

A Guide to Your Rights as an Assisted Living Resident/Tenant

Distributed by:

Long-Term Care Ombudsman Program

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

**1237 W Divide Avenue, Ste 6
Bismarck, ND 58501**

1-855-462-5465, option 3

or

701-238-4617 or 711 (TTY)

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

Updated: 08/01/2019

Dear Resident,

This booklet provides a summary of the rights you have in your new home in the assisted living 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 go into effect 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 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.

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

NORTH
Dakota | **Human Services**
Be Legendary.™
AGING SERVICES DIVISION

An Assisted Living Facility is a building that has at least five (5) separate living units where individualized support services are made available to individuals to accommodate needs and disabilities to enable individuals to remain independent.

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



- [North Dakota Century Code 50-32 - Assisted Living](#)
- North Dakota Century Code 47-16 – Leasing of Real Property (also known as Landlord Tenant Law)
- [North Dakota Century Code 23-09 - Lodging Establishments and Assisted Living Facilities](#)
- [North Dakota Administrative Code 75-03-34 - Licensing of Assisted Living Facilities](#)
- [North Dakota Administrative Code 33-33-04 - Food Code](#)
- [North Dakota Administrative Code 33-33-05 - Smoke Detectors](#)
- [North Dakota Administrative Code 33-33-09 - Emergency Lighting, Emergency Plans, and Sprinkler Systems](#)

YOU HAVE THE RIGHT TO BE INFORMED

- About the details of your lease, and the tenancy agreement which lists the tenancy criteria
- About the services offered by the assisted living facility and the costs
- About changes in cost or the availability of services at least 30 days before the change
- About refund policies
- About your rights, your responsibilities, the assisted living responsibilities and the rules on resident conduct.
- About the facility's grievance process

YOU HAVE THE RIGHT TO CHOOSE

- Your pharmacy, doctor, and other health care providers
- Your daily routine
- How to spend your money
- What activities to participate in both at the assisted living facility and in the community
- Who you want as visitors

YOU HAVE THE RIGHT TO PRIVACY

- In your living area
- In receiving unopened mail, private conversations by telephone and during visits
- Regarding your personal, medical or financial information and to authorize with whom information can be shared

YOU HAVE THE RIGHT TO BE FREE FROM

- Mental and physical abuse, even the threat of abuse
- Neglect
- Financial exploitation
- Discrimination
- Retaliation or the fear of retaliation for presenting complaints
- Physical or chemical restraints

YOU HAVE THE RIGHT TO

- Live in a safe and clean environment. (Facility must follow fire and life safety codes and, when applicable, food establishment inspections.)
- Be treated with courtesy, fairness, and with the fullest measure of dignity and respect.
- Have your individuality respected.
- Have your belongings with you, have their security protected, and have a locked space.
- To present concerns and recommendations to the assisted living staff.
- Be given written notice if the assisted living management wants you to move and end your lease and tenancy agreement.
 - This can be done only for specific reasons – medical reasons, your welfare or that of other residents/tenants or if you aren't paying your rent and fees

FACILITY LICENSURE

- The Assisted living Facility must certify that operation of its facility follows all applicable federal, state, and local laws.
- An Assisted Living Facility must display its license(s) in a conspicuous place on its premises.
- The Assisted Living Facility must notify all tenants and third-party payers of the Department's revocation of its license within fifteen days from the date of the final revocation notice.
- An Assisted Living Facility cannot advertise or claim to be an Alzheimer's, dementia, or special memory care facility. That requires licensure as either a basic care facility or a skilled nursing facility.

YOU HAVE THE RIGHT TO VOICE COMPLAINTS WITHOUT FEAR OF RETALIATION TO

- Your family and friends
- Others living at the facility
- Facility staff, facility administrator, government officials
- Assisted Licensing personnel
- The ombudsman

The Assisted Living Facility must provide each tenant with written notice of how they may report a complaint.

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

- 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

(For information or to report a concern about health, safety or welfare or rights of a resident of assisted living)

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

701-328-4617

711 (TTY)

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.

Licensing Authority

Melanie Phillips, Administrator, Long Term Care Continuum
Division of Medical Services
ND Department of Human Services
600 East Boulevard Avenue, Dept 325
Phone: 701-328-2321
Fax: 701-328-1544
E-mail: mdphillips@nd.gov

Vulnerable Adult Protective Services

To report abuse, neglect or financial exploitation of a vulnerable adult

- **E-mail:** SFN 1607 Report of Vulnerable Adult Abuse, Neglect, or Exploitation <https://www.nd.gov/eforms/Doc/sfn01607.pdf> or **FAX** it to 701-328-8744
- Link for online reporting: <https://fw2.harmonyis.net/NDLiveIntake/>
- Make a report by telephone. **Call the central intake line at 1-855-462-5465, "Press 2"**. NOTE: The Aging and Disability Resource LINK - 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.*

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 two 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</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>

	<i>care agencies to supplement services.</i>		
License	<i>Licensed by ND Dept. of Human Services</i>	<i>Licensed by ND Dept. of Health</i>	<i>Licensed by ND Dept. of Health</i>
Regulation/ Oversight	<i>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.</i>	<i>Surveyed by ND Dept. of Health every 3-5 yrs.</i>	<i>Surveyed annually by ND Dept. of Health</i>
Payment	<i>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.</i>	<i>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.</i>	<i>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.</i>
Nursing Staff Availability	<i>NO set requirement or regulation. May not have any after-hours or overnight staff on duty.</i>	<i>RESPONSE staff are available at all times to meet the 24-hour per day scheduled and unscheduled needs to residents.</i>	<i>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</i>

			<i>week.</i>
<i>Additional Facts</i>	<i>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.</i>	<i>Not required to have regular 24-hour medical or nursing services; only RESPONSE staff.</i>	<i>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.</i>
<i>Activities of Daily Living (ADLs): Eating, Bathing, Dressing, Toileting, Transferring (walking) and Continence.</i>			