfer or discharge from the facility. The orientation must be provided in a form and manner the resident, resident representative, or immediate family can understand.
- (5) Provide a copy of the notice to the office of the state long-term care ombudsman.
- (6) If a facility determines a resident who was transferred with an expectation of returning to the facility cannot return to the facility, the facility shall comply with the requirements of subdivisions n and o of subsection 1 and this subsection regarding discharge.

4. A facility shall inform the resident if the facility determines the physician chosen by the resident is unable or unwilling to assure provision of appropriate and adequate care and treatment. The facility shall discuss alternative physician participation with the resident and honor the resident's preferences, if any, among options. If the resident subsequently selects another attending physician, the facility shall honor that choice.
5. The facility shall provide the resident, and a member of the resident's immediate family or the resident representative, a written statement before admission identifying the level of licensed long-term care to which the resident will be admitted. The facility also shall disclose and provide to a resident or potential resident, resident representative, or immediate family member before admission, notice of special characteristics or service limitations of the facility.
6. The facility shall protect the resident from retaliation. The facility shall adopt a grievance process and make the process known to each resident, the resident's immediate family member, and the resident representative. A person making a complaint in good faith is immune from any civil liability that otherwise might result from making the complaint.
- 7.5. If a trust is established by the facility to hold the resident's funds, the facility shall provide to the resident, resident representative, or an agent under a power of attorney for financial decisions a written quarterly accounting of any transactions made on behalf of the resident which includes an explanation of the transactions by the facility. The facility shall pay out in full, within thirty days, the resident's personal funds deposited with the facility or refunds due to the resident upon discharge or eviction, and provide a final accounting of those funds to the resident, or in the case of death, in accordance with state law. Other refunds due to the resident upon discharge, eviction, or death must be paid out in full within thirty days from the resident's date of discharge from the facility.

- ~~8-6.~~ The facility shall inform a resident, resident representative, an agent under a power of attorney for financial decisions, or immediate family member, at least thirty days before any change in the costs or availability of the services. A facility may not demand or receive advance payment or gratuity to assure admission or for the resident to be placed on a waiting list for admission.
- ~~9-7.~~ A resident and the resident representative may view and authorize release of any personal or medical records.
- ~~10-8.~~ 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. A chemical restraint must be administered by a ~~licensed nurse or~~ physician, nurse practitioner, licensed nurse, or physician's assistant. Except as provided in this subsection, a drug or physical restraint may not be used or threatened to be used for the purpose of punishment, for the convenience of staff, for behavior conditioning, as a substitute for rehabilitation or treatment, or for any other purpose not included in an approved treatment plan.
- ~~11-9.~~ Upon request, a facility shall provide an applicant for admission to a facility who is denied admission the reason for the denial in writing. The facility shall note in the written denial when the denial is based on the special characteristics or service limitations of the facility.
- ~~12-10.~~ A facility shall ensure a resident council meeting is attended by residents only or at the invitation of a resident.
- ~~13-11.~~ Waiver of any of the rights guaranteed by this chapter may not be made a condition of admission to a facility or ongoing residence.
- ~~3-~~~~14-12.~~ Each facility shall prepare a written plan and provide staff training to implement this chapter.
- ~~4-~~~~15-13.~~ The department shall develop and coordinate with the facility licensing and regulatory agencies a relocation plan in the event a facility is decertified or unlicensed.

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

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

1. A resident and the resident representative may treat the resident's living quarters as the resident's home and, subject to rules to protect the privacy and safety of another resident, may purchase and use a technology device of the resident's choice, including a technology device that may facilitate virtual monitoring or virtual visitation with family and other persons, provided operation and use of the technology device does not violate an individual's right to privacy under state or federal law. ~~The resident and the resident representative may not record~~ Subsections 3 through 12 apply if a technology device or a virtual monitoring and virtual visitation device is used to record.
2. A resident may use a device of the resident's choice that facilitates virtual monitoring, provided:
 - a. The purchase, activation, installation, maintenance, repair, deactivation, and removal of such device is at the expense of the resident; and
 - b. The device and any images obtained from the device are used by the resident and any person communicating with the resident in a manner that does not violate an individual's right to privacy under state or federal law.
3. A facility shall permit a resident or the resident representative to conduct authorized electronic ~~monitoring~~ recording of the resident's room through an authorized electronic ~~monitoring~~ recording device if:
 - a. The authorized electronic ~~monitoring~~ recording device is placed in the resident's room;
 - b. The electronic ~~monitoring~~ recording device is placed in a fixed, stationary position; ~~monitors~~ records only the area occupied by the resident and not the area occupied by the resident's roommate; and protects the privacy and dignity of the resident;

- c. The facility is given written notice of the placement and use which must include an installation plan in compliance with the facility's standards and regulations the facility ~~provides~~shall provide to the resident;
- d. A video tape or recording created using an authorized electronic ~~monitoring~~recording device records the date and time;
- e. All costs, except for electricity, associated with the authorized electronic ~~monitoring~~recording device, including installation, operation, removal, repairs, room damage, and maintenance, are paid by the resident or resident representative who initiated the use of the authorized electronic ~~monitoring~~recording device; and
- f. A signed authorization for the disclosure of protected health information, as defined by title 45, Code of Federal Regulations, part 160, section 103, compliant with the federal Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.] and consenting to the use of the device is given by each resident occupying the same room, or by that resident's resident representative in accordance with subsection 4~~6~~5.

~~2.4. A facility that uses allows the use of an authorized electronic monitoring ~~recording device or a virtual monitoring device in compliance with this chapter is not guilty of a crime or civilly liable under this code for a violation of a resident's privacy.~~~~

~~3.5.4.~~ The facility shall cooperate to accommodate the placement of the authorized electronic ~~monitoring~~recording device, unless doing so would place undue burden on the facility.

4.~~6~~5. Before placing and using the authorized electronic ~~monitoring~~recording device or virtual monitoring device, a resident or resident representative shall obtain the signed authorization of any other resident residing in the room in accordance with subsection ~~43~~4. The authorization may be signed by that resident's resident representative.

- a. The resident's or the resident representative's authorization may limit the use of an authorized electronic ~~monitoring~~recording device to only audio ~~monitoring~~recording or only video ~~monitoring~~recording and may limit the device's time of operation, direction, and focus.
 - b. At any time, a resident or resident representative who did not request the authorized electronic ~~monitoring~~recording device in the resident's room may withdraw, in writing, the signed authorization for the use of the device. The resident who requested the device or the resident's resident representative is responsible for having the device disabled in compliance with the facility's standards and regulations after receipt of the written withdrawal.
- 5.7.6. The facility shall make a reasonable attempt to accommodate a resident if a resident or resident representative of a resident who is residing in a shared room wants to have an authorized electronic ~~monitoring~~recording device placed in the room and another resident living in the same shared room refuses to authorize the use of the authorized electronic monitoring device.
- 6.8.7. If authorized electronic ~~monitoring~~recording is being conducted in the room of a resident, and another resident will be moved into the room, the resident who requested the device or the resident's resident representative is responsible for having the existing authorized electronic ~~monitoring~~recording device disabled in compliance with the facility's standards and regulations unless the new resident or the resident's resident representative authorizes the device pursuant to subsections 43 and 465..
- 7.9.8. A facility may not refuse to admit an individual and may not remove a resident from a facility because of authorized electronic ~~monitoring~~recording of a resident's room. A person may not intentionally retaliate or discriminate against a resident for authorization of authorized electronic ~~monitoring~~recording.

~~8.~~^{10.}~~9.~~ A facility clearly and conspicuously shall post a sign where authorized electronic ~~monitoring~~recording is being conducted to alert and inform visitors.

~~9.~~^{11.}~~10.~~ A facility or staff of the facility may not access any video or audio recording created through an authorized electronic ~~monitoring~~recording device placed in a resident's room without the written consent of the resident or resident representative or court order.

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

~~11.~~^{13.}~~12.~~ A person may not intercept a communication or disclose or use an intercepted communication of an authorized electronic ~~monitoring~~recording device or a virtual monitoring device placed in a resident's room, without the express written consent of the resident or the resident representative.

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

50-10.2-05. Furnishing financial information.

A facility may request that an applicant for admission, a resident of the facility, or the applicant's or resident's legal representative furnish financial information regarding income and assets, including information regarding any transfers or assignments of income or assets. A facility may deny admission to an applicant for admission who is unable to verify a viable payment source. The facility shall inform the resident in writing if the inability to verify a viable payment source is the reason for denial of admission.

2025 HOUSE HUMAN SERVICES

SB 2070

2025 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

SB 2070
3/11/2025

Relating to the rights of health care facility residents.

9:59 a.m. Chairman M. Ruby opened the hearing.

Members Present: Chairman M. Ruby, Vice-Chairman Frelich, Representatives K. Anderson, Beltz, Bolinske, Dobervich, Hendrix, Holle, Kiefert, Rios, Rohr

Members Absent: Representatives Davis, Fegley

Discussion Topics:

- Assisted living, basic care, swing bed, regulations, rates, and rights for residents
- Accountability for facilities
- Refunds and interest rates

10:00 a.m. Karla Backman, State Long-Term Care Ombudsman of the Department of Health & Human Services, testified in favor and submitted testimony, #40149.

10:12 a.m. Nikki Wagner, President of ND Long Term Care Association, testified in favor and submitted testimony, #40070.

10:18 a.m. Kelly Gustavsen, Social Services Manager of the Mountrail County Health System, testified in favor and submitted testimony, #40067.

10:29 a.m. Julie Leer, private citizen, testified in favor and submitted testimony, #40303, #40304.

Additional written testimony:

Amy Kriedt, CEO of St. Luke's Home, Incorporated, submitted testimony in favor, #39963.

Jim Cornelius, Benedictine | St Catherines Living Center, submitted testimony in favor, #40130.

Kim Forshnell, private citizen, submitted testimony in favor, #40448.

10:39 a.m. Chairman M. Ruby closed the hearing.

Jackson Toman, Committee Clerk

Chairman Ruby and members of the House Human Services Committee, my name is Amy Kreidt, I am the CEO at St. Luke's Home in Dickinson and am the Board Chair for the North Dakota Long Term Care Association.

Thank you for the opportunity to testify in support of the proposed changes to resident rights regulations as outlined in engrossed Senate Bill 2070.

A committee of members of the long term care association reviewed Senate Bill 2070 at the start of the session and made significant revisions to the bill to recategorize Basic Care and Assisted Living as distinct differences from skilled nursing.

Please support the proposed changes in Senate Bill 2070. If you have any questions, please email or call me. Thank you.

Amy Kreidt
CEO St. Luke's Home
akreidt@stlukeshome.com
701-483-5000

Testimony Relating to Resident Rights in Long Term Care
House Human Services Committee
March 11, 2025
Senate Bill 2070

Chairman Ruby and Members of the House Human Services Committee, my name is Kelly Gustavson, and I am the President of the Long-Term Care Social Workers of ND and the Social Services Manager for the Mountrail Bethel Home and Mountrail County Medical Center, in Stanley, ND. My position as the facility Social Worker allows me to work with not only residents and families in skilled nursing, but I also work with our residents and families in Basic Care, Assisted Living, and our Swing Bed at our Critical Access Hospital. Thank you for the opportunity to testify in support of the proposed changes to resident rights regulations as outlined in engrossed Senate Bill 2070.

Over the years, I've had the privilege of working closely with our local Ombudsman, first Deb Kraft and now Mary Benson. I've welcomed them into Resident Council meetings, shared their contact information with families and residents, and relied on their expertise to ensure everyone feels supported.

In some cases, residents voice concerns frequently, sometimes without realizing they've already done so. Other times, a complaint may be about one issue on the surface, but there's an underlying concern that needs to be uncovered in order to truly help. I continue to refer to and partner with the Ombudsman staff on a regular basis and have a strong, collaborative relationship.

I was also an active participant, in the meetings, with Karla Backman, ND Long Term Care Ombudsman, including the meeting when revisions were made. Many of the changes that were initially proposed by the Ombudsman aligned with elements already required in skilled nursing facilities and are logical in that context. However, these changes may not be appropriate for an assisted living setting or could be unsuitable for basic care and swing ed settings. This section of the North Dakota Century Code outlines the requirements for skilled nursing facilities, basic care, assisted living, and swing bed settings in relation to resident rights. Any changes need to make sense for each of these unique care environments, ensuring they are practical and appropriate for the people they serve. Here are a few examples:

Page 3 Lines 20 Community Access

Originally Karla Backman had proposed “the right to have full access to the community, unless otherwise indicated through the care planning process.” However, since assisted living operates under service agreements rather than care plans, this raised concerns about potential disruptions to their standard way of providing care. Providers specifically in rural areas were concerned about the language that Karla had chosen. They feared it could imply an obligation to provide access to nearby larger communities for events and appointments, which may not always be realistic due to limited resources or staff. Through collaboration, we reached a consensus on a more practical revision: “The right to participate in the community.”

Page 6 Beginning on Line 29 Transfer and Discharge

After the bill was introduced, we, along with other assisted living and basic care providers, had concerns about the transfer and discharge language Karla included. In a collaborative meeting, we talked through these concerns

and reached a consensus. While the language made sense for skilled nursing facilities, which are already required to follow these federal regulations, it didn't fit assisted living and in some cases, basic care. In many cases, assisted living residents manage their own transitions, choosing when to move in and when to leave. However, since assisted living must still abide by this section of the code, it was important to ensure the language was appropriate for their level of care, recognizing the independence of residents and the unique role of these providers.

Closing Comments:

Rights of all residents, no matter the setting are very important and something that all facilities have as a priority. A comment I say to all of the families, no matter what setting, is this "We know that you are trusting us with your most prized possession."

Those living in a Skilled Nursing Facility, Assisted Living, Basic Care, or as a patient in a Swing Bed, all have rights, and they need to be upheld by the facility they are residing in. The settings are all different, have different guidelines, regulations and rules. Updating this section of the code is complex, but I believe the engrossed SB 2070 is a thoughtful and well-balanced solution. It reflects strong collaboration between providers and the Ombudsman, upholding the rights of residents, tenant, and patients across all care settings.

Thank you for your time and I welcome any questions.

Kelly Gustavson, LBSW
Manager of Social Services

Mountrail Bethel Home

PO Box 700

Stanley, ND 58784

(701) 628-8618

kgustavson@stanleyhealth.org

Testimony Relating to Resident Rights in Long Term Care
House Human Services Committee
March 11, 2025
Senate Bill 2070

Chairman Ruby and Members of the House Human Services Committee, my name is Nikki Wegner, and I am the President of the North Dakota Long Term Care Association (NDLTCA). I represent 182 members in skilled nursing, assisted living, and basic care. Thank you for the opportunity to testify in support of the proposed changes to resident rights regulations as outlined in engrossed Senate Bill 2070.

During the interim, members of NDLTCA worked with Karla Backman, ND Long Term Care Ombudsman on proposed changes to residents' rights. Although our meetings had been productive, ultimately, when the bill was introduced, we did have some concerns with some of the provisions as we had not been given the opportunity to review the bill prior to this Legislative session. When the bill was heard in committee, we did express our concerns and were able to work with Karla and our providers to reach a consensus on how best to move forward. Mainly, most of the proposed provisions were more suitable for our skilled nursing providers, but didn't account for the differing requirements between our provider groups such as basic care and assisted living.

We remain committed to our shared goal of protecting resident rights and ensuring the best outcomes for those we serve. As amended, we fully support the provisions of the engrossed bill and ask your support for a do pass recommendation.

Many of the requirements originally added in this section mirrored skilled nursing facility (SNF) regulations, such as those outlined in the [Code of Federal Regulations](#) and the [Appendix PP](#). While these standards were appropriate for SNFs as they are a higher level of care, they did not always align with the operational realities of assisted living or basic care settings due to differences in scope, resources, and regulatory frameworks. Additionally, reiterating these regulations in this section for SNFs was unnecessary, as they are already well-defined in existing federal frameworks, which SNFs are required to follow.

There was a disconnect between the bill's original provisions and the practical needs of these diverse care settings. Addressing these issues was 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 a couple of the specific areas where our members had raised concerns and provide context for why we believed adjustments were necessary. Again, we appreciate the collaboration with the ombudsman to reach consensus on this bill.

Page 5, lines 1-3 – Personal Possessions

The original proposed amendment stated: *“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 recommended 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 keep and use personal possessions, including furnishings and clothing, as space permits, unless keeping or using the personal possessions would infringe upon the rights or health and safety of other residents.”

Page 7, line 29 – Physician Authorization

Regarding the proposed regulation requiring physician authorization for the use of physical or chemical restraints in emergencies, we highlighted 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 recommended adding flexibility to this requirement by allowing authorization from a nurse practitioner and physician's assistant. This adjustment will maintain the regulation's intent to safeguard residents while accounting for the realities of staffing and resource availability.

To address this concern, we agreed on 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.

Closing

With the amendments addressing our concerns, our members are now supportive of engrossed Senate Bill 2070. The revisions provide necessary clarity and ensure that updates to residents' rights are practical and appropriate across all care settings. We appreciate the collaboration between providers, the Ombudsman, and legislators in this effort.

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

Nikki Wegner MS, OTR/L, President
North Dakota Long Term Care Association
(701) 222-0660
nikki@ndltca.org



Chairman Ruby and members of the House Human Services Committee, my name is Jim Cornelius, I am the Executive Director of Benedictine Living Community in Wahpeton. Thank you for the opportunity to testify in support of the proposed changes to resident rights regulations as outlined in engrossed Senate Bill 2070.

At the start of the Legislative session, our review of Senate Bill 2070 revealed that while Basic Care (BC) and Assisted Living (AL) were categorized as health care facilities, the proposed updates did not fully reflect their unique levels of care. Following the Senate Human Services hearing, we worked alongside the State Ombudsman and providers to address these gaps, ensuring the revisions recognized the distinct differences between skilled nursing, BC, and AL.

We support the revisions that have been submitted!

Thank you for giving us the opportunity to include our input!

Sincerely,

Jim Cornelius

BENEDICTINE ST. CATHERINE'S
1307 7th Street North
Wahpeton, ND 58075
PH (701) 642-6667
FX (701) 642-2485

BENEDICTINE SIENA COURT
711 14th Avenue North
Wahpeton, ND 58075
PH (701) 642-6667 ext. 226

BENEDICTINE HOME HEALTH CARE
1307 7th Street North
Wahpeton, ND 58075
PH (701) 642-6667

BLCWahpeton.org

Testimony
Engrossed Senate Bill No. 2070
House Human Services Committee
Representative Ruby, Chairman
March 11, 2025

Chairman Ruby and members of the House 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 Engrossed 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 on issues that affect 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 learned of system issues having a negative impact for residents. In response the program explored addressing some of the issues through updates to the North Dakota resident rights law. That led to 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. The residents and family members participating in the stakeholder groups were in support of these updates to NDCC 50-10.2.

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 with the terms and definitions for “authorized electronic monitoring” and “authorized electronic monitoring device” replacing monitoring with the word recording.

Page 2, lines 14-27 add definitions for “technology device”, “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 4 and line 8. The term, already defined in the law, includes a power of attorney agent for healthcare in addition to a legal guardian. There are clarifying clerical changes in the remainder of this subsection.

Page 3, line 20, subdivision c establishes the right of residents to participate in the community. For example, attend community activities, have coffee time with friends at a local restaurant, etc.

Page 3, line 22 is another update to language to use the defined term of resident representative with the same reasoning as explained above.

Page 3, lines 25-30 are moved to subsection 4, on page 7, lines 5-9 to clarify between residents’ rights and facility responsibilities in the execution of resident rights.

Page 4, lines 4 and 5, in subdivision f proposes a language change to include partners and significant others, in addition to spouses, in the right of residents to private visits and room sharing with them subject to restrictions to protect the health or safety of the resident.

Page 4, lines 11-14 were moved to page 7, lines 10-13 to group the sections showing the facility responsibilities in the execution of resident rights. Page 4 lines 17-20 were also moved to page 7, lines 20-24 for the same reason.

Page 4, lines 26-27, subdivision j are moved to subdivision k, page 5, lines 1-3, to separate out two different topics. There is also clarification added regarding the use of possessions, furnishings and clothing that is it limited to the space available with safety considerations also. The second sentence of subsection j, page 4, lines 29-30 was moved to subsection 7 on page 7, lines 25-26, to group facility responsibilities in the execution of resident rights.

Page 5, lines 5 and 6, subdivision m proposes adding in "neglect and financial exploitation." These terms were not previously included in this law. Lines 8-14, relating to the authorization and use of restraints, was moved to subsection 8 starting on page 7, lines 27-31 and page 8, lines 1-4 to group facility responsibilities in the execution of resident rights.

Page 5, lines 17-19 subdivision n add safety as a factor to the valid reasons for resident transfer or discharge. Also on page 5, line 22 adds facility closure as a valid discharge reason.

Page 6, line 8, subdivision r requires each facility to provide three years of survey reports, rather than just two, to match with federal regulations for skilled nursing homes.

Page 6, lines 14-17, subdivision s proposes language to strengthen the residents right to choose their pharmacy without financial penalty. The ombudsman program has heard 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. There is language prohibiting a charge for repackaging if that can be included in the facility cost report. This aligns with administrative guidelines posted by the ND Board of Pharmacy.

Page 6, lines 20 and 21, subdivision t are moved to page 8 subsection 9, lines 5-8 to group together facility responsibilities in the execution of resident rights.

As previously stated, a lot of the changes being proposed in subsections 2 through 10 currently exists in state law and are being moved to group together facility responsibilities in the execution of resident rights. I will discuss the additional changes being proposed in subsections 2 through 10.

Subsection 2, page 6, lines 26-28 proposes the requirement that prompt notice be given to residents, or the resident's immediate family and their resident representative when changes are made to the resident rights law. It is important any changes be made known for full exercise of rights.

Subsection 3, pages 6, lines 29-31 and page 7, lines 1-4 proposes new requirements in the information details that must be included on a transfer and discharge notice for it to be valid. This information will help assure best practice in transfer and discharge planning. 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.

The first sentence of subsection 4, page 7, line 5 adds language that the facility shall protect residents from retaliation.

Subsection 5, page 7, lines 14-19 propose a 30-day 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 accessing the payout and refund monies.

Subsection 6, page 7, the final phrase on lines 23-24 is proposed so a resident can be added to a waiting list for admission without advance payment.

Subsection 7, page 7, line 25 proposes to add “and the resident representative” to give the right to view and authorize release of records to that decision maker also.

Subsection 9, page 8, lines 6-8, proposes the requirement that it is noted in the written denial when admission to a facility is denied due to special characteristics or service limitations. This helps residents and families in understanding an admission denial. Often when a written response is requested the typical answer is “can’t meet needs of the resident”. This additional language can provide insight to the resident and family more specifics about what would need to be different to gain admission to the facility.

Subsection 10, page 8, lines 9-10 is proposed language so resident council meetings for residents can provide a private forum to collectively share their concerns and plan for change advocacy. 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 11, page 8, line 12 adds that a resident's stay in the facility isn't jeopardized if they refuse to waive any of their rights granted in chapter 50-10.2.

Section 3, amends section 50-10.2-02.1 on pages 8-11. Subsection 1, page 8, lines 20-25 is new language proposing that a resident can purchase and use a technology device for use within their home at the facility, and that it can be used for virtual monitoring and virtual visitation with the provision that privacy is protected for all residents. Lines 26 and 27 show how subsections apply if a technology device or a virtual monitoring device is used to record.

Subsection 2, page 8, lines 28-31 and page 9, 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 virtual visitation.

The remainder of the subsections in section 50-10.2-02.1 (3-13), which are the original regulations for authorized electronic monitoring, remains the same except for changes to rename authorized electronic monitoring to electronic recording, and to change from the use of authorized electronic monitoring device to authorized electronic recording device. It is simply a change in terminology with no changes to the protections of privacy and confidentiality for all residents when recording devices are in use.

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

TESTIMONY**Engrossed Senate Bill No. 2070
House Human Services Committee
Representative M. Ruby, Chairman**

March 11, 2025

Chairman Ruby and members of the House Human Services Committee: My name is Julie Leer. I am a resident of District 7 in Bismarck. I appear in support of Engrossed Senate Bill No. 2070, particularly the proposed new language being added as subsection 5 under section 2 of the bill. I am also proposing an amendment to that language to ensure situations like my Mother's are addressed.

Here is my Mom's experience. On December 18, 2023, my then 93-year old Mom was residing in an assisted living facility (Facility) in Minot (District 5) when she sustained severe injuries resulting from a fall; specifically 7 broken ribs and a compression fracture of the thoracic spine. She was taken to the ER in Minot and returned to her apartment at the Facility after several hours.

On December 20, 2023, she was transported back to the ER and admitted to the hospital amid concerns that the injuries she suffered two days earlier were limiting her ability to move and to breathe deeply enough to keep her from developing pneumonia. In January, 2024, after 2 weeks in the hospital, Mom was discharged and transported to a facility in Bismarck for rehabilitation. During this time, we asked the Facility where she lived about payment for the personal care services Mom wasn't receiving as it was our understanding that while Mom would continue to pay rent for her apartment at the Facility, she would be refunded payments made for personal cares she didn't receive due to being hospitalized and being in Bismarck. Staff at the Facility said the payments for personal care services would be refunded.

Thankfully, Mom was able to return to her apartment at the Facility on March 23, 2024, fully three months after she was admitted to the hospital. In that time, the entire payments for rent and services at the Facility continued to be automatically withdrawn

from her bank account, but we did not see any credits applied to subsequent bills nor did Mom receive any refund of the payments as we were told to expect. Now, over a year has passed and still she has seen no refunds. This sequence of events is not in question; the Facility has never said Mom is not entitled to receive a refund for personal care services she didn't receive in December, 2023 and January into March of 2024.

In May of 2024, my Mother moved to a different facility in Minot. The Facility where she had previously lived withdrew a payment from her account in June of 2024, **more than 2 weeks after my Mom had moved out of that Facility to the new facility**. This created a second overpayment. This is also not in question; the Facility has never said Mom is not entitled to receive a refund for their mistake in drawing money from her account to pay for rent in the month **after** she moved out.

My sister (who submitted online testimony in support of this bill) followed up with the Facility several times during 2024. In addition, I went to the Facility the day after Thanksgiving, November 29, 2024. When I spoke to the Business Director for the Facility on that day, he showed me a sticky note with a handwritten amount of more than \$5500 that is owed to Mom. He indicated that amount did not include the amount to be refunded for personal cares from the day after she moved out in May through the end of May. He was going to talk to the Director and provide me a status of the refund. I have yet to receive a response, even after following up with two emails to the Business Director, copied to their Executive Director, requesting a status of the refunds.

On November 29th, I also asked the Business Director about payment of interest on the amount owed to Mom which I believe is close to \$6000 when the refund for personal cares from May is factored in. He said normally refunds are issued within 30 days so rarely would interest be due. As stated above, we have been seeking these refunds for substantially longer than 30 days. For 8-14 months, my Mom has been deprived of money which could have been used for her ongoing care. My sister and I have both inquired with the Facility about getting this resolved and we have both been told changes in the administration in the Facility's parent office are the reason for the delay. We understand administrative changes can impact the way refunds are handled, but that really isn't an acceptable reason to fail to refund payments made by a 94-year

old former resident (now almost 95 years old) for services she didn't receive. Nothing about these refunds being due and owing for this long is acceptable.

My sister also contacted the Office of the Ombudsman. She has worked with two different ombudsmen and both were very helpful in following up with the Facility. Their efforts didn't yield a refund from the Facility, either.

The amendment I am requesting, that is attached to my testimony, is to add language that will ensure situations such as my Mom's would also be subject to refund within 30 days as follows:

5. If a trust is established by the facility to hold the resident's funds, the facility shall provide to the resident, resident representative, or an agent under a power of attorney for financial decisions a written quarterly accounting of any transactions made on behalf of the resident which includes an explanation of the transactions by the facility. The facility shall pay out in full, within thirty days, the resident's personal funds deposited with the facility or refunds due to the resident upon discharge or eviction, and provide a final accounting of those funds to the resident, or in the case of death, in accordance with state law. Other refunds due to the resident upon discharge, eviction, or death, and refunds due as a result of an overpayment to the facility, must be paid out in full within thirty days from the resident's date of discharge from the facility, except that a refund due as a result of an overpayment to the facility must be paid in full within thirty days from the date the overpayment is discovered. If the facility fails to issue a refund within 30 days, the facility shall include a reasonable rate of interest on the amount of the refund when the payment is made.

Thank you for your consideration of my testimony and proposed amendment. We appreciate your attention to the needs of this vulnerable population.

I will try to answer any questions you have.

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)

A BILL for an Act to amend and reenact sections 50-10.2-01, 50-10.2-02, 50-10.2-02.1, and 50-10.2-05 of the North Dakota Century Code, relating to the rights of health care facility residents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

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

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

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

~~m.o.~~ The right to receive at least a thirty-day written advance notice of any transfer or discharge when the resident is being discharged to another facility or the resident's own home, or when the resident is being transferred or discharged because of a change in the resident's level 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.

3/9/25, 2:54 PM

SB2070 - Google Docs

Committee Members,

On March 23, 2025, it will be one year that my 94 year old mother has been waiting for a refund from a long term care facility. She is due reimbursement for fees charged for services she never received. In addition, she was charged rent for the month of June 2024 when she had moved out of the facility on May 11, 2024. Most certainly, time is of the essence when one is 94 years old. The general manager and office manager have both agreed the money is due her but still she waits. Thank you for your efforts in passing this legislation. Meanwhile, my mom is left with no alternative but to take legal action.

Respectfully,

Kim Fornshell

2025 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

SB 2070
3/19/2025

Relating to the rights of health care facility residents.

9:50 a.m. Chairman M. Ruby opened the meeting.

Members Present: Chairman M. Ruby, Vice-Chairman Frelich, Representatives K. Anderson, Beltz, Bolinske, Dobervich, Fegley, Hendrix, Holle, Kiefert, Rohr

Members Absent: Representatives Davis, Rios

Discussion Topics:

- Refunds for overpayments
- Committee action

9:55 a.m. Representative Rohr moved to amend the bill relating to refunds for overpayments.

9:55 a.m. Representative Holle seconded the motion.

9:55 a.m. Voice vote passed.

9:59 a.m. Representative K. Anderson moved a Do Pass as amended.

10:00 a.m. Representative Bolinske seconded the motion.

Representatives	Vote
Representative Matthew Ruby	Y
Representative Kathy Frelich	Y
Representative Karen Anderson	Y
Representative Mike Beltz	Y
Representative Macy Bolinske	Y
Representative Jayme Davis	AB
Representative Gretchen Dobervich	Y
Representative Cleyton Fegley	Y
Representative Jared Hendrix	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Nico Rios	AB
Representative Karen Rohr	Y

10:01 a.m. Motion passed 11-0-2.

Vice Chairman Frelich will carry the bill.

10:02 a.m. Chairman M. Ruby closed the meeting.

Jackson Toman, Committee Clerk

March 19, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

VC 3/19/25
1 of 12

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, ~~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.~~

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

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

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

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

- a. The right to civil and religious liberties, including knowledge of available choices, the right to independent personal decisions without infringement, and the right to encouragement and assistance from the staff of the facility to promote the fullest possible exercise of these rights.
- b. The right to have private meetings, associations, and communications with any person of the resident's choice within the facility.
- c. The right to participate in the community.
- d. The right of each resident, the resident's immediate family, ~~any existing legal guardian of the resident representative~~, friends, facility staff, and other persons to present complaints on the behalf of the resident to the facility's staff, the facility's administrator, governmental officials, or to any other person, without fear of reprisal, interference, coercion, discrimination, or restraint. ~~The facility shall adopt a grievance process and make the process known to each resident and, if the resident is unable to understand, to the resident's immediate family member or members and any existing legal guardian of the resident. An individual making a~~

1 ~~complaint in good faith is immune from any civil liability that otherwise might~~
2 ~~result from making the complaint.~~

3 ~~d.e.~~ The right to send and receive unopened personal mail and electronic mail and
4 the right of access to and use of telephones and electronic devices for private
5 conversations.

6 ~~e.f.~~ The right to assured private visits, subject to restrictions to protect the health or
7 safety of the resident, by one's spouse, partner, or significant other, or if both are
8 residents of the same facility, the right to share a room, within the capacity of the
9 facility, unless sharing a room is not medically advisable as documented in the
10 medical records by the attending physician.

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

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

23 ~~h.i.~~ The right to be adequately informed of one's medical condition and proposed
24 treatment and to participate in the planning of all medical treatment, including the
25 right to refuse medication and treatment, to be discharged from the facility upon
26 written request, and to be notified by the resident's attending physician of the
27 medical consequences of any such actions.

28 ~~i.j.~~ The right to have privacy in treatment and in caring for personal needs, ~~to use~~
29 ~~personal belongings, to have security in storing and using personal possessions,~~
30 and to have confidentiality in the treatment of personal and medical records. ~~The~~

1 ~~resident has the right to view, and authorize release of, any personal or medical~~
2 ~~records.~~

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

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

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

17 l.-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 individual
20 in the facility who is endangered due to the clinical or behavioral status of
21 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 transfer or
26 discharge when the resident is being discharged to another facility or the
27 resident's own home, or when the resident is being transferred or discharged
28 because of a change in the resident's level of care; however, advance notice of
29 transfer or discharge may be less than thirty days if the resident has urgent
30 medical needs that require a more immediate transfer or discharge, or a more

1 immediate transfer or discharge is required to protect the health and safety of
2 residents and staff within the facility.

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

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

7 ~~p.f.~~ The right to have each facility display a notice that the following information is
8 available for public review and make the information available on request:

9 (1) A complete copy of every inspection report, deficiency report, and plan of
10 correction the facility received during the previous ~~two~~three years.

11 (2) The facility's grievance process.

12 (3) A copy of the statement of ownership, board membership, and partners.

13 (4) A statement of ownership setting forth any conflict of interest in the
14 operation of the facility.

15 ~~q.s.~~ The right to a pharmacist of the resident's choice irrespective of the type of
16 medication distribution system used by the facility, and to not be charged a fee or
17 receive a financial incentive or disincentive for choosing a pharmacy other than
18 the facility's preferred pharmacy. The resident may not be charged for
19 repackaging if that cost can be included on the facility cost report.

20 ~~r.t.~~ The right to not be discriminated against by a facility in the admissions process or
21 in the provision of appropriate care on the basis of the resident's source of
22 payment to the facility. ~~Any applicant for admission to a facility who is denied~~
23 ~~admission must be given the reason for the denial in writing upon request.~~

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

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

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

- 1 3. For involuntary transfer and discharge actions taken by a facility, the written transfer or
2 discharge notice issued by the facility must include:
- 3 a. The reason for the transfer or discharge.
4 b. The effective date of transfer or discharge.
5 c. The location the resident is to be transferred or discharged to.
6 d. The name, mailing and electronic mail address, and telephone number of the
7 office of the state long-term care ombudsman.
- 8 4. The facility shall protect the resident from retaliation. The facility shall adopt a
9 grievance process and make the process known to each resident, the resident's
10 immediate family member, and the resident representative. A person making a
11 complaint in good faith is immune from any civil liability that otherwise might result
12 from making the complaint.
- 13 5. If a trust is established by the facility to hold the resident's funds, the facility shall
14 provide to the resident, resident representative, or an agent under a power of attorney
15 for financial decisions a written quarterly accounting of any transactions made on
16 behalf of the resident ~~which includes,~~ including an explanation of the transactions by
17 the facility. The facility shall pay out in full, ~~within thirty days, the:~~
- 18 a. A resident's personal funds deposited with the facility or refunds due to the
19 resident upon discharge or eviction ~~within thirty days,~~ and provide a final
20 accounting of those funds to the resident, or in the case of death, in accordance
21 with state law.
- 22 b. Refunds due as a result of an overpayment to the facility within thirty days from
23 the date the overpayment is discovered.
- 24 c. Other refunds due to the resident upon discharge, eviction, or death ~~must be paid~~
25 ~~out in full~~ within thirty days from the resident's date of discharge from the facility.
- 26 6. The facility shall inform a resident, resident representative, an agent under a power of
27 attorney for financial decisions, or immediate family member, at least thirty days before
28 any change in the costs or availability of the services. A facility may not demand or
29 receive advance payment or gratuity to assure admission or for the resident to be
30 placed on a waiting list for admission.

- 1 7. A resident and the resident representative may view and authorize release of any
2 personal or medical records.
- 3 8. The use of a physical or chemical restraint in an emergency or ~~when~~if necessary to
4 protect the resident from injury to self or others must be authorized and documented
5 by a physician, nurse practitioner, or physician's assistant for a limited period of time. A
6 chemical restraint must be administered by a licensed nurse, physician, nurse
7 practitioner, or physician's assistant. Except as provided in this subsection, a drug or
8 physical restraint may not be used or threatened to be used for the purpose of
9 punishment, for the convenience of staff, for behavior conditioning, as a substitute for
10 rehabilitation or treatment, or for any other purpose not included in an approved
11 treatment plan.
- 12 9. Upon request, a facility shall provide an applicant for admission to a facility who is
13 denied admission the reason for the denial in writing. The facility shall note in the
14 written denial ~~when~~if the denial is based on the special characteristics or service
15 limitations of the facility.
- 16 10. A facility shall ensure a resident council meeting is attended by residents only or at the
17 invitation of a resident.
- 18 11. Waiver of any of the rights guaranteed by this chapter may not be made a condition of
19 admission to a facility or ongoing residence.
- 20 ~~3.~~12. Each facility shall prepare a written plan and provide staff training to implement this
21 chapter.
- 22 ~~4.~~13. The department shall develop and coordinate with the facility licensing and regulatory
23 agencies a relocation plan in the event a facility is decertified or unlicensed.

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

26 **50-10.2-02.1. Authorized electronic monitoring - Penalty.**

- 27 1. A resident and the resident representative may treat the resident's living quarters as
28 the resident's home and, subject to rules to protect the privacy and safety of another
29 resident, may purchase and use a technology device of the resident's choice,
30 including a technology device that may facilitate virtual monitoring or virtual visitation
31 with family and other persons, provided operation and use of the technology device

- 1 does not violate an individual's right to privacy under state or federal law.
- 2 Subsections 3 through 12 apply if a technology device or a virtual monitoring device is
- 3 used to record.
- 4 2. A resident may use a device of the resident's choice that facilitates virtual monitoring,
- 5 provided:
- 6 a. The purchase, activation, installation, maintenance, repair, deactivation, and
- 7 removal of such device is at the expense of the resident; and
- 8 b. The device and ~~any~~ images obtained from the device are used by the resident
- 9 and any person communicating with the resident in a manner that does not
- 10 violate an individual's right to privacy under state or federal law.
- 11 3. A facility shall permit a resident or the resident representative to conduct authorized
- 12 electronic ~~monitoring~~recording of the resident's room through an authorized electronic
- 13 ~~monitoring~~recording device if:
- 14 a. The authorized electronic ~~monitoring~~recording device is placed in the resident's
- 15 room;
- 16 b. The electronic ~~monitoring~~recording device is placed in a fixed, stationary position;
- 17 ~~monitors~~records only the area occupied by the resident and not the area
- 18 occupied by the resident's roommate; and protects the privacy and dignity of the
- 19 resident;
- 20 c. The facility is given written notice of the placement and use which must include
- 21 an installation plan in compliance with the facility's standards and regulations the
- 22 facility ~~provides~~shall provide to the resident;
- 23 d. A video tape or recording created using an authorized electronic
- 24 ~~monitoring~~recording device records the date and time;
- 25 e. All costs, except for electricity, associated with the authorized electronic
- 26 ~~monitoring~~recording device, including installation, operation, removal, repairs,
- 27 room damage, and maintenance, are paid by the resident or resident
- 28 representative who initiated the use of the authorized electronic
- 29 ~~monitoring~~recording device; and
- 30 f. A signed authorization for the disclosure of protected health information, as
- 31 defined by title 45, Code of Federal Regulations, part 160, section 103, compliant

1 with the federal Health Insurance Portability and Accountability Act of 1996 [Pub.
2 L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.] and consenting to the use of
3 the device is given by each resident occupying the same room, or by that
4 resident's resident representative in accordance with subsection 45.

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

8 ~~3.4.~~ The facility shall cooperate to accommodate the placement of the authorized
9 electronic ~~monitoring~~recording device, unless doing so would place undue burden on
10 the facility.

11 ~~4.5.~~ Before placing and using the authorized electronic ~~monitoring~~recording device or
12 virtual monitoring device, a resident or resident representative shall obtain the signed
13 authorization of any other resident residing in the room in accordance with
14 subsection ~~4.3~~. The authorization may be signed by ~~that~~the resident's resident
15 representative.

16 a. The resident's or the resident representative's authorization may limit the use of
17 an authorized electronic ~~monitoring~~recording device to only audio
18 ~~monitoring~~recording or only video ~~monitoring~~recording and may limit the device's
19 time of operation, direction, and focus.

20 b. At any time, a resident or resident representative who did not request the
21 authorized electronic ~~monitoring~~recording device in the resident's room may
22 withdraw, in writing, the signed authorization for the use of the device. The
23 resident who requested the device or the resident's resident representative is
24 responsible for having the device disabled in compliance with the facility's
25 standards and regulations after receipt of the written withdrawal.

26 ~~5.6.~~ The facility shall make a reasonable attempt to accommodate a resident if a resident
27 or resident representative of a resident who is residing in a shared room wants to have
28 an authorized electronic ~~monitoring~~recording device placed in the room and another
29 resident living in the same shared room refuses to authorize the use of the authorized
30 electronic monitoring device.

- 1 ~~6-7.~~ If authorized electronic ~~monitoring~~recording is being conducted in the room of a
2 resident, and another resident will be moved into the room, the resident who
3 requested the device or the resident's resident representative is responsible for having
4 the existing authorized electronic ~~monitoring~~recording device disabled in compliance
5 with the facility's standards and regulations unless the new resident or the resident's
6 resident representative authorizes the device pursuant to subsections ~~43~~ and ~~45~~.
- 7 ~~7-8.~~ A facility may not refuse to admit an individual and may not remove a resident from a
8 facility because of authorized electronic ~~monitoring~~recording of a resident's room. A
9 person may not intentionally retaliate or discriminate against a resident for
10 authorization of authorized electronic ~~monitoring~~recording.
- 11 ~~8-9.~~ A facility clearly and conspicuously shall post a sign where authorized electronic
12 ~~monitoring~~recording is being conducted to alert and inform visitors.
- 13 ~~9-10.~~ A facility or staff of the facility may not access any video or audio recording created
14 through an authorized electronic ~~monitoring~~recording device placed in a resident's
15 room without the written consent of the resident or resident representative or court
16 order.
- 17 ~~10-11.~~ ~~A person~~An individual that intentionally hampers, obstructs, tampers with, or destroys
18 a recording or an authorized electronic ~~monitoring~~recording device or virtual
19 monitoring device placed in a resident's room, without the express written consent of
20 the resident or resident representative, is subject to a class B misdemeanor. A
21 ~~person~~An individual that places an electronic ~~monitoring~~recording device in the room
22 of a resident or which uses or discloses a tape or other recording made by the device
23 may be guilty of a crime or civilly liable for any unlawful violation of the privacy rights of
24 another. In any civil proceeding, administrative proceeding, or survey process, material
25 obtained through the use of an authorized electronic ~~monitoring~~recording device may
26 not be used if a ~~person~~an individual intentionally hampered, obstructed, or tampered
27 with the material without the express written consent of the resident or resident
28 representative, or if the material was obtained through the operation of an electronic
29 ~~monitoring~~recording device which was not compliant with this section.
- 30 ~~11-12.~~ A person may not intercept a communication or disclose or use an intercepted
31 communication of an authorized electronic ~~monitoring~~recording device or a virtual

1 monitoring device placed in a resident's room, without the express written consent of
2 the resident or the resident representative.

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

5 ~~— **50-10.2-05. Furnishing financial information.**~~

6 ~~— A facility may request that an applicant for admission, a resident of the facility, or the~~
7 ~~applicant's or resident's legal representative furnish financial information regarding income and~~
8 ~~assets, including information regarding any transfers or assignments of income or assets. A~~
9 ~~facility may deny admission to an applicant for admission who is unable to verify a viable~~
10 ~~payment source.~~

**REPORT OF STANDING COMMITTEE
ENGROSSED SB 2070**

Human Services Committee (Rep. M. Ruby, Chairman) recommends **AMENDMENTS** ([25.8092.02001](#)) and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT OR EXCUSED AND NOT VOTING). SB 2070 was placed on the Sixth order on the calendar.

2025 SENATE HUMAN SERVICES

SB 2070

2025 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Fort Lincoln Room, State Capitol

SB 2070
3/31/2025

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

9:03 a.m. Chairman Lee opened the hearing.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

Discussion Topics:

- Conference Committee

9:03 a.m. Chairman Lee opened committee discussion on concurring with the bill.

9:05 a.m. Chairman Lee closed the hearing.

Andrew Ficek, Committee Clerk

2025 CONFERENCE COMMITTEE

SB 2070

2025 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Fort Lincoln Room, State Capitol

HB 2070
4/8/2025
Conference Committee

Relating to the rights of health care facility residents.

4:00 p.m. Chairman Roers opened the hearing.

Members Present: Chairman Roers, Senator Van Oosting, Senator Hogan, Representative Ruby, Representative Frelich, Representative Rios.

Discussion Topics:

- Grammar Errors
- Audio and Video Recording Devices
- Ombudsman Investigation
- Unintentional Recording
- Unauthorized Social Media Sharing

4:00 p.m. Chairman Roers opened discussion on House Amendments.

4:04 p.m. Karla Backman, State Long-Term Care Ombudsman with Department of Health and Human Services, answered committee questions.

4:18 p.m. Nikki Wegner, President, Long Term Care Association, answered committee questions.

4:21 p.m. Chairman Roers closed the hearing.

Andrew Ficek, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

SB 2070
4/16/2025
Conference Committee

Relating to the rights of health care facility residents.

9:00 a.m. Chairman Roers opened the hearing.

Members Present: Chairman Roers, Senator Van Oosting, Senator Hogan, Representative Rios, Representative Ruby, and Representative Frelich.

Discussion Topics:

- First Amendment Rights

9:01 a.m. Representative Frelich opened discussion on submitted testimony #45022.

9:03 a.m. Senator Hogan moved the Senate accepts the House amendments
LC#25.8092.02001

9:03 a.m. Representative M. Ruby seconded the motion.

Motion passed 6-0-0.

Senator Roers will carry the bill.

Representative Frelich will carry the bill.

9:04 a.m. Chairman Roers closed the hearing.

Andrew Ficek, Committee Clerk

SB 2070 041625 0904 AM Roll Call Vote

Final Recommendation

SB 2070

Date Submitted: April 16, 2025, 9:04 a.m.

Recommendation: Accept

Amendment LC #: 25.8092.02001

Engrossed LC #: N/A

Description:

Motioned By: Hogan, Kathy

Seconded By: Ruby, Matthew

House Carrier: Frelich, Kathy

Senate Carrier: Roers, Kristin

Emergency Clause: None

Vote Results: 6 - 0 - 0

Sen. Roers, Kristin	Yea
Sen. Van Oosting, Desiree	Yea
Sen. Hogan, Kathy	Yea
Rep. Frelich, Kathy	Yea
Rep. Ruby, Matthew	Yea
Rep. Rios, Nico	Yea

**REPORT OF CONFERENCE COMMITTEE
ENGROSSED SB 2070**

Your conference committee (Sens. Roers, Van Oosting, Hogan and Reps. Frelich, M. Ruby, Rios) recommends the **SENATE ACCEPT** the House amendments ([25.8092.02001](#)) to Engrossed SB 2070.

Engrossed SB 2070 was placed on the Seventh order of business on the calendar.

Frelich, Kathy

From: Alm, Jonathan E. <jealm@nd.gov>
Sent: Friday, April 11, 2025 7:25 AM
To: Frelich, Kathy
Subject: RE: SB 2070

Representative Frelich

Sorry for the delayed response.

I was able to listen to the conference committee's conversation regarding Engrossed Senate Bill No. 2070 (ESB 2070). Some of the concerns of the committee members might already be addressed in ESB 2070 and in existing law.

1. ESB 2070 changes to N.D.C.C. § 50-10.2-02.1(11) states: "~~A person~~ An individual that places an electronic ~~monitoring~~ recording device in the room of a resident or which uses or discloses a type or other recording made by the device may be guilty of a crime or civilly liable for any unlawful violation of the privacy rights of another."
2. N.D.C.C. § 12.1-31-14 addresses surreptitious intrusion or interference with privacy. You might want to check with Legislative Council if N.D.C.C. § 12.1-31-14 should be updated based on the concerns raised during the conference committee regarding the posting of a video of a staff member at a long-term care facility and if that section of law can be added to ESB 2070 since it has not been part of this Bill as of this date. Legislative Council might also want to consider if the prohibition of posting of a video of a staff member at a long-term care facility would infringe upon the individual's 1st Amendment rights who posted the video or if the staff member has an expectation of privacy while providing a public accommodation.
3. As far as the use of the video recording or what is on the video, N.D.C.C. § 12.1-17-07 addresses harassment, N.D.C.C. § 12.1-17-07.1 addresses stalking, and N.D.C.C. § 12.1-17-07.2 addresses the distribution of intimate images without or against consent.
4. My interpretation of N.D.C.C. § 50-10.2-02.1(12) is that this subsection only applies to intercepted communications of an authorized electronic recording device or virtual monitoring device.

Thank you,

Jonathan Alm

*Department of Health & Human Services
 Legal Division – Chief Legal Officer*

701.328.3311 • jealm@nd.gov • www.hhs.nd.gov



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From: Frelich, Kathy <kfrelich@ndlegis.gov>
Sent: Wednesday, April 9, 2025 2:44 PM
To: Alm, Jonathan E. <jealm@nd.gov>
Subject: RE: SB 2070

You don't often get email from kfrelich@ndlegis.gov. [Learn why this is important](#)

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Thank you



Kathy Frelich
ND House of Representatives
District 15

701-351-0719
[Kfrelich@ndlegis.gov](mailto:kfrelich@ndlegis.gov)

From: Alm, Jonathan E. <jealm@nd.gov>
Sent: Wednesday, April 9, 2025 2:22 PM
To: Frelich, Kathy <kfrelich@ndlegis.gov>
Subject: RE: SB 2070

Representative Frelich

Sorry for the delayed response. I will listen to the hearing and let you know if this is something that I can assist with.

Thank you,

Jonathan Alm
Department of Health & Human Services
Legal Division – Chief Legal Officer

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Be Legendary.

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