

**A Guide to Your Rights as a
Resident of a Nursing 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 nursing facility as set forth in Federal and State Law. Use the links listed on Page 3 to read the full resident rights regulations.

Updated: 08/01/2019

Dear Resident:

This handbook provides some explanation of the rights you have in your home here at the nursing facility. You keep the rights you had before this move and are still in charge of your choices and lifestyle. Your rights must always be applied with consideration that the other residents also have the same rights.

If you are an individual who is diagnosed with a developmental disability, a mental illness, or mental retardation, there are additional rights guaranteed to you by State and Federal law.

While living in the nursing facility you may choose a family member or friend to be included 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.

Memory and understanding changes may lead to your power of attorney being triggered or a court determining your health and/or financial decisions need to be managed by a legal (resident) representative. However certain rights may still be kept and you should always be informed and consulted about life choices and changes.

If you, or any of your family members or friends, have questions about how these rights apply to you or any particular 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 North Dakota Long-Term Care Ombudsmen

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Legal Authority: (see the links below for full copies of your resident rights.)

Code of Federal Regulations 42 CFR §483

<https://www.federalregister.gov/documents/2016/10/04/2016-23503/medicare-and-medicaid-programs-reform-of-requirements-for-long-term-care-facilities>

State Law: NDCC 50-10.2

<http://www.legis.nd.gov/cencode/t50c10-2.pdf?20140919124429>

ADMISSION RIGHTS

- Binding arbitration is an alternative to judges or courts settling disputes between consumers and businesses, binding arbitration works out a deal through an independent, third-party body. The arbitrator's decision is final and cannot be disputed or appealed. This removes the right to sue in court.

Effective 09/16/2019 if you or your representative are asked to sign an agreement for binding arbitration the facility must:

- **Not require the signature as a condition of admission, or as a requirement to continue to receive care at the facility** and clearly tell you or your representative of this requirement;
 - Explain the agreement to you and your representative in a way that you understand;
 - Have you and your representative acknowledge that you understand the agreement;
 - Have the agreement give you or your representative this right to **cancel the agreement within 30 days of signing it.**
-
- You have the right to review the facility's admission agreement/contract and its rules and policies prior to admission.
 - You cannot be discriminated against in the admission process based upon your source of payment (private, LTC insurance, Medicare, Medicaid, etc.).
 - You can request and receive, in writing, the reason for the denial of your admission.
 - The facility can't require your family or friends to promise to pay your facility bill from their personal funds.
 - You cannot be required to give advance payment, gratuity, or gift to the facility to assure admission or to be placed on a waiting list.
 - You cannot be asked to waive or give up any of your rights as a condition of admission.
 - You cannot be requested or required to waive facility liability for losses of your personal property.
 - You must be given notice of special features or service limitations of the facility prior to time of admission. (effective 11/28/16)

Example of a rights violation:

- ❖ The administrator of the Skilled Nursing Facility asked Carl's son to pay a \$500 deposit to put Carl's name on the waiting list for a room.

RESIDENT RIGHTS NOTIFICATIONS

- The facility is required to provide you and a member of your immediate family, resident representative, 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, (and every year from then on) the statement must be verbally explained to you. If you are unable to understand, it should be explained to your immediate family member or any existing legal guardian.
- You and your resident representative must be promptly notified of any changes in resident rights under federal or state law or regulations.
- You have the right to request additional written copies of this statement at any time during your stay at the facility
- The facility must make you, your interested family member, resident representative, or legal guardian aware of any changes in your rights under federal or state laws or regulations.
- If after a period of inability to understand your rights you regain the ability to understand, the facility is then responsible to again inform YOU of your rights and responsibilities.
- The facility's staff is responsible to assist you in exercising your rights to the fullest possible extent.

MEDICAL ASSISTANCE (MEDICAID) & MEDICARE

- Staff at the facility need to provide you with oral and written information on how to apply for Medical Assistance and Medicare and how these programs may help you in paying for your care.
- You can request and receive information about your community spouse's rights under the Medical Assistance program from facility staff.

- You can ask for a list in writing of the items which Medical Assistance and Medicare pay for. You may request information about the facility's daily rate, as well as which items cost extra.
- You cannot be asked to give up your right to participate in the Medical Assistance or Medicare program.
- You must be treated and cared for the same as all other residents, regardless of who is paying for your care.
- You cannot be asked to leave the facility if you have submitted all the necessary paperwork to a potential payment source (Medical Assistance, Medicare, LTC Insurance, etc.) and are waiting payment. Nonpayment has only occurred if that payment source has DENIED your claim and you refuse to pay.

Examples of rights violations:

- ❖ John's wife is told to "contact the county" for help with John's Medical Assistance (Medicaid) application and offered no other information.
- ❖ The social worker tells Ethel's husband he must pay Ethel's bill while waiting for Medical Assistance.

COST OF CARE

- You can request written 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 for which you may be eligible.
- You cannot be asked to pay more for your services or room (unless you are in a private room) if you are paying out-of-pocket for your care, than a resident whose bill is being paid for by Medical Assistance.
- You have the right to appeal/formally challenge any changes in your resident classification (based on assessment) that affect the cost of care.

Example of a rights violation:

- ❖ Abigail is financial POA and talks to the facility about concerns that her aunt's rate increased due to a change in the classification but is never told. about the right to appeal the classification

PROTECTION OF FUNDS

- You have the right to manage your personal funds while in the facility and to use your funds how you choose.
- You can authorize the facility in writing to handle your personal funds. (The facility cannot refuse to handle your funds or require you to deposit your funds with them.)
- You can ask for a written statement explaining the rules and regulations governing how your personal funds will be protected and managed by the facility.
- The facility must return any funds within 5 working days upon a written request to close your account.
- The facility must make available quarterly statements or a statement at any time upon request from the resident or the legal/resident representative.
- Within 30 days of your death, the facility must return remaining funds and a final accounting to the administrator of your estate.

Example of a rights violation:

- ❖ Clinton has his funds managed by the facility, and they allow him to withdraw just \$1 a day because he is diabetic and uses the money to buy a candy bar from the vending machine.

INVOLVEMENT IN HEALTH CARE

- You have the right to choose the health care providers you want while in the facility such as your doctor, pharmacy, and dentist.
- You have the right to services and care that will help you attain and maintain your highest level of physical, mental and psychosocial well-being.
- 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.
- 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 should be included in the development and implementation of the person-centered care plan. You should be informed in advance of any changes to the care plan.
- 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 are to be informed immediately, plus your legal/resident representative or an interested family member, if:
 1. You are involved in an accident resulting in injury which may require a doctor's involvement.
 2. There is a significant change in your physical, mental or psychosocial condition.
 3. Your treatment needs to be changed significantly.
 4. You are going to be transferred or discharged from the facility.
- You, plus your legal/resident representative or an interested family member, should be informed promptly of any proposed room changes.
- If there is a change in your rights the facility must promptly inform you of those changes.
- You can request, refuse or discontinue treatment to include medications. When doing so you should be notified by your doctor of any medical consequences of your decisions.
- You can look at, or authorize someone else to look at, your records within 24 hours of your request, excluding weekends and holidays. You can purchase copies of your records, at a reasonable cost, within 2 working days at your request.
- The facility should give you a written statement about their policy to follow any advance healthcare directive you may have. If the facility will not follow your wishes, it must take reasonable steps to transfer your care to a facility or care provider who will.

Examples of rights violations:

- ❖ Elizabeth has asked to see the medication list from her chart and the nurse has assured her that whatever she is taking is necessary and ordered by her doctor, so she doesn't need to see the list or worry about those things.
- ❖ Wilbert tells the facility upon admission that he would like to keep his primary care doctor from the community but is told that he must now agree to be seen by the facility's medical director.
- ❖ The facility shares information about your care and condition with your children without your consent and against your wishes and you have not been judged incapacitated.

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 interprets 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".

Example of a rights violation:

- ❖ Delilah refuses to have her fingernails trimmed, so staff hold her wrists down and trim them against her will.

TRANSFERS & DISCHARGES

- You must receive prompt notice of a change in your room or roommate.
- The facility must inform you, and a family member or legal/resident representative if they are transferring or discharging you.
- 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:
 - Your doctor documents your needs cannot be met by the facility,
 - Your doctor documents your health has improved so you no longer need the facility's services.
 - The safety and welfare, of individuals in the facility is threatened.
 - Non-payment of your bill, whether by you or outside paying source
 - If you have an application pending with a third party payer (such as Medicaid) there must be a denial of the claim before this applies.
 - The facility ceases to operate.
 - During times of remodel – can be temporary only.
- In cases of transfer or discharge, you must receive a 30-day **written** notice stating the following information:
 - The reasons for the transfer or discharge.
 - The effective date of the transfer or discharge.
 - The location to which you are being transferred or discharged.
 - Your right to appeal/challenge the transfer or discharge.
 - The name, address, and phone number of the Ombudsman program, Developmental Disabilities Advocate, or Mental Health Advocate.
- Notice of Transfer or Discharge **may be less than 30 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.
- A copy of the involuntary transfer/discharge notice must be sent to the Long-Term Care Ombudsman.

- If there are changes to the information in the 30-day notice updates must be sent as soon as possible.
- You and a family member or your legal/resident representative should receive written information about the facility's **bed-hold policy (time during which the resident can return to the residence at the facility)**, before you are transferred to a hospital or go on therapeutic leave. The written information must tell you:
 - The facility's policy regarding bed-hold periods and duration of the bed hold.
 - The number of days Medical Assistance (Medicaid) will pay for your bed to be held for you to return.
 - Your right to have your bed held according to the facility's bed-hold policy.
 - If you are on Medical Assistance and your hospital stay or therapeutic leave exceeds Medical Assistance bed-hold periods you have the right to:
 - Be readmitted to the facility immediately upon the first availability of a bed in a semi-private room, if you require the facility's services.
 - Pay, or have someone else pay, to hold your current bed using funds other than your monthly income.

Examples of rights violations:

- ❖ Stacy was notified via letter than her uncle would need to move out of the facility within 15 days as his bill is not being paid.
- ❖ John received a letter from the nursing home stating that he would need to pick his father up from the facility and find another nursing home for him as the facility could no longer meet his father's needs.

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 can share a room with a roommate of your choice if the potential roommate agrees to the room assignment.
- 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, except if you are being transferred to another facility or the release of information is required by law.

- You have the right to safe, clean and comfortable surroundings, allowing you to keep your personal belongings to the extent space permits. The facility must provide you with reasonable accommodation for your personal needs and preferences.
- You should be able to send and receive unopened personal mail and be able to purchase supplies for such from the facility.
- You can choose activities to participate in and choose to set your own schedule (for example sleeping and waking times.)
- You have the right to visitors, attend meetings, and communicate with people of your choosing at reasonable times. (Effective 11/28/16 visitors who are not immediate family or relatives may be subject to reasonable clinical and safety restrictions as written in the facility's policies and procedures.)
- You cannot be denied 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 consented to visit with.
- If you so choose, besides your legal/resident representative you can have your family representative involved in your health care.
- The facility must provide a telephone in a private area for your use for communication.
- 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 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.)

Examples of rights violations:

- ❖ Walter was informed by the social worker that his nephew may no longer visit because Walter's daughter said she doesn't want him there.

- ❖ Because Violet's daughters argue when they visit her, the facility has decided it is best that none of the daughters visit her at this time.

GROUPS AND ACTIVITIES

- You are able to participate in social, religious, and community activities of your choice, as long as they do not interfere with the rights of other residents.
- These activities may be inside or outside of the facility.
- You have the right to spend time outside.
- 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. (Effective 11/28/16 staff, visitors or other guests may attend such council meeting only if invited by the residents or family.)
- 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 indicating the need or desire for work, the nature of the services performed and whether it is voluntary or paid.

Examples of rights violations:

- ❖ Helen would like to use her scooter to attend church down the street from the nursing home, but is told she is not allowed to leave the facility by herself.
- ❖ Martha is told she has to go to bed at 7:30 because the facility is short staffed in the evening and nobody will be able to assist her with her evening cares after that time.

GRIEVANCES AND COMPLAINTS

- You can freely make complaints and discuss problems, concerns, grievances, or suggestions with anyone you choose. There should be no threat of retaliation or reprisal.
- 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 policy that informs you how to file a grievance and ensures prompt resolution of your grievance.
 - The policy should include:

- the name, business mailing and e-mail address, and business phone number of the grievance official.
 - the reasonable expected time frame of review and response to the grievance
- 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.

Example of a rights violation:

- ❖ Tony was told that if he is not happy about something at the facility he can address it with the social worker or administrator. Then if he is still not happy the facility can assist him in finding another nursing home to move to.

ACCESS TO FACILITY INFORMATION

- The facility must make available the State Survey report and the approved plan of correction for the past two years.
- You can request a copy of the names of the owners, 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.
- The facility must notify you if they receive a waiver of licensed nursing staff requirements.

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.

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/efrms/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. If you call after hours leave a message your contact information.

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