

# **RESIDENT'S RIGHTS**

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## **A Guide to your RIGHTS as a Resident of a Nursing Facility in North Dakota**

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## INTRODUCTION

When you enter a nursing facility, you **DO NOT** give up the legal rights you had while living in the community. Residents of North Dakota's nursing facilities have additional legal rights and responsibilities which are guaranteed by state and federal law. Each nursing facility is required to:

- Care for you as a resident in a manner and in an environment that promotes your quality of life with emphasis placed on dignity, choice, and self-determination.
- Provide services and activities that promote the quality of care you receive; with reasonable accommodations for your needs and preferences, except when the health and safety of you or other residents would be endangered.
- Protect and promote your rights as a citizen without interference, coercion, discrimination or reprisal from the facility when exercising those rights.

This brochure has been prepared to assist you and your family in understanding your legal rights and responsibilities as a resident in a North Dakota nursing facility. It is not intended, however, to answer specific legal questions or provide specific legal advice. Such questions should be posed to a licensed attorney.

The rights contained in this brochure apply to **ALL** residents. However, residents who have developmental disabilities, mental retardation or mental illness may have other rights guaranteed by state and federal law. These rights which apply to such individuals will be marked with a star ( ) and appear at the end of each appropriate section.

## ADMISSION RIGHTS

**YOUR RIGHT to apply to be admitted to a nursing facility. You have the right:**

- **To review the nursing facility's admission agreement/contract, and facility's rules governing resident conduct and other relevant policies and procedures.**
- **To ask questions about any of the information you are given by the facility.**
- **To not be discriminated against by a facility in the admission process.**
- **To request and receive, in writing, reasons for your denial of admission.**
- **To not be required to have any person other than yourself guarantee payment for your care (no third party guarantor can be required).**
- **To not be required to give advance payment, gratuity, or gift to the facility to assure admission (the facility cannot charge to hold a bed prior to your admission).**
- **To not waive any of your rights as a condition of admission.**

**YOUR RIGHT to be informed of your rights and responsibilities as a resident.  
You have the right:**

- **To be informed at the time you are admitted, and annually thereafter, of your rights and responsibilities and the facility's policies regarding your conduct.**
- **To be given a written copy of your rights and responsibilities and all facility policies.**
- **To be informed when there is a change in resident rights under federal or state laws or regulations, and to have your legal representative or interested family member notified as well.**
- **To receive a statement to sign which says you have been informed of your rights and responsibilities and the facility's policies.**
- **To have a member of your immediate family and your guardian, if any, be informed of your rights and responsibilities if you are unable to understand. At any time you become able to understand, the facility must inform YOU of your rights and responsibilities.**
- **To receive assistance from staff of the facility to promote the fullest possible exercise of your rights.**

## **MEDICAL ASSISTANCE (MEDICAID) AND MEDICARE RIGHTS**

**YOUR RIGHT to information about the Medical Assistance and Medicare programs. You have the right:**

- **To receive information on how to apply for Medical Assistance and Medicare and how each of these programs may assist you in paying for your care.**
- **To request and receive information about your spouse's rights under the Medical Assistance program.**
- **To be informed in writing of the items which will be paid for by Medical Assistance, Medicare, or the facility's daily rate, as well as those items for which there is an extra charge.**
- **To not waive your rights to participate in the Medical Assistance or Medicare programs.**
- **To be treated the same as all other residents regardless of who is paying for your care.**
- **To not be transferred or discharged if you have submitted to a third party payor, such as Medicare or Medicaid, all the paper-work necessary for your bill to be paid. Nonpayment would occur if the third party payor, such as Medicare or Medicaid, denies your claim and you refuse to pay for your stay.**

**YOUR RIGHT to be informed of all costs for your care. You have the right:**

- **To receive written information about any services provided by the facility and the costs for those services.**
- **To be informed at least 30 days prior to any change in costs or availability of services.**
- **To have the facility assist you in filing for any third party payments.**
- **To not pay more as a private pay resident for room or services (unless you are in a private room) than that paid for by Medical Assistance program.**
- **To appeal any changes in your resident classification that affect payment for your care.**

<b>PROTECTION OF FUNDS</b>
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**YOUR RIGHT to have your money protected. You have the right:**

- **To receive a written statement as to how your personal funds will be protected in the facility.**
- **To manage your own funds.**
- **To authorize, in writing, the facility to handle your personal funds (the facility may not refuse to handle your funds or require you to deposit funds with the facility).**
- **To have the facility handle your funds in the following manner:**
  1. **Not charge you for holding, safeguarding, and accounting of your funds.**
  2. **Provide reasonable access to your funds.**
  3. **Keep your funds in excess of \$50.00 in a separate interest bearing account and to give you any interest earned.**
  4. **Purchase a surety bond or other insurance to protect your funds in its keeping.**
  5. **Keep accurate records of your funds and make the records available to you or your representative upon request.**
  6. **Give you an understandable written report and verbal explanation four times a year as to how your funds were spent.**
  7. **Notify you, if you are on Medical Assistance, when your funds come within \$200 of the Medical Assistance limit and the effect of this on your eligibility.**

8. **Not use your funds to pay for any item or service covered by any other payment source such as Medicare and Medical Assistance.**

- 9. To return any funds in the custody of the facility within five working days of your or your guardian's written request to close your account.**
- 10. Upon your death, give your remaining funds and a final accounting to the administrator of your estate. This must take place within thirty days of your death.**

**YOUR RIGHT to be involved in planning for your medical care. You have the right:**

- **To services/care to help you attain and maintain your highest level of physical, mental, and psychosocial well being. Where you receive the services of a provider from outside of the facility, you have the right to be informed as to that provider's identity.**
- **To be fully informed about your total health status, including your medical care, nursing care, nutritional status, activities potential, rehabilitation potential, and physical impairments.**
- **To be informed in advance and participate in any care and treatment to be provided.**
- **To give yourself certain medications and drugs unless professionals determine it is not safe for you to do so.**
- **To choose individuals you want involved in or notified about your care.**
- **To be informed *immediately*, and to have your legal representative or interested family member immediately informed 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; or**
  4. **You are going to be transferred or discharged from the facility.**

- To be informed ***promptly***, and to have your legal representative or interested family member promptly notified when there is a change in your room or roommate.
- To refuse medication and treatment.
- To be notified by your doctor of any medical consequences of your decisions.
- To refuse to be involved in experimental research.
- To know the name, address, phone number, and specialty of all of your health care providers.
- To choose your health care providers such as your doctor, pharmacist, and dentist.
- To have access to any of your records within 24 hours of your request, excluding weekends and holidays.
- To purchase a copy of your records, at a reasonable cost, and within two working days advance notice to the facility.
- To be informed and receive written information of your right to have an advance care directive, such as a living will or durable power of attorney for health care which states your wishes regarding your health care when you are incapacitated.
- To receive a written statement of the facility's policies to implement advance care directives. If the facility chooses to not follow your wishes, it must take reasonable steps to transfer your care to a facility or care provider who will.

***As a resident with a developmental disability or mental illness, you have the right:***

- **To be informed of alternatives to current or proposed treatment or services.**
- **To habilitation or treatment and a habilitation or treatment plan developed by you and a team of people who are or will be providing services to you.**

## **FREEDOM FROM ABUSE, NEGLECT, EXPLOITATION, & RESTRAINTS**

**YOUR RIGHT to be free from abuse and restraints. You have the right:**

- **To be free from verbal, sexual, physical, or mental abuse, corporal punishment, or involuntary seclusion.**
- **To be free from chemical and physical restraints used for the convenience of the facility staff or for disciplinary reasons.**
- **To have chemical and physical restraints 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, in 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.**
- **To have an annual review, by an expert from outside of the facility, of drugs you are receiving to control your mood, mental status, or behavior.**
- **To receive 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.**

***As a resident with a developmental disability or mental illness, you have the right:***

- **To decide if chemical and/or physical restraints will be included in your approved rehabilitation or treatment plan.**

**Federal law interprets physical and chemical restraints as follows:**

- **PHYSICAL RESTRAINTS** are “any manual method 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 a 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”.

**YOUR RIGHT to know if you are going to be transferred to another room within the facility or transferred or discharged from the facility. You have the right:**

- To receive **prompt** notice of a change in your room or roommate.
- Under certain circumstances, to refuse transfer to another room within the facility.
- To be informed **immediately**, and to have your legal representative or interested family member immediately informed, if you are to be transferred or discharged.
- To be transferred or discharged from a facility **only** for the following reasons:
  1. Your doctor documents your medical needs cannot be met by the facility or that your health has improved so you no longer need the facility's services.
  2. Your health or safety or the health or safety of other residents is endangered.
  3. Non-payment of your bill, which could involve Medicare or Medicaid denying your claim and your refusing to pay for your stay.
  4. The facility closes.
- To receive, in the written notice, the following information:
  1. The reasons for the transfer or discharge.
  2. The effective date of the transfer or discharge.
  3. The location to which you are being transferred or discharged.

4. Your right to appeal the transfer or discharge as established in State policy.
  5. The name, address, and telephone number of the Ombudsman Program, Developmental Disabilities Advocate, or Mental Health Advocate.
- To receive, and have a family member or your legal representative receive, written information about the facility's bed-hold policy, well in advance (such as on admission) and each time you are transferred to a hospital or go on therapeutic leave. The written information tells you:
    1. The facility's policy regarding bed-hold periods.
    2. The number of days Medical Assistance will pay for your bed to be held before you return, if you are receiving Medical Assistance.
    3. Your right to request your bed be held for the facility's bed-hold periods.
    4. If you are on Medical Assistance and your hospital stay or therapeutic leave exceeds Medical Assistance bed-hold periods, you have the right to:
      - a. Pay or have someone else pay, to hold your current bed, using funds other than your monthly income.
      - b. Not pay to hold your current bed, but to be readmitted to the facility immediately upon the first available semi-private room, if you require the facility's services.
  - To be treated the same as all other residents regarding the facility's transfer and discharge policies and practices.

- To have the facility prepare you for a safe and orderly transfer or discharge from the facility.
- To receive written notice, as soon as practicable before, discharge or transfer when:
  - 1) The safety or health of individuals in the facility would be endangered;
  - 2) An immediate transfer or discharge is required by the resident's urgent medical needs; or
  - 3) A resident has not resided in the facility for thirty days.
- To receive written notice, thirty days before discharge or transfer in all other cases.

**YOUR RIGHT to privacy, confidentiality, and use of personal possessions.  
You have the right:**

- **To send and promptly receive unopened personal mail.**
- **To have stamps and writing materials available to buy.**
- **To access and use of a telephone for *PRIVATE* conversations.**
- **To privacy in visits with your spouse.**
- **To share a room with your spouse if you both agree and if a room is available.**
- **To have private meetings, associations, and communications with any person you choose.**
- **To privacy in medical treatment and personal care.**
- **To have safe, clean, and comfortable surroundings.**
- **To keep and use your own clothing and other personal items to the extent space permits.**
- **To confidentiality of your personal and medical records.**
- **To release information in your personal and medical records to whom you choose, except if you are transferred to another facility or the release of information is required by law; such as a request for payment for Medicare.**
- **To receive a copy of the facility's written policy/procedures regarding how they will prevent employment of persons convicted of misappropriating resident property.**

**YOUR RIGHT to be treated with dignity and respect. You have the right:**

- **To be treated courteously, fairly, and with dignity.**
- **To make independent personal decisions.**
- **To receive reasonable accommodation from the facility for your personal needs and preferences.**
- **To encouragement and assistance from the staff of the facility to promote the fullest possible exercise of your rights.**
- **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.).**

## VISITING RIGHTS

**YOUR RIGHT to have visitors. You have the right:**

- To ***immediate*** access ***at any time*** and without any restrictions to:
  1. Your personal doctor;
  2. Representatives 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, provided you consent to the visit.
- To receive other visitors whom you choose to see at reasonable times.

## **GROUPS AND ACTIVITIES**

**YOUR RIGHT to participate in groups and activities. You have the right:**

- **To refuse to work for the facility.**
- **To work for the facility if:**
  1. **It is documented in your plan of care.**
  2. **You agree to the work arrangement.**
  3. **Your plan of care specifies whether the work will be voluntary or for pay.**
  4. **You are paid at or above the prevailing wage (where you are being paid for your work).**
- **To participate in social, religious, and community activities of your choice which do not interfere with the rights of other residents.**
- **To interact with members of the community both inside and outside of the facility.**
- **To organize and participate in resident and family groups within the facility and to have the facility:**
  1. **Provide private space.**
  2. **Provide a staff person to assist when requested.**
  3. **Listen and act upon grievances and recommendations concerning proposed policy and operational decisions that affect your care and life in the facility.**

## RIGHTS CONCERNING FAMILIES / LEGAL REPRESENTATIVES

**YOUR RIGHT to have your family and legal representative involved in your care. You have the right to have your family and legal representative:**

- **Be notified immediately of the following:**
  1. **An accident resulting in your injury which may require a doctor's involvement;**
  2. **A significant change in your physical, mental, or psychosocial status;**
  3. **A need to change your treatment and/or medication significantly;  
or**
  4. **A decision to transfer or discharge you from the facility.**
- **Be notified of your appeal rights.**
- **Be notified promptly if there is a change in your room or roommate, or resident's rights provisions.**
- **Be notified if the facility receives a waiver of licensed nurse staffing requirements.**
- **Participate in your care planning process.**
- **See you at any time, with your permission.**
- **Participate in a family council which may meet privately in space provided by the facility and receive the facility's cooperation in its activities.**
- **Make recommendations to the facility and have the facility act upon grievances and recommendations concerning proposed policy and operation decisions affecting your care and life in the facility.**

## GRIEVANCES AND COMPLAINTS

**YOUR RIGHT to speak up about decisions that affect your care and life in the facility. You have the right:**

- **To make complaints and to freely discuss problems, concerns, grievances, or suggestions with anyone you choose without fear of retaliation or reprisal.**
- **To receive a written statement from the facility of your right to file a complaint with the Department of Health concerning resident abuse, neglect, and misappropriation of resident property in the facility.**
- **To receive a copy of the facility's grievance procedures.**
- **To receive a timely resolution from the facility of your grievance.**
- **To receive information about other agencies or organizations, such as the State Ombudsman Program or Medicaid Fraud, that may assist you with resolving a complaint or providing to you information and assistance.**
- **To a claim for relief against the facility for a violation of any resident rights.**

***As a resident with a developmental disability or mental illness you have the right to file a complaint with the North Dakota Protection and Advocacy Project if you think you have been abused, neglected, or exploited.***

## **ACCESS TO FACILITY INFORMATION**

**YOUR RIGHT to know how the facility operates. You have the right:**

- **To review every inspection report and approved plan of correction issued to the facility within the last two years.**
- **To request a copy of the names of the owners, board members, and partners of the facility.**
- **To request 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.**
- **To receive notice if the facility receives a waiver of licensed nursing staff requirements.**

**IMPORTANT REFERENCES**

**Long-Term Care Ombudsman** 1-800-451-8693  
**Elderly Law Program** 1-800-634-5263  
**Protection & Advocacy Project** 1-800-472-2670  
**ND Department of Health** 1-701-328-2352

**Facility Staff:**

**Administrator** \_\_\_\_\_  
**Director of Nursing** \_\_\_\_\_  
**Social Worker** \_\_\_\_\_  
**Grievance Contact Person** \_\_\_\_\_  
**Doctor** \_\_\_\_\_  
**Others** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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