

Summary of Changes to NDCC 50-10.2 Rights of Health Care Facility Residents

Effective 08/01/2025

Strike out is text removed and **bolded black text** is new.

50-10.2-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Authorized electronic ~~monitoring~~ **recording** " means the placement and use of an authorized electronic ~~monitoring~~ **recording** device, by a resident or resident representative, in the resident's room.
2. "Authorized electronic ~~monitoring~~ **recording** device" means ~~video surveillance cameras, monitoring devices, web-based cameras, video phones, or audio recording or transmitting devices, or a combination of these devices,~~ **a device that is** installed in the room of a resident which ~~are designed to acquire, transmit, broadcast, interact, or~~ **is intended to** record **or is recording and transmitting** video, communications, or other sounds occurring in the room. ~~The term does not include still cameras or devices used for the purpose of the resident having contact with another person but not for the purpose of electronically monitoring a resident.~~

NEW: 10. "Technology device" means a device capable of remote audio or video communications which is used for the purpose of the resident having contact with another person but not for the purpose of virtual monitoring or recording audio or video of a resident and the resident's room. A technology device includes a cellular mobile telephone used primarily for telephonic communication, an electronic tablet not used for virtual monitoring or recording, and an assistive communication device.

New:11. "Virtual monitoring" means remote live action monitoring conducted without recording of a resident by a third party via the placement and use of a virtual monitoring device in the resident's room.

New: 12. "Virtual monitoring device" means a device owned and operated by the resident or resident representative placed in the

resident's room which allows live action monitoring without recording of a resident by a third party.

New: 13. "Virtual visitation" means remote visitation between a resident and another individual using a technology device.

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:

New: 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.

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.

k. The right to keep and use personal possessions, **including furnishings and clothing as space permits, unless keeping or using**

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

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.

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

(1) Medical reasons;

(2) The resident's welfare ~~or that of other residents~~ **the safety of an individual in the facility who 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.

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.

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 on the facility cost report.**

NEW 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.

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

- a. The reason for the transfer or discharge.
- b. The effective date of transfer or discharge.
- c. The location the resident is to be transferred or discharged to.
- d. The name, mailing and electronic mail address, and telephone number of the office of the state long-term care ombudsman.

NEW: 4. The facility shall protect the resident from retaliation.

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 transactions made on behalf of the resident, including an explanation of the transactions by the facility. **The facility shall pay out in full:**

- a. **A resident's personal funds deposited with the facility or refunds due to the resident upon discharge or eviction within thirty days, and provide a final accounting of those funds to the resident, or in the case of death, in accordance with state law.**
- b. **Refunds due as a result of an overpayment to the facility within thirty days from the date the overpayment is discovered.**
- c. **Other refunds due to the resident upon discharge, eviction, or death within thirty days from the resident's date of discharge from the facility.**

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.**

8. The use of a physical or chemical restraint in an emergency or if 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, physician, nurse practitioner, 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.

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 if the denial is based on the special characteristics or service limitations of the facility.**

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

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.**

50-10.2-02.1. Authorized virtual monitoring, virtual visitation, and electronic recording - 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. Subsections 3 through 12 apply if a technology device or a virtual monitoring 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 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.**

~~2. A facility that uses an authorized electronic 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. 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

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.

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 3. The authorization may be signed by ~~that~~ **the** 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.

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.

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 13 and 45.

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**.

9. A facility clearly and conspicuously shall post a sign where authorized electronic ~~Monitoring~~ **recording** is being conducted to alert and inform visitors.

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.

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.

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.