



# Leaving Against Medical Advice

## Key Risk Management Issues

What are key risk management and safety issues to consider when a resident requests to leave your facility or a family member wants to discharge a resident against medical advice?

- Does the resident understand the risks of leaving the facility against medical advice?
- Does the resident have decision-making capacity to exercise their right to refuse care?
- Is the resident making an informed choice or are family members or significant others coercing the decision?
- Have appropriate arrangements been made for continued care?
- Does the resident have a safe place to live on discharge?

## Issues to Consider

1. **Resident Capacity** – A resident with decision-making capacity can exercise their right to refuse medical care and treatment and leave against medical advice. Healthcare providers have a responsibility to assess decision-making capacity and support a safe discharge planning process. “State and Federal law requires a nursing home to assess the home care that the resident will be discharged into to ensure that the environment is safe and not risk a deterioration of the resident’s quality of life.”

(Source – Ask an Attorney. By David H. Fitch, Esq., Underberg & Kessler LLP. [Ask An Attorney: Nursing Home Resident Discharge Against Medical Advice \(underbergkessler.com\)](https://www.underbergkessler.com) (Accessed October 28, 2023)

### NORTH DAKOTA DECISION-MAKING CAPACITY

“As a competent adult, you have the right to control decisions about your own health care. You have the right to accept or to refuse any treatment, service, or procedure used to diagnose, treat, or care for your physical or mental condition.

You have the right to make your own health care decisions as long as you have the ability to:

1. Understand and appreciate the nature and consequences of a health care decision; and
2. Communicate a health care decision.”

Source - [Making Health Care Decisions in North Dakota: \(wrhs.com\)](https://www.wrhs.com) (Accessed October 28, 2023)

23-12-13. Persons authorized to provide informed consent to health care for incapacitated persons - Priority. [North Dakota Century Code t23c12 \(nd.gov\)](https://nd.gov) (Accessed October 28, 2023)

## MINNESOTA DECISION-MAKING CAPACITY

"Decision-making capacity" means the ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision."

Source - [Sec. 145C.01 MN Statutes](#) (Accessed October 28, 2023)

524.5-102 Definitions. Persons authorized to provide informed consent to health care for incapacitated persons – [Sec. 524.5-102 MN Statutes](#) (Accessed October 23, 2023)

## SOUTH DAKOTA DECISION-MAKING CAPACITY

"Every person has the right to make their own health care decisions, but there might come a time when you or a family member is not capable of making those decisions. Durable powers of attorney for health care and living wills can help plan ahead for these times. In the absence of these tools, South Dakota law authorizes others to make health care decisions for those unable to make their own.

By law, a person is incapable of giving informed consent if:

- A guardian has been appointed for the person;
- The court has determined the person to be legally incompetent;
- It has been determined in good faith by the person's attending physician."

Source - [South Dakota Attorney General \(sd.gov\)](#) (Accessed October 28, 2023)

Health Care Consent – [SDLRC - Codified Law 34-12C-3 \(sdlegislature.gov\)](#) (Accessed October 28, 2023)

- Resident Rights** – Nursing home residents have rights and protections under the law. Residents have the right to be informed about their medical condition, medications, to see their own doctor and the right to refuse medications and treatments. [Rights & protections in a nursing home | Medicare](#) (Accessed October 28, 2023)
  - A Guide to Your Rights as a Resident of a Nursing Facility in the State of North Dakota. Updated 2023. [nursing-facility-resident-rights.pdf \(nd.gov\)](#) (Accessed October 28, 2023)
  - Minnesota Department of Health, Combined Federal and State Bill of Rights for Residents in Medicare/Medicaid Certified Skilled Nursing Facilities or nursing facilities [Combined Federal and State Bill of Rights](#) (Accessed October 28, 2023)
  - South Dakota Long Term Care Facility, Resident's Bill of Rights. [SD Department of Human Services](#) (Accessed October 28, 2023)
    - You Have a Voice. South Dakota State Long-Term Care Ombudsman Program. [https://ltcombudsman.org/uploads/files/support/LTC\\_Rights\\_Booklet.pdf](https://ltcombudsman.org/uploads/files/support/LTC_Rights_Booklet.pdf)
    - Assisted Living Residents' Rights [DHS Assisted Living Poster \(2-26\) \(ltcombudsman.org\)](#)
- Informed Refusal** – A decision to leave against medical advice ideally includes the resident/legal representative participating in an informed refusal of care discussion with consideration of the following elements:
  - The resident/legal representative has been given information necessary to make an informed health care decision
  - The information was presented in manner and language the resident/legal representative can understand including continued care needs
  - The risks and benefits of continuing and refusing care and treatment were discussed and confirmed with an opportunity to ask questions

4. **Violation of Rights** – If an informed refusal of care (against medical advice discharge) is being requested/executed by the resident/legal representative or family, and there is concern for the welfare, safety, or care of the resident, follow state laws for reporting to Adult Protective Services.
  - **Adult Protective Services North Dakota** – Reporting Abuse and Neglect of a Vulnerable Adult <https://www.hhs.nd.gov/adults-and-aging/reporting> (Accessed October 29, 2023)
  - **Adult Protective Services Minnesota** - [Adult protection / Minnesota Department of Human Services \(mn.gov\)](https://www.dhs.gov/minnesota/adult-protection) (Accessed October 29, 2023)
  - **Adult Protective Services South Dakota** - [SD Department of Human Services](https://www.dhs.gov/south-dakota/adult-protection) (Accessed October 29, 2023)
5. **Discharge Plan for Safe Return Home** – Encourage residents and family members to participate in regular care planning meetings which may include a discharge plan for a safe return to home. Proactively discuss the resources needed to reduce the likelihood of a deterioration in quality of life for the resident once discharged.

## Resources

- **The Refusing Resident: Risk Management Principles**  
William C. Wilson, ESQ. Caring for the Ages. DOI: <https://doi.org/10.1016/j.carage.2017.06.013>  
[The Refusing Resident: Risk Management Principles - Caring for the Ages](https://doi.org/10.1016/j.carage.2017.06.013) (Accessed October 28, 2023)
- **AMA Documentation Form [Release of Responsibility for Discharge Against Medical Advice \(med-pass.com\)](https://www.ama-assn.org/practice-management/med-pass)**  
(Accessed October 28, 2023)

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