

A Guide to Your Rights as a
Resident of a Basic Care Facility
In North Dakota

Distributed by:

Long-Term Care Ombudsman Program

**A free and confidential
resident directed
advocacy service**

1237 W. Divide Ave. – Suite 6

Bismarck, ND 58501

**701-328-4617 or 711 (TTY) or
1-855-462-5465 option 3**

The contents of this booklet are a summary of your rights as a resident of a basic care facility as set forth by North Dakota state law. The links listed inside direct you to the complete law.

Updated 09/2019

Dear Resident,

This booklet provides a summary of the rights you have in your new home in the basic care facility. You keep the rights you had before this move and are still in charge of your choice and lifestyle. If you experience memory and understanding changes your power of attorney documents may be triggered or a court may determine a guardian needs to manage your health and/or financial decisions. Even if you have such a representative you should still be informed and consulted about decisions made that involve you.

Remember and respect that the other residents in the facility have the same rights as you. Your choices and actions should not interfere with their rights.

While living in the basic care facility you may choose a family member or friend to be included/involved in the decision-making and sharing of your information, but you must put this in writing – the facility cannot automatically share information with your family member(s) or others.

If you, or any of your family or friends, have questions about the rights and how they apply to a situation, you may ask facility staff, or you may call the Long-Term Care Ombudsman Program at 701-328-4617 or 1-855-462-5465 (choose option 3).

Sincerely,

The Long-Term Care Ombudsmen



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North Dakota Century Code and Administrative Rules

- North Dakota Century Code 50-10.2 Rights of Health Care Facility Residents

Scan below with your smart phone to connect with web site



NDCC 23-09.3 ND Century Code Basic Care Facilities

NDAC 33-03-24.1 ND Administrative Code Basic Care Facilities

RESIDENT RIGHTS INFORMATION

- The facility is required to provide you and a member of your immediate family, or any existing legal guardian,
 - a written statement of your rights,
 - the responsibilities of both you and the facility, and
 - the rules governing your conduct, at the time you are admitted.

Within 30 days after your admission, the statement must be verbally explained to you and if you are unable to understand, it should be explained to your immediate family member or any existing legal guardian. This should also happen every year for as long as you live in the facility.

- The facility's staff shall fully encourage and assist you in exercising your rights.

ADMISSION

- You cannot be discriminated against in the admission process based upon your source of payment.
- If you are denied admission to a facility, the facility must provide, **in writing**, the reason for the denial.
- You cannot be required to give advance payment, gratuity, or gift to the facility to assure admission.
- You cannot be asked to waive or give up any of your rights as a condition of admission.

INVOLVEMENT IN HEALTH CARE

- The facility must provide room and board and health, social and personal care to assist you in attaining and maintaining your highest level of functioning, consistent with your assessment and care plan.
- There must be staff in the facility, awake, and prepared to assist residents twenty-four hours a day.

- You should be assessed within 14 days of admission and then no less frequently than quarterly. A care plan should be developed from the assessment and updated at least quarterly.
- If you receive services from someone outside of the facility, you have the right to know who they are and what agency they work for.
- It is your choice who provides services to you. You can choose your doctor, pharmacist and dentist.
- You should be informed about your total health status including your medical care, nursing care, nutritional status, activities potential, rehabilitation potential, and any physical impairments.
- You should be informed in advance of any care or treatment to be provided and be given the opportunity to participate in decisions regarding proposed care or treatment.
- You can give yourself certain medications and drugs unless professionals have determined it is not safe for you to do so.
- You should choose who you want involved in or notified about your care.
- You can refuse to take medications and participate in a treatment. Your medical provider should notify you of any medical consequences of your decisions.
- You have access to view your personal or medical records and to authorize release of those records.

COST OF CARE

- You have the right to see in writing, information about any services you are provided by the facility and the costs of those services.
- You have to be informed by the facility at least 30 days before any change in the costs or availability of any services.

- The facility needs to assist you in filing for additional sources of payment you may be eligible for.

GROUPS AND ACTIVITIES

- You can participate in social, religious, and community activities of your choice, if they do not interfere with the rights of other residents. You should be able to continue normal activities.
- There must be a planned and meaningful activity program designed to your needs and interests. These activities may be inside or outside of the facility and should include day, evening, and weekend activities.
- You may participate and help organize resident and family council meetings. For resident and family councils, the facility must provide a space and staff person to assist when requested.
- The facility cannot force you to work or perform services for them. If you so choose to work and perform services, it must be documented in your care plan.

FREEDOM FROM ABUSE, NEGLECT, EXPLOITATION & RESTRAINTS

- You cannot be subjected to verbal, sexual, physical, or mental abuse. This includes the use of corporal punishment or involuntary isolation.
- You may request a copy of the facility's written policies/procedures regarding how they will prevent employment of persons convicted of mistreatment, neglect and abuse of residents.
- Chemical and Physical Restraints may not be used for the convenience of the staff or for disciplinary reasons and may be used ONLY:
 1. When ordered, in writing, by a doctor for a **specified and limited period of time** to treat a medical symptom and to ensure your safety or that of others.
 2. In Emergency situations during which your behavior has placed, or could place, yourself or others in danger of physical harm and the situation could not have been anticipated. Restraints can be applied in emergency situations only until a written order can be promptly obtained from your doctor.

Federal Law defines physical and chemical restraints as follows:

Physical Restraints are “any manual or physical or mechanical device, material, or equipment attached or adjacent to your body that you cannot remove easily and which restricts freedom of movement or normal access to your body”.

Physical restraints include, but are not limited to, hand mitts, soft ties and rests, wheelchair safety bars, bed rails, or chairs that prevent rising. Also included as restraints are facility practices such as tucking in a sheet so tightly that a bed-bound resident cannot move, or placing a wheelchair-bound resident so close to wall that the wall prevents the resident from rising.

Chemical Restraints means a “psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms”.

TRANSFER & DISCHARGE

- In cases of transfer or discharge, you must receive a **written** notice.
- The facility must prepare you for a safe and orderly transfer or discharge from the facility.
- A facility cannot transfer or discharge you from the facility against your wishes, unless it is for the following reasons:
 1. Your doctor documents your needs cannot be met by the facility,
 2. The safety and welfare, of individuals in the facility is threatened.
 3. Non-payment of your bill, whether by you or outside paying source.
 4. The facility ceases to operate.
 5. During times of remodel – can be temporary only.
- Written notice of Transfer or Discharge should be given **at least 30 days in advance** of the transfer or discharge. **However, the written notice may be less than 30 days if:**
 1. The resident has urgent medical needs that require a more immediate transfer or discharge or,
 2. A more immediate transfer or discharge is required to protect the health and safety of residents and staff within the facility.

PERSONAL & PRIVACY RIGHTS

- The facility staff must treat you courteously, fairly and with dignity.
- You should have privacy in visits with your spouse and can share a room with your spouse if you both agree and a room is available.
- You should have privacy in medical treatment and personal care along with confidentiality of those records. Your personal and medicals records can only be released to persons of your choice.
- You have the right to safe, clean and comfortable surroundings, allowing you to keep and securely store your personal belongings to the extent space permits. The facility must provide you with reasonable accommodation for your personal needs and preferences.
- You can send and receive unopened personal mail.
- You can manage your own financial affairs, if not under legal guardianship, or choose someone to handle them for you.
- You have the right to visitors, to attend meetings, and to communicate with people of your choosing.
- The facility must provide a telephone in a private area for your use for communication.
- If you so choose, besides your legal resident representative you can have your family representative involved in your health care.
- You can make choices about how you want to live your life that are significant to you. This includes deciding how you want to spend your time, what you would like your daily schedule and routine to be and what your health care wishes are that are consistent with your personal beliefs, values, interests, as well as assessments and plans of care.

- You can have immediate access at any time without restrictions to:
 - 1) Your personal doctor;
 - 2) Representative from state and federal agencies;
 - 3) Representatives from the Ombudsman program, Developmental Disabilities, or Mental Health Advocacy Programs; and
 - 4) Immediate family or other relatives you want to visit
- You have the right to civil and religious liberties, including knowledge of available choices (civil liberties include your right to vote, marry, divorce, sign papers, obtain and dispose of property, etc.)

GRIEVANCES AND COMPLAINTS

- You can present complaints and discuss problems, concerns, grievances, or suggestions with anyone you choose without fear of retaliation or reprisal. This includes your local long-term care ombudsman.
- The facility must provide you with a statement about your right to file a complaint with the Department of Health concerning resident abuse, neglect and misappropriation of your property in the facility.
- You must be provided a copy of the facilities grievance procedures.
- You must be given information about other agencies and organizations, such as the State Ombudsman Program or Medicaid Fraud that may assist you with resolving a complaint or providing information and assistance
- You have a right to claim relief against the facility for any violation of rights guaranteed by State Law.

ACCESS TO FACILITY INFORMATION

- The facility must make available every inspection report, deficiency report and the approved plan of correction for the past two years.
- You can request a copy of the facility's grievance process.
- You can request a copy of the names of the statement of ownership, board members, and partners of the facility.

- You may ask for a statement setting forth any conflict of interest in the operation of the facility, such as, an owner's family member being employed or doing business with the facility.

Effective August 1, 2019;

Notice of Right to Place and Use an Electronic Monitoring Device in your Room at a Long-Term Care Facility (assisted living, basic care, nursing home, swing bed)

WHO has the right to place and use an authorized electronic monitoring device in your room?

- A resident of a facility; or
- A resident representative of the resident (if the resident is not able to consent to electronic monitoring).
 - Must be a power of attorney for health care (agent must be in effect as per the terms of the POA document); or
 - Guardian of the resident

WHEN can you exercise this right to install and use an authorized electronic monitoring device?

- The authorized electronic monitoring law goes into effect on August 1, 2019.
- Then must complete and submit the applicable notices and authorizations.
- Also, you may choose to install an authorized electronic monitoring device in your room at any time while you reside in the long-term care facility if all the necessary documentation is completed and submitted.

WHAT should be considered before giving consent? You should know what you are giving consent to.

Video device

All residents in the room should consider the following.

- Who, and what, may be captured on video e.g. visitors, equipment in room, personal cares provided, intimate relations, etc.
- With whom will you share the recording? What restrictions do you want placed on sharing of the video recording?
- If there will be intimate times with a significant other do you want the recording turned off during those times?

Audio device

All residents in the room should consider the following.

- The device will likely record conversations with staff, family and friends, etc. for both the resident wanting the recording and for any other resident sharing the room. This may mean private information about finances, family relationships, and health information may be recorded.
- With whom will you share the recording? Do you want all conversations and possibly private information being on a recording? Do you plan to go to a family room or conference room for private conversations?

WHAT is the process to use an authorized electronic monitoring device in your room at the facility? **ALL** the following is required by law.

1. WRITTEN NOTICE GIVEN TO LONG-TERM CARE FACILITY

- a. You, the resident, or your resident representative, must complete and give a Notice to Facility of your intent to place and use an authorized electronic monitoring device.
- b. You, or your resident representative, must give the facility an **installation plan** that follows the facility's regulations and policies.

2. DOCUMENTATION OF CONSENT

- a. You, the resident, or the resident representative, completes a document showing consent.
- b. Each of the resident's roommates, or his/her resident representatives, must also complete a document of consent.
 - i. The roommate may put limits on the authorized electronic monitoring device and all of the limits must be followed for the authorized electronic monitoring device to be used.
- c. The documentation of consent includes:
 - i. Written consent for the placement and use of the authorized electronic monitoring device and
 - ii. written authorization for disclosure of protected health information and
 - iii. written release of liability of the facility for violation of a resident's privacy resulting from the use of an authorized electronic monitoring device.

3. PAYMENT

- a. You, the resident, or your resident representative, are responsible to pay for the authorized electronic monitoring device, and all installation, operation, maintenance, and removal costs associated with the device except for electricity.

4. INFORMATION REQUIRED ON VIDEO RECORDINGS

- a. All recordings from a video electronic monitoring device must include the date and time of the recording.

5. AUTHORIZED ELECTRONIC MONITORING DEVICE

- a. The authorized electronic monitoring device shall be in a fixed, stationary position.
- b. The authorized electronic monitoring device shall be directed only on the resident who initiated the installation and use of the authorized electronic monitoring device.
- c. The authorized electronic monitoring device shall be placed for maximum protection of the privacy and dignity of the resident and the roommate.

A person may be subject to a Class B misdemeanor if he

- Intentionally hampers, obstructs, tampers with or destroys a recording or an authorized electronic monitoring device placed in a resident's room without the express written consent of the resident or resident representative.

A person may be guilty of a crime or civilly liable if he

- Unlawfully violates the privacy rights of another by placing an electronic monitoring device in the room of a resident or by using or disclosing a tape or other recording made by the device.

- You can choose at any time to revoke your consent to have an authorized electronic monitoring device in your room by written notice.
- The roommate must agree to the use of an authorized electronic monitoring device in the room or it can't be used. You can request to move to a different room with a roommate that will agree to the use of an authorized electronic monitoring device
- A facility cannot refuse to admit you or discharge you if you choose to have an authorized electronic monitoring device.

A facility, or staff of the facility, may not access any recording from the authorized electronic monitoring device without written permission from you or your resident representative, or a court order.

- A facility, or staff of the facility, may not access any recording from the electronic monitoring device without written permission from you or your resident representative, or a court order.

Alzheimer's, dementia, special memory care, or traumatic brain injury facility or units

A basic care facility or unit that admits or retains only residents with Alzheimer's, dementia, or special memory care needs in a secured or unsecured facility or unit, or a facility that admits and retains only residents with traumatic brain injury has the additional requirements according to NDAC 33-03-24.1-24.

The facility shall ensure each resident's right to privacy, dignity and respect, and freedom from coercion and restraint by promoting

- individual initiative,
- autonomy, and
- independence in making life choices related to daily activities, physical environment, and with whom to interact.

The facility or unit must also fulfil the following.

- a. Residents must be provided privacy in their sleeping or living area, including entrance doors lockable by the individual, with only appropriate staff having keys to the doors;
- b. Residents sharing a room with another resident must have a choice of roommate in that setting;
- c. Residents must be granted the freedom to furnish and decorate their sleeping unit or living area to the extent allowable based on facility policy and fire code requirements;
- d. Residents must have the freedom and support to control their schedules and activities and have access to food any time and eat where they choose;

- e. Residents can have visitors of their choosing at any time;
- f. Residents must have access to the community; and
- g. Residents must have access to outdoor space. Residents in a secured facility or unit must have access to a secured outdoor space.

IMPORTANT AGENCIES and CONTACT INFORMATION

Long-Term Care Ombudsman Program

Phone: 1-855-462-5465 (toll free), option 3
701-328-4617

Address: 1237 W Divide Ave Suite 6
Bismarck ND 58501

E-mail: dhsagingombud@nd.gov

Link for online complaint reporting:
www.nd.gov/eforms/Doc/sfn01829.pdf.

ND Department of Health (Survey & Certification – Regulatory Agency & Licensing Agent)

Phone: 1-701-328-2352

Address: 600 East Boulevard Ave., Dept. 301
Bismarck, ND 58505- 0200

E-mail: LTCconcerns@nd.gov

Protection and Advocacy Project

Phone: 1-800-472-2670 or 1-701-328-2950

Address: 400 East Broadway Suite 409
Bismarck ND 58501

E-mail: panda_intake@nd.gov

Legal Services of North Dakota

Phone: **Under age 60** call toll-free **1-800-634-5263** (Monday, Tuesday, and Thursday between 9 a.m. - 3 p.m. CST).

Age 60+ call toll-free **1-866-621-9886** (Monday - Thursday between 8 a.m. - 5 p.m. CST. Friday between 8 a.m. - 2 p.m. CST.)

Vulnerable Adult Protective Services

Phone: Central intake line 1-855-462-5465 (choose option 2)

Address: 1237 W. Divide Ave Suite 6
Bismarck ND 58501

E-mail: SFN 1607 Report of Vulnerable Adult Abuse, Neglect, or Exploitation <https://www.nd.gov/eforms/Doc/sfn01607.pdf> ;

Send the completed form to carechoice@nd.gov or **FAX** it to 701-328-8744

Link for online reporting: <https://fw2.harmonyis.net/NDLiveIntake/>

NOTE: The Aging and Disability Resource LINK (ADRL) - Vulnerable Adult Protective Services intake line is answered weekdays between 8 a.m. and 5 p.m., Central Time. *Please leave a message, including your contact information, if you call after hours.*

Medicaid Fraud

Phone: 1-800-755-2604 or 1-701-328-4024

Address: Surveillance Utilization Review Administrator
c/o Medical Services Division
600 E Boulevard Ave Dept. 325
Bismarck ND 58505-0250

E-mail: medicaidfraud@nd.gov

State Health Insurance Counseling Program (SHIC)

Offers free help with Medicare and other health insurance including long term care insurance.

Phone: 1-888-575-6611 or 1-701-328-2440

Address: 600 E Boulevard Ave
Bismarck ND 58505-0320

E-mail: ndshic@nd.gov

The next three pages show a comparison of the different levels of long-term care facilities available in North Dakota.

	ASSISTED LIVING <i>(most independent)</i>	BASIC CARE <i>(needing more assistance)</i>	SKILLED NURSING HOME <i>(needing skilled nursing care)</i>
Definition	<i>An apartment setting that provides or coordinates individualized support services (see Features) to meet the resident's needs and abilities to maintain as much independence as possible.</i>	<i>A residence that provides room and board to people who because of impaired ability for independent living, require health, social, or personal care services. Basic Care residents do not require regular 24-hour medical or nursing services. Staff are available to respond at all times to meet the 24-hour per day scheduled and unscheduled needs of a resident. <u>Some</u> Basic Care facilities are Alzheimer's, dementia, or memory care units.</i>	<i>A facility that provides room and board AND 24-hour care/supervision to its residents. This facility is under the supervision of a licensed health care practitioner and has 24-hour nursing care.</i>
Features	<i>Services (commonly referred to as Service Plan/Contract/Level/Package) are purchased at costs above rental fees according to the resident's needs. Services MAY include meals, housekeeping, laundry, activities, 24-hour supervision, personal care, medication reminders, and varying levels of health care services. This setting is NOT appropriate for memory-impaired (advanced stage) residents. Residents may choose additional in-home care agencies to supplement services.</i>	<i>Provides room and board as well as health and social services. Assistance with Activities of Daily Living (ADLs) is provided 24-hours per day. Also includes recreational and therapeutic activities, dietary consultation, and medication administration.</i>	<i>Provides room and board and ALSO nursing, medical, rehabilitative care, recreational activities, social services, assistance with Activities of Daily Living (ADLs), and protective supervision 24-hours a day.</i>

License	Licensed by ND Dept. of Human Services	Licensed by ND Dept. of Health	Licensed by ND Dept. of Health
Regulation/ Oversight	No state oversight - Landlord Tenant Law and ND Contract Law apply. It is up to the resident to manage their contract/lease and monitor costs and services.	Surveyed by ND Dept. of Health every 3-5 yrs.	Surveyed annually by ND Dept. of Health
Payment	Housing is a landlord/tenant rental agreement, so billed separately from Services. Usually private pay (resident's own income sources/assets) or may be covered partially through Long Term Care insurance.	One rate is billed for room and board, personal care, and ADL assistance. May be private pay (resident's own income sources/assets) or paid through the state's Basic Care program.	Individual rates include room and board, personal cares, nursing and ADLs assistance. May be private pay (resident's own income sources/assets), through Long Term Care insurance, through the state Medicaid Program, or Medicare. There may be limits on the types of services paid for or the length of time benefits can be utilized.
Nursing Staff Availability	NO set requirement or regulation. May not have any after-hours or overnight staff on duty.	RESPONSE staff are available at all times to meet the 24-hour per day scheduled and unscheduled needs to residents.	Sufficient qualified nursing personnel on duty at all times to meet the nursing care needs of the residents. Required staff are at least 1 registered nurse on duty 8 consecutive hrs. per day, 7 days a week, AND at least 1 licensed nurse on duty and designated to work charge 24-hours a day, 7 days a week.

<p>Additional Facts</p>	<p>Most issues with lease agreement or lease contract need to be resolved between tenant and facility due to NO oversight by a state entity. Residence in an ALF with an attached Basic Care or SNF facility does not guarantee you placement in that level of care should you require it - placement depends upon availability and facility admission protocol. There can be many additional costs associated with this level of care.</p>	<p>Not required to have regular 24-hour medical or nursing services; only RESPONSE staff.</p>	<p>Not staffed by a physician; a physician is available for consultation at all times. There are differences among SNFs with regard to services provided (i.e., IV therapy, wound care, etc.) Nursing homes should disclose to residents/potential residents its special characteristics or service limitations. There is no mandated staff to resident ratio - facilities are required to be staffed to adequately meet the needs of the total number of residents.</p>
<p>Activities of Daily Living (ADLs): Eating, Bathing, Dressing, Toileting, Transferring (walking) and Continence.</p>			