

STATE OF SOUTH DAKOTA LONG TERM CARE OMBUDSMAN PROGRAM

*Policies and Procedures Manual Effective July 2016
Updated 1/1/2017, 10/1/2017 and June 9, 2021*

*Long Term Care
Ombudsman Program*

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

GENERAL	5
<i>Philosophy</i>	5
<i>Authority</i>	5
<i>Purpose</i>	5
 DEFINITIONS	6
<i>Abandonment</i>	6
<i>Abuse</i>	6
<i>Activities of Daily Living (ADLs)</i>	6
<i>Adult Foster Care Home</i>	6
<i>Adult Protective Services</i>	6
<i>Adult with a Disability</i>	6
<i>Advocacy Services</i>	6
<i>Assisted Living Centers</i>	6
<i>Bureau of Human Resources</i>	7
<i>Care Plan Development</i>	7
<i>Caregiver</i>	7
<i>Caregiver Services</i>	7
<i>Case Management</i>	7
<i>Code of Ethics</i>	7
<i>Competency</i>	7
<i>Complaint</i>	7
<i>Complaint Processing</i>	7
<i>Conflicts of Interest</i>	7
<i>Conservator</i>	7
<i>Consultation</i>	8
<i>Department of Human Services (Department)</i>	8
<i>Department of Health (DOH)</i>	8
<i>Division of Long Term Services and Supports (Division)</i>	8
<i>Division of Finance and Management</i>	8
<i>Domestic Abuse</i>	8
<i>Elder</i>	8
<i>Eligible Adult</i>	8
<i>Emergency</i>	8
<i>Emotional or Psychological Abuse</i>	8
<i>Exploitation</i>	9
<i>Family or Household Members</i>	9
<i>Family Council</i>	9
<i>Guardian</i>	9
<i>Guardianship</i>	9
<i>Immediate Family</i>	9
<i>Instrumental Activities of Daily Living (IADLs)</i>	9
<i>In-Service Education</i>	9
<i>Local Long Term Care Ombudsman (Local Ombudsman / LLTCO)</i>	9
<i>Long Term Care Facility</i>	9
<i>Long Term Care Ombudsman Program (Ombudsman Program / LTCOP)</i>	9
<i>Medicaid Fraud Control Unit (MFCU)</i>	10
<i>National Ombudsman Reporting System (NORS)</i>	10
<i>Neglect</i>	10
<i>Nursing Facilities</i>	10
<i>Office of the State Long Term Care Ombudsman</i>	10
<i>Ombudsman</i>	10
<i>Ombudsmanager</i>	10
<i>Protection Order</i>	10
<i>Representatives of the Office of the State Long Term Care Ombudsman</i>	10

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

<i>Resident</i>	<i>10</i>
<i>Resident Council.....</i>	<i>11</i>
<i>Resident Representative.....</i>	<i>11</i>
<i>Resident Rights</i>	<i>11</i>
<i>Residential Living Centers.....</i>	<i>11</i>
<i>Self-Abuse</i>	<i>11</i>
<i>Self-Neglect.....</i>	<i>11</i>
<i>Sexual Abuse.....</i>	<i>11</i>
<i>State Long Term Care Ombudsman (State Ombudsman / SLTCO).....</i>	<i>11</i>
<i>State Long Term Care Ombudsman Program, Ombudsman Program, or Program (SLTCOP /Office)</i>	<i>11</i>
<i>Theft by Exploitation</i>	<i>11</i>
<i>Willful Interference.....</i>	<i>12</i>
 <i>OMBUDSMAN PROGRAM STRUCTURE.....</i>	 <i>12</i>
 <i>PROCEDURES FOR ACCESS.....</i>	 <i>13</i>
 <i>LEGAL COUNSEL</i>	 <i>14</i>
 <i>SYSTEMS ADVOCACY.....</i>	 <i>14</i>
 <i>DESIGNATION AND DE-DESIGNATION.....</i>	 <i>15</i>
 <i>ROLES AND RESPONSIBILITIES</i>	 <i>16</i>
<i>Roles and Responsibilities in Administering the Ombudsman Program</i>	<i>16</i>
<i>Roles and Responsibilities of State Long Term Care Ombudsman.....</i>	<i>17</i>
<i>Roles and Responsibilities of Local Long Term Care Ombudsmen.....</i>	<i>18</i>
<i>Adult Protective Services and the Long Term Care Ombudsman Program (LTCOP) - Separate Roles; Separate People.....</i>	<i>19</i>
<i>Situations of Conflict</i>	<i>19</i>
 <i>CONFLICTS OF INTEREST</i>	 <i>20</i>
<i>Identification of Individual Conflicts of Interest.....</i>	<i>20</i>
<i>Identification of Organizational Conflicts of Interest.....</i>	<i>21</i>
 <i>CONFIDENTIALITY AND DISCLOSURE OF RECORDS</i>	 <i>22</i>
<i>Requests from Attorneys</i>	<i>22</i>
 <i>CERTIFICATION AND DE-CERTIFICATION OF LONG TERM CARE OMBUDSMEN</i>	 <i>23</i>
<i>Minimum Qualifications</i>	<i>23</i>
<i>Initial Certification</i>	<i>23</i>
<i>Annual Certification</i>	<i>23</i>
<i>De-Certification.....</i>	<i>23</i>
 <i>GRIEVANCE PROCEDURE</i>	 <i>24</i>

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

<i>Appeal from Dismissals, Demotion, Suspension, or Reduction in Pay or Termination.....</i>	<i>24</i>
<i>Other Appeals.....</i>	<i>24</i>
<i>Appeal on Grounds of Discrimination.....</i>	<i>24</i>
<i>Step 1: Division Director.....</i>	<i>25</i>
<i>Step 2: Appeal to Department Secretary.....</i>	<i>25</i>
<i>Step 3: Appeal to Civil Service Commission.....</i>	<i>25</i>
<i>Step 4: Appeal to Court.....</i>	<i>25</i>
<i>Failure to Comply with Time Limitations.....</i>	<i>25</i>
<i>ARSD 55:10:08:01 Appeal from Selection Process and ARSD 55:10:08:03 Appeal of Classification.....</i>	<i>25</i>
 OMBUDSMAN SERVICES.....	 25
<i>Why do Residents Need Advocacy?.....</i>	<i>25</i>
<i>Barriers to Self-Advocacy.....</i>	<i>25</i>
<i>Individual Problems that May Surface in Long Term Care Facilities.....</i>	<i>26</i>
<i>Requests by Consumers for Information in Selecting a Nursing Facility.....</i>	<i>27</i>
<i>Facilities Subject to Ombudsman Services.....</i>	<i>27</i>
<i>Routine Facility Visits.....</i>	<i>27</i>
<i>Quality of Life Determinations.....</i>	<i>28</i>
 COMPLAINT PROCESS.....	 29
<i>Who May File a Complaint?.....</i>	<i>29</i>
<i>Complaint Intake.....</i>	<i>30</i>
<i>Timeliness of Response to Complaints.....</i>	<i>31</i>
<i>Incident Reports.....</i>	<i>32</i>
<i>Standards for Interview Process.....</i>	<i>32</i>
<i>Building Trust.....</i>	<i>33</i>
<i>Resident-Centered Focus.....</i>	<i>34</i>
<i>Complaint Resolution.....</i>	<i>34</i>
<i>Roles in Resolution.....</i>	<i>35</i>
<i>Self-Advocacy.....</i>	<i>35</i>
<i>Complaint Resolution Factors.....</i>	<i>35</i>
<i>Administrative Hearing Request.....</i>	<i>36</i>
<i>Complaint Follow-Up.....</i>	<i>36</i>
<i>Closing a Complaint and Case.....</i>	<i>37</i>
<i>Documentation.....</i>	<i>37</i>
<i>State Long Term Care Ombudsman Complaint Monitoring.....</i>	<i>38</i>
<i>Complaint Referrals.....</i>	<i>39</i>
<i>Communication of Informed Consent.....</i>	<i>40</i>
<i>Referrals to South Dakota Department of Health (DOH).....</i>	<i>40</i>
<i>Referrals to Legal Services.....</i>	<i>41</i>
<i>Referrals to Law Enforcement.....</i>	<i>41</i>
<i>Referrals to Medicaid Fraud Control Unit (MFCU).....</i>	<i>41</i>
<i>Determining Outcome of a Referral.....</i>	<i>41</i>
 SURVEY PROCESS AND RELATIONSHIP WITH THE OMBUDSMAN.....	 42
<i>State Licensure of Long Term Care Facilities.....</i>	<i>42</i>
<i>Licensing and Survey Process.....</i>	<i>42</i>
<i>Enforcement in Long Term Care Facilities.....</i>	<i>43</i>
<i>Types of Enforcement Processes.....</i>	<i>44</i>
 APPENDIX A – CODE OF ETHICS FOR LONG TERM CARE OMBUDSMEN.....	 45

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

<i>APPENDIX B – LONG TERM CARE OMBUDSMAN CONFLICT OF INTEREST AGREEMENT</i>	<i>46</i>
<i>APPENDIX C - DEPARTMENT OF HUMAN SERVICES CONFIDENTIALITY POLICY.....</i>	<i>47</i>
<i>APPENDIX D – RESIDENTS’ RIGHTS</i>	<i>48</i>
<i>APPENDIX E - RESIDENT RIGHTS §483.10.....</i>	<i>52</i>
<i>APPENDIX F – FREEDOM FROM ABUSE, NEGLECT, AND EXPLOTATION §483.12.....</i>	<i>68</i>
<i>APPENDIX G – ADMISSION, TRANSFER AND DISCHARGE RIGHTS §483.15</i>	<i>70</i>
<i>APPENDIX H – ARTICLE 44:73, NURSING FACILITIES, CHAPTER 44:73:11, RESIDENT’S RIGHTS</i>	<i>75</i>
<i>APPENDIX I – ARTICLE 44:70, ASSISTED LIVING CENTERS, CHAPTER 44:70:09, RESIDENTS’ RIGHTS AND SUPPORTIVE SERVICES.....</i>	<i>80</i>
<i>APPENDIX J – FAMILY COUNCIL</i>	<i>87</i>
<i>APPENDIX K – RESIDENT COUNCIL.....</i>	<i>90</i>
<i>APPENDIX L – AVOIDING AND RESPONDING TO DELINQUENT FACILITY ACCOUNTS</i>	<i>92</i>
<i>APPENDIX M – SOUTH DAKOTA DEPARTMENT OF HUMAN SERVICES’ DIVISION OF LONG TERM SERVICES AND SUPPORTS ORGANIZATIONAL CHART</i>	<i>95</i>
<i>APPENDIX N: INITIAL AND ONGOING LONG TERM CARE OMBUDSMAN TRAINING MANUAL FOR STATE OF SOUTH DAKOTA OMBUDSMEN.....</i>	<i>96</i>
<i>APPENDIX O – STATE LONG TERM CARE OMBUDSMAN JOB DESCRIPTION.....</i>	<i>98</i>
<i>APPENDIX P – LOCAL LONG TERM CARE OMBUDSMAN JOB DESCRIPTION.....</i>	<i>102</i>

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

GENERAL

Philosophy

The Long Term Care Ombudsman Program is a resident focused advocacy program. The Ombudsman advocates, mediates, investigates, and educates residents and others and upholds their responsibility to act in situations involving vulnerable individuals. The Ombudsman carries out their advocacy role through the activity of providing information to assist in problem solving, and by promoting individual and group self-advocacy skills. Posters are placed in each long term care facility as a means of informing residents about the Ombudsman Program and services available.

Authority

The South Dakota Long Term Care Ombudsman is mandated by the U.S. Administration on Aging and is authorized under the [Older Americans Act \(OAA, Title VII, Chapter 2, Sections 711/712\)](#). The Long Term Care Ombudsman Program is organizationally located within the [Department of Human Services' Division of Long Term Services and Supports](#). The Department does not have personnel policies or practices which prohibit the Ombudsman from performing the functions and responsibilities of the Ombudsman, as set forth in [§ 1324.13](#), or from adhering to the requirements of [Section 712 of the Older Americans Act](#). Nothing in this provision prohibits the Department from requiring that the Ombudsman, or other employees or volunteers of the Department, adhere to the personnel policies and procedures of the entity which are otherwise lawful. In accordance with South Dakota law, no person, facility or other entity shall discriminate or retaliate because of making a complaint or providing information in good faith to the Ombudsman Program. (See [SDCL 28-1-45.7](#)).

The State Long Term Care Ombudsman is a full-time benefitted state employee who is responsible to monitor the files, records and other information maintained by the Ombudsman Program. The State Long Term Care Ombudsman is also responsible for the performance of Local Long Term Care Ombudsmen who are full-time benefitted state employees designated to carry out the duties of the Ombudsman Program, Division of Long Term Services and Supports within the Department of Human Services. Standards have been developed to assure prompt response to complaints by the State and/or Local Long Term Care Ombudsmen which prioritize abuse, neglect, exploitation and time-sensitive complaints and which consider the severity of the risk to the resident, the imminence of the threat of harm to the resident, and the opportunity for mitigating harm to the resident through provision of Ombudsman Program services.

The Department of Human Services has zero-tolerance for disclosure of confidential information. In accordance with the Department of Human Services Confidentiality Policy, all information is confidential in nature. Neither the State nor Local Long Term Care Ombudsmen shall disclose identifying information of any complainant nor long term care facility resident to individuals outside of the Ombudsman Program, except as otherwise specifically authorized in federal or state regulations. (See Appendix C)

Purpose

The purpose of the LTCOP is to protect and improve the quality of care and quality of life for residents of long term care facilities through advocacy for, and on behalf of, residents. The Ombudsman receives, investigates and attempts to resolve complaints made by, or on behalf of, individuals who are residents of long term care facilities. The primary focus of the Ombudsman Program is the resident; therefore, the Ombudsman advocates on behalf of the resident. It is important to remain objective throughout the complaint investigation process while collecting the facts. Complaints may relate to the action, inaction, or decisions of providers or their representatives, or to long term care services, which may adversely affect the health, safety, welfare, or rights of residents. The LLTCO is available to any resident of a long term care facility in the state of South Dakota. The Ombudsman must be sensitive to the needs and concerns of not only the resident, but the needs and concerns of friends and relatives who lodge complaints as well. The Ombudsman seeks to:

- provide an effective means to ensure that the resident receives fair treatment in long term care facilities;

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- provide the resident with an opportunity for participation in their care; and
- provide an efficient means to ensure that resident rights are being met, and followed according to the [Nursing Home Reform Act of 1987](#); and
- empower the resident with a sense of self-determination.

The SLTCO or representative of the Office of the SLTCO will represent the interests of residents before governmental agencies, assure that individual residents have access to, and pursue (as the Ombudsman determines as necessary and consistent with resident interests) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents.

DEFINITIONS

Abandonment

The desertion of an elderly person or adult with disabilities by an individual who has assumed responsibility for providing care for an elder or adult with disabilities, or by a person with physical custody of an elder or adult with disabilities.

Abuse

Physical harm, bodily injury, or attempt to cause physical harm or injury, or the infliction of fear of imminent physical harm or bodily injury on an elder or adult with disabilities. ([SDCL 22-46-1](#)) (See also [ARSD 44:70:01:01](#))

Activities of Daily Living (ADLs)

Basic, self-care tasks including: bathing, dressing, personal hygiene, walking, transferring, toileting, eating and bed mobility. (See also [ARSD 44:70:01:01](#))

Adult Foster Care Home

Family residence licensed by the state of South Dakota Department of Health where aged, blind, physically disabled, developmentally disabled, or socially-emotionally disabled adults can obtain personal care, health supervision services, & household services in family atmosphere.

Adult Protective Services

Adult Protective Services are those services provided when abuse, neglect or exploitation is suspected. The services may include investigation, follow along, short term housing, referral to outside agencies (legal, shelter, mental health, etc.), exterminators, homemaking, nursing, or meals.

Adult with a Disability

Person eighteen years of age or older who suffers from a condition of developmental delays, infirmities of aging, or who lacks the functional, physical or mental ability to provide their own self-care. (See also [SDCL 22-46-1](#))

Advocacy Services

Services provided by the Ombudsman Program to residents of a long term care facility. Services may include negotiating with facility staff; filing complaints on behalf of residents; working with the resident council; or organizing residents with common concerns.

Assisted Living Centers

Licensed by the State of South Dakota Department of Health to provide personal care and services beyond basic food, shelter, and laundry. May admit and retain only those who do not require more than intermittent nursing care by a licensed nurse. Licensure may include special approvals to offer 1) medication administrations, 2) care of the cognitively impaired, 3) care of the physically impaired, 4) oxygen administration, and 5) therapeutic diet; 6) care of residents electing hospice; 7) care of residents requiring dining assistance; and 8) for individuals requiring one or two staff for up to total assistance with completing

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

activities of daily living. Posted license indicated which approvals granted. An Assisted Living Center may provide home health agency services for short term skilled services for a specific medical reason. (See also [ARSD 44:70](#))

Bureau of Human Resources

The South Dakota department charged with finding, screening, recruiting, and training job applicants, as well as administering employee benefit programs.

Care Plan Development

The process of developing a written person centered care plan with the individual based on their needs, preferences, strengths, capacities and desired outcomes. Care Plan development is needs oriented based on a standardized assessment; is person centered and goal directed; includes the individual and others whom the individual chooses to participate; addresses both paid and unpaid services and supports; and assists the individual to make informed decisions about where and how he/she will receive services and supports.

Caregiver

Individual who provides care, services and support to another person. Informal caregivers provide care, services and support to another person on a non-professional, unpaid basis. Primary caregivers serve as the primary provider of care to a specific individual and invests the most time and resources towards their care.

Caregiver Services

Key supports that assist family and informal caregivers to care for their loved ones at home for as long as possible. Caregiver services include a wide array of supports designed to provide a coordinated set of supports for individual caregivers. Caregiver services enable primary caregivers to have access to services that will help sustain and support the caregiver as they strive to meet the needs of the person in their care.

Case Management

A comprehensive process of assessment, care plan development, coordination of services and supports, monitoring and follow-up.

Code of Ethics

Ethics upheld by Long Term Care Ombudsmen as written per the [National Association of State Long Term Care Ombudsman Programs](#). (See Appendix A)

Competency

The mental ability to understand problems and make decisions. ([See also Black's Law Dictionary 302, 8th ed. 2004](#))

Complaint

Any expression of dissatisfaction or concern.

Complaint Processing

Steps followed by the Long Term Care Ombudsman to identify, review, and resolve complaints made by or on behalf of residents.

Conflicts of Interest

Any interest that is, or may be, in conflict with the purpose, interests and concerns of the Long Term Care Ombudsman Program.

Conservator

One appointed by the court to be responsible for managing the estate and financial affairs of a minor or protected person.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Consultation

Ombudsmen may provide consultations and offer technical assistance, advice, and opinions for the purpose of resolving the problems of elderly residents who reside in long term care facilities.

Department of Human Services (Department)

The South Dakota State Department of Human Services is the Department in which the Division of Long Term Services and Supports is located.

Department of Health (DOH)

The South Dakota Department of Health delivers a wide range of public health services to prevent disease, promote health and ensure access to needed, high-quality health care. The Office of Licensure and Certification (OLC) is housed within DOH. OLC certifies and licenses Assisted Living Centers, Nursing Homes, Registered Residential and Adult Foster Care Homes, and etc.

Division of Long Term Services and Supports (Division)

The South Dakota State Division of Long Term Services and Supports is the Division responsible for administering the Long Term Care Ombudsman Program.

Division of Finance and Management

Provides support services to oversee and manage the Department's budget and financial operations including accounting services, financial reporting, cost allocation and processing of vouchers through the State's financial reporting system; provides delivery of departmental payments through electronic technology and ensures convenient, rapid and secure transfer of both information and payments; and provides auditing services for the Department as well as reimbursement methodology and reimbursement rates.

Domestic Abuse

Physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury, between family or household members. ([SDCL 25-10-1](#))

Elder

A person sixty-five years of age or older. ([SDCL 22-46-1](#))

Eligible Adult

The Long Term Care Ombudsman Program assists any resident of a covered facility regardless of age or disability.

Emergency

A circumstance in which an individual is at immediate risk of death, harm, or serious physical injury.

Emotional or Psychological Abuse

Emotional and psychological abuse," a caretaker's willful, malicious, and repeated infliction of:

- (a) A sexual act or the simulation of a sexual act directed at and without the consent of the elder or adult with a disability that involves nudity or is obscene;
- (b) Unreasonable confinement;
- (c) Harm or damage or destruction of the property of an elder or adult with a disability, including harm to or destruction of pets; or

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(d) Ridiculing or demeaning conduct, derogatory remarks, verbal harassment, or threats to inflict physical or emotional and psychological abuse, directed at an elder or adult with a disability ([SDCL 22-46-1](#))

Exploitation

The wrongful taking or exercising of control over property of an elder or adult with disabilities with intent to defraud the elder or adult with disabilities. ([SDCL 22-46-1](#))

Family or Household Members

Spouses, former spouses, or persons related by consanguinity, adoption, or law, person living in the same household, persons who have lived together, or persons who have had a child together.

Family Council

A family council is defined as a unique consumer group composed of the friends and relatives of the facility residents. (See Appendix I)

Guardian

One appointed by the Court to be responsible for the personal affairs of a minor or protected person.

Guardianship

Legal process in which the Court provides a decision-maker for an individual who is found to lack cognitive capacity to maintain a safe environment, meet basic needs, or make decisions appropriate for their health and well-being.

Immediate Family

A member of the household or a relative with whom there is a close personal or significant financial relationship.

Instrumental Activities of Daily Living (IADLs)

Tasks performed routinely by a person, utilizing physical and social environmental features, to manage life situations, including meal preparation, self-administration of medications, telephone use, housekeeping, laundry, handling finances, shopping, and use of transportation.

In-Service Education

Presentations to long term care facility staff on long term care issues.

Local Long Term Care Ombudsman (Local Ombudsman/LLTCO)

Individuals certified and designated by the State Long Term Care Ombudsman who serve in the role of Local Long Term Care Ombudsmen in facilities within their region, acting as representatives of the Ombudsman Program. Local Long Term Care Ombudsmen serve on a full-time basis. The LLTCO is an employee of the Department of Human Services.(See Roles and Responsibilities)

Long Term Care Facility

Facilities that provide long term care services that are served by the SD Long Term Care Ombudsman Program include nursing facilities, assisted living facilities, licensed adult foster care homes, registered residential facilities, and the Pierce Unit at the Human Services Center.

Long Term Care Ombudsman Program (Ombudsman Program/LTCOP)

The program within the Division of Long Term Services and Supports that is headed by the State Long Term Care Ombudsman. The South Dakota Long Term Care Ombudsman Program is comprised of six Local Long Term Care Ombudsmen and a State Long Term Care Ombudsman. They work to resolve concerns of individual residents and to bring about change at the local, state and national levels that will improve residents' care and quality of life. (See Roles and Responsibilities)

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Medicaid Fraud Control Unit (MFCU)

The South Dakota Medicaid Fraud Control Unit is within the South Dakota Attorney General's office. The Medicaid Fraud Control Unit investigates and prosecutes fraud and abuse committed by providers such as physicians, facilities, pharmacists, durable medical equipment suppliers, home health services, transportation services, and other providers. The MFCU seeks to recover monies improperly paid by the Medicaid program and to prosecute criminal conduct. The Medicaid Fraud Control Unit investigates and prosecutes acts of abuse, neglect or exploitation perpetrated upon any resident in a health care facility that receives federal funding.

National Ombudsman Reporting System (NORS)

NORS is the system used to generate an annual report that is submitted to the Administration on Community Living. This report records the work LTCO do on behalf of residents, including visits to facilities, complaints, consultations, and more. Each state reports their data to the Administration on Aging, to be summarized into NORS. In South Dakota the data for this report is documented in a web-based application that is accessed from a web browser through Harmony's Portal called OmbudsManager.

Neglect

Harm to a person's health or welfare, without reasonable justification, caused by the conduct of someone responsible for the person's health or welfare, including offensive behavior made to or directed at a patient or resident, and the failure to provide timely, consistent, and safe services, treatment, or care necessary to avoid physical harm, mental anguish, or mental illness to the person (See ARSD 44:70:01:01, 44:73:01:01 and 44:77:01:01)

Nursing Facilities

Licensed by the state of South Dakota Department of Health; may be certified by Medicare and/or Medicaid. May admit and retain those who require nursing care by licensed nurses. Have a medical director and staffed with licensed nurses. Visit Medicare's [Nursing Home Compare](#) site for a list of nursing facilities in South Dakota, along with recent survey information.

Office of the State Long Term Care Ombudsman

Is the organizational unit in a State or territory which is headed by a State Long Term Care Ombudsman.

Ombudsman

The word ombudsman (om-budz-man) is of Swedish origin, and means one who speaks on behalf of another.

Ombudsmanager

The web-based data management application where all LTCO cases, complaints, activities, staff and volunteer information are documented and stored by every Ombudsman throughout the state.

Protection Order

An order restraining an individual from contact with another individual. (See also [SDCL 25-10-1](#))

Representatives of the Office of the State Long Term Care Ombudsman

The employees designated by the State Long Term Care Ombudsman to fulfill the duties set forth in § 1324.19(a), whether personnel supervision is provided by the State Long Term Care Ombudsman or their designees.

Resident

A person not in need of acute care with a valid order by a physician, physician assistant, or nurse practitioner for services in an assisted living center or a person not in need of acute care with a valid order by a practitioner for services in a nursing facility. (See [ARSD 44:70:01:01](#) and [44:73:01:01](#))

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Resident Council

An independent, organized group of residents living in a long term care facility that meets on a regular basis to discuss concerns, develop suggestions on improving services, and plan social activities. (See Appendix H)

Resident Representative

Means any of the following: (1) An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications; (2) A person authorized by State or Federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications; (3) Legal representative, as used in [Section 712 of the Older Americans Act](#); or (4) The court-appointed guardian or conservator of a resident.

Resident Rights

Residents' Rights are guaranteed by the federal [1987 Nursing Home Reform Law](#). The law requires homes to "promote and protect the rights of each resident" and places a strong emphasis on individual dignity and self-determination. (See Appendixes D, E, F, G, H)

Residential Living Centers

A private residence which is not licensed but required to register with the state of South Dakota Department of Health to provide services, for compensation, for two or more elderly or disabled persons not related to the owner. May admit and retain persons who do not require more than meals, room, and daily living services.

Self-Abuse

Conduct which threatens or endangers a person's own welfare, health or safety.

Self-Neglect

An act or failure that substantially endangers a person's health, safety, welfare or life by not seeking or obtaining services necessary to meet the person's essential human needs. Choices of lifestyle or living arrangement are not by themselves evidence of self-neglect.

Sexual Abuse

Unwanted sexual activity, with perpetrators using force, making threats or taking advantage of victims unable to give consent.

State Long Term Care Ombudsman (State Ombudsman / SLTCO)

Individual located in the central state office in Pierre and is responsible for the overall management of the Long Term Care Ombudsman Program. The State Long Term Care Ombudsman serves on a full-time basis. (See Roles and Responsibilities)

State Long Term Care Ombudsman Program, Ombudsman Program, or Program (SLTCOP /Office)

The program within the Division of Long Term Services and Supports that is headed by the State Long Term Care Ombudsman. The South Dakota Long Term Care Ombudsman Program is comprised of six Local Long Term Care Ombudsmen and a State Long Term Care Ombudsman. They work to resolve concerns of individual residents and to bring about change at the local, state and national levels that will improve residents' care and quality of life. (See [§ 1324.13 \(Functions and Responsibilities of the State Long Term Care Ombudsman\)](#), and [§ 1324.19 \(Duties of the Representatives of the Office\)](#))

Theft by Exploitation

Any person who, having assumed the duty by written contract, by receipt of payment for care, or by order of a court to provide for the support of an elder or adult with disabilities, and having been entrusted with the property of that elder or adult with disabilities, with intent to defraud, appropriates such property to a use or

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

purpose not in the due and lawful execution of that person's trust, is guilty of theft by exploitation. Theft by exploitation is punishable as theft pursuant to [SDCL 22-30A](#). (See also [SDCL 22-46-3](#))

Willful Interference

Actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any of the functions or responsibilities set forth in the Ombudsman Final Rule and Older Americans Act. Retaliation against the LTCOP complainant or interference with the program is a misdemeanor as set forth in SDCL 28-1-45.7 a misdemeanor is punishable as outlined in SDCL 22-6-2. (See [§ 1324.13 \(Functions and Responsibilities of the State Long Term Care Ombudsman\)](#), and [§ 1324.19 \(Duties of the Representatives of the Office\)](#))

If the LLTCO experiences willful interference, he or she shall do the following:

1. Provide the individual who is interfering with a verbal explanation of the Long-Term Care Ombudsman Program and a written summary of the laws and regulations prohibiting willful interference with the lawful actions of Ombudsman representatives. SDCL 28-1-45.7 will be provided to the individual. Ombudsman representatives should keep copies of the law with them whenever they make visits to facilities.
2. If this first level of communication is not successful, the SLTCO shall contact the facility administrator either by telephone or in person to provide a verbal explanation of the Long-Term Care Ombudsman Program and a written summary of the laws and regulations prohibiting willful interference with the lawful actions of Ombudsman representatives. If the issue is resolved, the LLTCO shall return to the facility and resume Ombudsman duties.
3. If the interference continues the SLTCO or designee shall send a cease and desist letter to the administrator or the facility where the interference occurred. The cease and desist letter shall advise the administrator that they may be subject legal action for interference.
4. If the interference continues, and results in isolation of residents from the Ombudsman, as defined 28-1-45.7 of the South Dakota Codified Law the SLTCO may file a complaint with the appropriate local law enforcement agency.

If the SLTCO experiences willful interference, he or she shall do the following:

1. Provide the individual who is interfering with a verbal explanation of the Long-Term Care Ombudsman Program and a written summary of the laws and regulations prohibiting willful interference with the lawful actions of Ombudsman representatives. SDCL 28-1-45.7 will be provided to the individual. Ombudsman representatives should keep copies of the law with them whenever they make visits to facilities.
2. If this first level of communication is not successful, the SLTCO shall contact the facility administrator either by telephone or in person to provide a verbal explanation of the Long-Term Care Ombudsman Program and a written summary of the laws and regulations prohibiting willful interference with the lawful actions of Ombudsman representatives.
3. If the interference continues the SLTCO or designee shall send a cease and desist letter to the administrator or the facility where the interference occurred. The cease and desist letter shall advise the administrator that they may be subject legal action for interference.
4. If the interference continues, and results in isolation of residents from the Ombudsman, as defined 28-1-45.7 of the South Dakota Codified Law the SLTCO may file a complaint with the appropriate local law enforcement agency.

OMBUDSMAN PROGRAM STRUCTURE

The [Division of Long Term Services and Supports](#) is a unit within the [South Dakota Department of Human Services](#) that administers the [Ombudsman Program](#). The LTCOP is a distinct program located within the Division of Long

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Term Services and Supports within the Department of Social Services. The State Long Term Care Ombudsman's office is located in the Pierre State office within the Division. LLTCO are strategically located throughout the state providing statewide coverage. LLTCO are stationed in the following local Department of Human Services offices: Watertown, Mitchell, Yankton, Aberdeen, Sioux Falls and Rapid City. (See Appendix L)

The SLTCO is the head of the LTCOP who reports directly to the Director of Long Term Services and Supports and is responsible for reviewing complaints about services in long term care facilities, mediating disputes, offering information and referral services surrounding long term care, providing advocacy services to residents within these facilities, and conducting outreach activities such as training staff, community groups and other agencies on issues such as residents' rights and other related issues.

Each LLTCO has their own distinct office letterhead. Individuals wishing to contact the State or Local Ombudsmen may call the s toll-free number or call the local office number directly. Individuals may also visit their State or Local Long Term Care Ombudsman in person.

PROCEDURES FOR ACCESS

The Long Term Care Ombudsman Program representatives have timely access to facilities, residents, and appropriate records which include but are not limited to:

- Access to enter all long-term care facilities at any time during a facility's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated;
- Access to all residents to perform the functions and duties set forth in §1324.13 and §1324.19;
- Access to the name and contact information of the resident representative, if any, where needed to perform the functions and duties set forth in §1324.13 and §1324.19
- Access to review the medical, social and other records relating to a resident, if—
 - The resident or resident representative communicates informed consent to the access and the consent is given in writing or through the use of auxiliary aids and services;
 - The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services, and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; and
 - Access is necessary in order to investigate a complaint, the resident representative refuses to consent to the access, a representative of the Office has reasonable cause to believe that the resident representative is not acting in the best interests of the resident, and the representative of the Office obtains the approval of the Ombudsman;
- Access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities;
- Access of the Ombudsman to, and, upon request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities; and
- Reaffirmation that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, 45 CFR part 160 and 45 CFR part 164, subparts A and E, does not preclude release by covered entities of resident private health information or other resident identifying information to the Ombudsman program, including but not limited to residents' medical, social, or other records, a list of resident names and room numbers, or information collected in the course of a State or Federal survey or inspection process.

**** Where the resident is unable to communicate informed consent, and has no resident representative, the Ombudsman or representative of the office shall be granted access to review the medical, social and other records relating to a resident as required by the circumstances to be investigated.****

The Department of Health Administrative Rule [44:73:11:08](#) and [44:70:09:08](#) also provide for the release of information, by the facility, to the Long Term Care Ombudsman Program.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

LEGAL COUNSEL

The State agency assures legal counsel for the Ombudsman program. LLTCO notify the SLTCO upon receipt of any complaint, summons, subpoena, lawsuit, injunction court order, or notice of any other legal action taken against the LLTCO in connection with the performance of official duties. The notice shall be provided as soon as practicable, but within 48 hours of receipt of the action, in writing, and shall include a copy of the legal documents along with a brief case summary. Upon receipt, the SLTCO will complete the Assistance for Legal Services form and submit the form and documents to the Division of Legal Services within the DHS as soon as practicable, but within 48 hours of receipt.

The SLTCO upon receipt of any complaint, summons, subpoena, lawsuit, injunction court order, or notice of any other legal action taken against the SLTCO in connection with the performance of official duties will access Legal counsel by completing the Assistance for Legal Services form and submitting it to the Division of Legal Services within the DHS as soon as practicable, but within 48 hours of receipt.

Any disclosure of information will be documented in the resident record. A copy of any disclosed records will be kept on file.

The Division of Legal Services will assign a staff attorney to work with the LLTCO and SLTCO to represent the interest of the LTCOP. The legal counsel shall be adequate, available, have competencies relevant to the legal needs of the program and of residents and is without conflict of interest (as defined by the State ethical standards governing the legal profession), in order to –

- Provide consultation and representation as needed in order for the Ombudsman program to protect the health, safety, welfare, and rights of residents; and
- Provide consultation and/or representation as needed to assist the Ombudsman and representatives of the Office in the performance of their official functions, responsibilities, and duties, including, but not limited to, complaint resolution and systems advocacy;
- The Ombudsman and representatives of the Office assist residents in seeking administrative, legal, and other appropriate remedies. In so doing, the Ombudsman shall coordinate with the legal services developer, legal services providers, and victim assistance services to promote the availability of legal counsel to residents; and
- Legal representation, arranged by or with the approval of the Ombudsman, is provided to the Ombudsman or any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties.
- Such legal counsel may be provided by one or more entities, depending on the nature of the competencies and services needed and as necessary to avoid conflicts of interest (as defined by the State ethical standards governing the legal profession). However, at a minimum, the Office shall have access to an attorney knowledgeable about the Federal and State laws protecting the rights of residents and governing long- term care facilities.
- Legal representation of the Ombudsman program by the Ombudsman or representative of the Office who is a licensed attorney shall not by itself constitute sufficiently adequate legal counsel.
- The communications between the Ombudsman and legal counsel are subject to attorney-client privilege.

SYSTEMS ADVOCACY

The SLTCO and LLTCO of the Office are required by the Older Americans Act to analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other government policies and actions that connect to long term care facilities and services and to the health, safety, welfare and rights of residents.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

The SLTCO and the LLTCO shall also recommend any changes in such law regulations, and policies as the Office determines to be appropriate. The SLTCO and the LLTCO will also facilitate public comment on the laws, regulations, policies and actions.

The SLTCO and LLTCO will provide information to public and private agencies, legislators, the media and other persons regarding the LTC residents' issues and concerns along with recommendations related to them.

The SLTCO and LLTCO will represent the LTCOP, not the Department, when carrying out systems advocacy efforts on behalf of residents. Such procedures must exclude the Ombudsman and representatives of the Office from any State lobbying prohibitions to the extent that such requirements are inconsistent with section 712 of the Act. Nothing in this part shall prohibit the Ombudsman or the State agency or other agency in which the Office is organizationally located from establishing policies which promote consultation regarding the determinations of the Office related to recommended changes in laws, regulations, and policies. However, such a policy shall not require a right to review or pre-approve positions or communications of the Office.

The SLTCO and LLTCO will represent the LTCOP, not the Department when making recommendations to changes in laws, regulations, policies and actions as the Office determines to be appropriate and facilitate public comment on the laws, regulations, policies and actions.

The SLTCO or representative of the Office of the SLTCO will represent the interests of residents before governmental agencies, assure that individual residents have access to, and pursue (as the Ombudsman determines as necessary and consistent with resident interests) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents.

The SLTCO will provide leadership to statewide advocacy efforts of the Office on behalf of long term care residents. All representatives of the Office must first discuss and receive written notice of approval from the SLTCO regarding their systems advocacy efforts. The SLTCO will notify the Director of the Division of Long Term Services and Supports of any systems advocacy efforts.

DESIGNATION AND DE-DESIGNATION

The SLTCO has the authority to designate, refuse to designate, or de-designate individuals as ombudsmen to participate in the LTCOP and to represent the Office of the SLTCO.

To be designated as a LTCO, an individual must meet the following requirements:

- Be free from un-remedied conflicts of interest
- Meet the minimum qualifications for the position
- Satisfactorily complete the initial and annual certification training requirements
- Adequately fulfill the LTCO responsibilities
- Pass a criminal background check

Suspension of designation, refusal to designate or to de-designate an individual could occur for the following reasons:

- An un-remedied conflict of interest exists
- Deliberate failure of the individual to disclose all conflict of interest
- Falsifying records or providing false information
- Violation of the confidentiality requirements
- Failure to provide adequate and appropriate services to long term care residents
- Failure, refusal or inability to follow direction of the SLTCO regarding LTCO policies, procedures and practices
- A change in circumstances which are incompatible with the LTCO duties

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- Failure, refusal or inability to act in accordance with applicable federal and state laws, regulation and/or policies
- Divulging Department of Health survey dates for long term care facilities covered under the SD LTCOP
- Not pass a criminal background check

ROLES AND RESPONSIBILITIES

Roles and Responsibilities in Administering the Ombudsman Program

The Director of the Division of Long Term Services and Supports is responsible to ensure that the State and Local Long Term Care Ombudsmen comply with the relevant provisions of the [Older Americans Act](#) and of the [Ombudsman Final Rule](#).

The State and Local Long Term Care Ombudsmen have sufficient authority and access to facilities, residents, and information needed to fully perform all of the functions, responsibilities, and duties of the Ombudsman Program. A Memorandum of Understanding exists between the South Dakota Medicaid Fraud Control Unit (MFCU), the South Dakota Department of Social Services (DSS), the South Dakota Department of Health (DOH), and the South Dakota Department of Human Services (DHS) the purpose of this Agreement is to provide a collaborative approach to ensuring the health, safety, and welfare of vulnerable people residing in, and/or receiving services from, licensed health care facilities.

The Department provides opportunities for training for the State and Local Long Term Care Ombudsmen in order to maintain expertise to serve as effective advocates for residents.

The LTCOP provides opportunities for in-service educational sessions to the long term care facilities under authority of the LTCOP.

The SLTCO completes an Accountability and Competency Evaluation (ACE) on each LLTCO within the initial three months of hire; again at 5 months and annually thereafter to measure the employee's performance in their respective role. Additionally, the SLTCO monitors Ombudsman documentation to ensure LLTCO are meeting required visits and providing appropriate follow up on concerns reported.

The Director of Long Term Services and Supports completes an Accountability and Competency Evaluation (ACE) on the SLTCO within the initial three months of hire; again at 5 months and annually thereafter to measure the employee's performance in their respective role.

The Department provides fiscal monitoring through the Division of Finance and Management which includes an assessment of whether the Ombudsman Program is performing all of the functions, responsibilities and duties set forth in [§1324.13](#) and [§1324.19](#).

The SLTCO collaborates with staff in the Division of Finance and Management regarding the use of fiscal and state resources available under the Ombudsman Program.

The Division of Long Term Services and Supports is responsible to ensure that any review of files, records or other information maintained by the Ombudsman Program is consistent with the disclosure limitations set forth in [§1324.11\(e\)\(3\)](#) and [§1324.13\(e\)](#). File reviews are completed at least semi-annually.

The SLTCO is responsible for establishing and recommending policies, procedures and standards for administration of the Ombudsman Program pursuant to [§1324.11\(e\)](#) and for requiring Local Long Term Care Ombudsmen to fulfill their duties set forth in [§1324.19](#).

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

The State agency shall provide elder rights leadership. In so doing, it shall require the coordination of Ombudsman program services with, the activities of other programs authorized by Title VII of the Act as well as other State and local entities with responsibilities relevant to the health, safety, well-being or rights of older adults, including residents of long-term care facilities as set forth in [§1324.13\(h\)](#).

Roles and Responsibilities of State Long Term Care Ombudsman

The SLTCO provides services to protect the health, safety, welfare, and rights of residents of long term care facilities. The State Ombudsman is responsible for providing leadership, planning and direction for the Ombudsman Program to include program management, development of policies and procedures and maintaining adherence to the Ombudsman Code of Ethics (See Appendix A).

The SLTCO provides services to protect the health, safety, welfare, and rights of residents of long term care facilities. The SLTCO supervises and provides direction and coordination to the Local Ombudsmen. Duties when serving as the SLTCO include but are not limited to:

- Appropriately interpreting the LTCOP policies and procedures
- Accurate and timely response to team member's questions
- Assisting team members in appropriately applying policies and procedures to individual resident's circumstances
- Certification and De-Certification of LLTCO
- Determining the use of fiscal resources appropriated or otherwise available for the operation of the Office
- Providing guidance, problem solving, and critical thinking assistance to team members regarding the LTCOP
- Coordinating Ombudsman services with other state agencies and programs as appropriate. Other entities may include but, are not limited to the Department of Health, Medicaid Fraud Control Unit, long term care facilities, law enforcement, advocacy programs, and adult protective services
- Maintaining and managing the OmbudsManager data base to include but, is not limited to maintenance of case records and submission of data as required to the Administration on Aging
- Develop, provide final approval and distribute the annual report as required by the Administration on Aging
- Management and analysis of the collection of data relating to complaints and conditions in long term care facilities, for the purpose of identifying and resolving significant concerns
- Providing information and assistance regarding long term care issues to the general public, community organizations, residents and staff of long term care facilities, and other interested parties
- Providing specialized technical assistance, consultation, training and resources to the LLTCO
- Establishing training protocol for LLTCO
- Receive grievances and investigate allegations of misconduct by LLTCO in the performance of Ombudsman duties
- Periodic review of the resolution status of complaints to verify the accuracy of Local Ombudsman reporting
- Maintenance of a quality assurance program to monitor resident satisfaction with complaint resolution
- Providing facility in-service education sessions
- Provide services to protect the health, safety, welfare, and rights of residents
- Ensure that residents in the service area of the local Ombudsman entity have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses to requests for information and complaints
- Represent the interests of residents before government agencies and assure that individual residents have access to, and pursue (as the representative of the Office determines necessary and consistent with resident interest) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents
- Making regular visits to facilities to provide a presence and build relationships

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- Advocating for, mediating, investigating, and educating residents and others and upholding their responsibility to act in situations involving vulnerable individuals
- Providing options planning so residents and families can make informed decisions
- Referring complaints to other agencies and following up as appropriate
- Respecting the confidentiality of sensitive and personal information
- Coordinating with and promoting the development of citizen organizations consistent with the interest of residents
- Promoting, providing technical support for the development of, and providing ongoing support as requested by resident and family councils to protect the well-being and rights of residents
- Analyzing, commenting on, and monitoring the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long term care facilities and services in the state
- Recommending any changes in such laws, regulations, policies, and actions as determined appropriate for the health, safety, welfare and rights of residents
- Facilitating public comment on the laws, regulations, policies, and actions as necessary
- Providing leadership to statewide systems advocacy efforts on behalf of long term care facility residents
- Providing information to public and private agencies, legislators, the media, and other persons, regarding the concerns of residents and recommendations related to the concerns
- Performing other duties as assigned that do not interfere with the primary responsibility of the SLTCO and the LTCOP

Roles and Responsibilities of Local Long Term Care Ombudsmen

The LLTCO, designated and working under the direction of the SLTCO, provides services to protect the health, safety, welfare, and rights of residents of long term care facilities. Duties when serving as a LLTCO include but are not limited to:

- Complaint processing
- Maintaining awareness of current issues and trends in long term care
- Applying policies and procedures to individual resident's circumstances
- Providing ongoing follow-up and monitoring as necessary to residents and families
- Building relationships with residents
- Attending resident council and family council activities when invited and as scheduling allows
- Participating in the collection of data relating to complaints and conditions in long term care facilities, for the purpose of identifying and resolving significant concerns
- Attending initial group meeting and exit interviews with Department of Health survey teams whenever possible
- Advocating for, mediating, investigating, and educating residents and others and upholding their responsibility to act in situations involving vulnerable individuals
- Providing options planning so residents and families can make informed decisions
- Respecting the confidentiality of sensitive and personal information
- Maintaining documentation in the OmbudsManager data base to include maintenance of case records
- Providing information and assistance regarding long term care issues to the general public, residents and staff of long term care facilities, community organizations and other interested parties
- Making regular visits to facilities
- Provide services to protect the health, safety, welfare, and rights of residents
- Ensure that residents in the service area of the local Ombudsman entity have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses to requests for information and complaints
- Identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- Coordinating with and promoting the development of citizen organizations consistent with the interest of residents
- Identifying, investigating, and resolving complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of residents
- Ensuring that residents in the service area of the LLTCO have regular and timely access to the services provided through the Ombudsman Program and that residents and complainants receive timely responses to requests for information and complaints
- Representing the interests of residents before government agencies and assure that individual residents have access to, and pursue administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents
- Reviewing, and commenting on existing and proposed laws, regulations, and other government policies and actions that pertain to the rights and well-being of residents and facilitate the ability of the public to provide comments
- Analyze, comment on and monitor the development and implementation of federal, state, and local laws regulations and other governmental policies and actions, pertaining to the health, safety, welfare and rights of the residents, with respect to the adequacy of long-term care facilities and services in the state. Facilitation of public comment may be a part of this
- Promoting, providing technical support for the development of, and providing ongoing support as requested by resident and family councils
- Performing other duties as assigned

Adult Protective Services and the Long Term Care Ombudsman Program (LTCOP) - Separate Roles; Separate People

While they often share a similar philosophy of respect for consumer wishes and preferences, similar long term objectives for the well-being of the vulnerable individuals they serve and similar functions and approaches in their work, adult protective services and LTCOP are separate and distinct. Each role has its own inherent conflicts that arise in serving consumers/residents, working with facilities and systems, and working within legal mandates. If a complaint indicates alleged abuse or neglect of a resident the ombudsman shall:

- Assist the resident in reporting the alleged abuse or neglect, if the resident wishes to report it.
- Obtain consent from the resident, or resident representative to report the alleged abuse or neglect to the facility, The Department of Health Licensure and Certification, Adult Protective Services, and/or law enforcement if the resident does not wish to make the report directly
 - Referrals to Adult Protection (APS) will be made by the online APS email on the Department of Human Service website
 - The SLTCO shall be notified of any report being made on behalf of a resident
- If the complaint is from a staff member, inform them of the mandatory reporting requirements

Situations of Conflict

There are times when conflicts arise between protecting the health, safety and welfare of a consumer/resident, or of other residents, and respecting or protecting that individual's right to self-determination. These situations sometimes occur in cases where:

- A resident or client is engaging in, or threatening to engage in, criminal behavior
- Residents' wishes and/or facility actions are in conflict with the Federal Civil Rights or Americans With Disabilities laws or
- The facility is the resident's guardian/conservator

LLTCO should contact the SLTCO for guidance as necessary.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

CONFLICTS OF INTEREST

Ombudsmen must be held to a strict standard of "no conflict of interest" while attending to Ombudsman duties.

Laws and regulations stipulate that an Ombudsman or an immediate member of their family:

1. Do not have a direct involvement in the licensing or certification of a long term care facility or of a provider of a long term care service;
2. Do not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long term care facility or long term care service;
3. Are not employed by, or participating in the management of, a long term care facility, or stand to gain financially through action or potential action brought on behalf of individuals served by the Ombudsman Program; or
4. Do not receive, or have the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long term care facility.

Other conflicts could include having a relative or very close friend be a resident of a long term care facility, being associated with pending legal action involving a long term care facility, or having a job responsibility of placing people in long term care facilities.

If a LLTCO experiences this type of conflict, he/she must remove him/herself from the situation and refer the situation to the SLTCO. If the SLTCO experiences this type of conflict, he/she must remove him/herself from the situation and refer the situation to the Director of the Division of Long Term Services and Supports .

All possible conflicts of interest should be declared to the SLTCO and/or Director to take reasonable steps to refuse, suspend or remove designation of an individual who has a conflict of interest, or who has a member of the immediate family with a conflict of interest, which cannot be adequately removed or remedied.

On a semi-annual basis or at a minimum annually, the Director of the Division of Long Term Services and Supports will review and identify potential conflicts of the State and Local Long Term Care Ombudsmen and take appropriate action to remove such conflict, including possible termination of the Ombudsman.

Identification of Individual Conflicts of Interest

Individual conflicts of interest for the SLTCO, LLTCO, and members of their immediate family include, but are not limited to:

1. Direct involvement in the licensing or certification of a long term care facility;
2. Ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long term care facility;
3. Employment of an individual by, or participation in the management of, a long-term care facility in the service area or by the owner or operator of any long term care facility in the service area;
4. Receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long term care facility;
5. Accepting gifts or gratuities of significant value from a long term care facility or its management, a resident or a resident representative of a long term care facility in which the State or Long Term Care Ombudsman provides services (except where there is a personal relationship with a resident or resident representative which is separate from the individual's role as SLTCO or LLTCO);
6. Accepting money or any other consideration from anyone other than the Ombudsman Program, or an entity approved by the State Long Term Care Ombudsman
7. Serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in which the State or Local Long Term Care Ombudsman provide services; and

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

8. Serving residents of a facility in which an immediate family member resides.
(i) Another LLTCO or the SLTCO will cover that facility during the duration of the conflict.

Identification of Organizational Conflicts of Interest

Organizational conflicts of interest may include, but are not limited to, placement of the Ombudsman Program, or requiring that the SLTCO or the LLTCO perform conflicting activities. In South Dakota, potential organizational conflicts of interest (noted with asterisks within the chart below) have been remedied through structural re-organizational changes. (See Appendix L)

The following have been identified as potential organizational conflicts of interest...	Do State or Local Ombudsmen perform activities in areas identified...
Licensing, surveying, or certifying long term care facilities	No
Is an association (or an affiliate of such an association) of long term care facilities, or of any other residential facilities for older individuals or individuals with disabilities	No
Has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long term care facility	No
Has governing board members with any ownership, investment or employment interest in long term care facilities	No
Provides long term care to residents of long term care facilities, including the provision of personnel for long term care facilities or the operation of programs which control access to or services for long term care facilities	No
Provides long term care coordination or case management for residents of long term care facilities*	No
Sets reimbursement rates for long term care facilities	No
Provides adult protective services**	No
Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long term care facilities	No
Conducts preadmission screening for long term care facility placements	No
Makes decisions regarding admission or discharge of individuals to or from long term care facilities	No
Provides guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long term care facilities***	No

*As of July 1, 2016 Only Long Term Services and Supports Specialists who are not identified as Ombudsmen serve as case managers for individuals eligible for waiver services.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

****As of July 1, 2016** The State Adult Protective Services Program Specialist reports to the Deputy Director within the Division of Long Term Services and Supports while the SLTCO reports directly to the Director.

*****As of July 1, 2016** Only Long Term Services and Supports Specialists who are not identified as Ombudsmen serve as guardian and conservator representatives.

CONFIDENTIALITY AND DISCLOSURE OF RECORDS

Disclosure of Ombudsman Program information and files is made only at the discretion of the SLTCO. Disclosure of the complainant's or resident's identity is strictly prohibited unless oral, written or visual consent is obtained or disclosure is required by a court order. (See Appendix C)

The collection, compilation, analysis, and dissemination of information by the State and Local Long term Care Ombudsmen shall be performed in a manner that protects complainants, individuals providing information about a complaint, public entities, and confidential records of residents or recipients. The identity of a resident or recipient, a complainant who is not a resident or recipient, or individual providing information about a complaint shall not be disclosed without consent provided by the resident or resident representative orally, in writing or visually including through the use of auxiliary aids and services. The only exception is if disclosure is required by court order.

The investigative files, including any proprietary records of a long term care provider contained in the files, are not public records subject to inspection or copying. Information contained in investigative and other files maintained by the SLTCO and LLTCO shall be disclosed only with consent from the resident, at the discretion of the State Ombudsman or if disclosure is required by court order.

No report prepared by the SLTCO or a LLTCO shall include any information that violates the confidentiality requirements.

A representative of the Office must obtain approval by the SLTCO or, alternatively, follow policies and procedures of the Office which provide for such disclosure. The SLTCO or, designated individual will appropriately respond to requests by the LLTCO to release resident identifying information. The response will be provided to the LLTCO as soon as practicable, but will not exceed 5 working days.

Additionally, with the approval of the SLTCO, when requests for open records are received, the Ombudsman shall refer the request to the Division of Legal Services for assistance following the State's Open Records policy (See [SDCL 1-27](#)). When a request for open records is received by the SDLTCP the SLTCO will work directly with the Legal Services Staff Attorney to ensure compliance with the State and Federal Regulations.

Requests from Attorneys

All requests for Ombudsman case information from attorneys should be referred to the SLTCO and then to the Division of Legal Services in order to assure that proper protocol is followed in protecting resident's rights for confidentiality and privacy. General guidelines:

- A court order specifying what information is needed is required;
 - The order should include a statement as to whether the attorney may view, copy, and/or discuss the case record;
- The attorney will be informed that referent's name and any identifying information about referent may be redacted. If the attorney wants that information, he/she will need to produce a court order specifying that personal identifying information of the referent be disclosed.
- No information will be disclosed whether an investigation was done or not, without a court order and without the express approval of the SLTCO.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

CERTIFICATION AND DE-CERTIFICATION OF LONG TERM CARE OMBUDSMEN

Minimum Qualifications

A bachelor's degree with major work in social work, psychology, health or related field may be considered as applicable to the entry-level knowledge, skills and abilities. Knowledge of social work principles and practices as well as cultural, economic, social, physical and psychological factors that influence the elderly and adults with disabilities is relevant to the position. The ability to establish and maintain effective and collaborative working relationships and demonstrate compassion, respect, courtesy, and tact when interacting with others; actively receive and elicit needed information and communicate information effectively and accurately; utilize computerized data system; prepare clear and concise documentation, reports, and correspondence that reflect relevant facts; effectively plan and organize work activities, adjust to multiple demands, and prioritize tasks to complete assignments and meet schedules and deadlines; gather and analyze data; reason logically and accurately; solve problems using common sense, reasoning and resourcefulness; assume initiative with minimal supervision; and observe and correctly assess situations are key to success in this position. The ideal candidate will demonstrate expertise in long term services and supports or other direct services for older persons or individuals with disabilities; consumer-oriented public policy advocacy; leadership and program management skills; and negotiation and problem resolution skills. (See Appendix N and O) The SLTCO will make the final determination on hiring and submit that determination to the Bureau of Human Resources for processing.

Initial Certification

To be certified as a State or Local Long Term Care Ombudsman, an individual is hired into the position as a full-time benefited state employee and must demonstrate the capability to carry out the responsibilities of the Long Term Care Ombudsman; be free of un-remedied conflicts of interest; meet the minimum qualifications of the position; and satisfactorily complete the certification training requirements as specified in the "Initial and Ongoing Long Term Care Ombudsman Training Manual for State of South Dakota Ombudsmen". The certification testing requirement shall be completed as soon as possible, but no later than six (6) months after attending certification training that is available online through the National Ombudsman Resource Center and approved by the SLTCO. The State and Local Long Term Care Ombudsmen must satisfactorily fulfill the responsibilities of the position and successfully complete at least 45 hours of initial training, as approved by the SLTCO and/or the Division Director. During the six month period, the LLTCO will perform the role of the Ombudsman duties under supervision of the SLTCO while the SLTCO will perform the role of the Ombudsman under direct supervision of the Director of Long Term Services and Supports .
(See Appendix M)

Annual Certification

LLTCO must be re-certified on an annual basis. To be re-certified, the LLTCO must satisfactorily fulfill the responsibilities of the position and successfully complete at least 12 hours of training annually, as approved by the SLTCO.

De-Certification

A LLTCO may be de-certified for any the following reasons: failure to meet and/or maintain the criteria for certification; existence of un-remedied conflict of interest; deliberate failure to disclose any conflict of interest; violation of confidentiality requirements; failure to provide adequate and appropriate services to long term care residents; falsifying records; failure to follow direction of the SLTCO, or designee, regarding policies, procedures and practices; change in employment duties; failure to act in accordance with applicable federal and state laws, regulations and policies; or for any other reason that is warranted by the State of South Dakota Bureau of Human Resources. The SLTCO will have the final determination in recommending de-certification of a LLTCO. The SLTCO will forward their determination to the Bureau of Human Resources.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

GRIEVANCE PROCEDURE

In situations where an individual believes their complaint was not adequately addressed to their satisfaction by a LLTCO, or the actions / inactions of the LLTCO they can file a written grievance with the SLTCO for resolution.

- The grievance statement must include the specific facts related to the grievance, the nature of the grievance, and any request for resolution.
- The grievance must be made in writing within thirty (30) calendar days of the action.
- The grievance will be discussed with the LLTCO named in the grievance within seven (7) working days and a written copy of the grievance statement will be given to them at this time.
- The LLTCO will have five (5) working days to provide a written response.
- The SLTCO may discuss the grievance with the Division Director of Long Term Services and Supports if possible without violating confidentiality and disclosure rules.
- The SLTCO will respond to the LLTCO and complainant regarding the grievance within five (5) working days of the receipt of the response from the LLTCO. The response is final.

In situations where an individual believes their complaint was not adequately addressed to their satisfaction by the SLTCO, or actions/inactions of the SLTCO they can file a written grievance with the Division Director of Long Term Services and Supports for resolution.

- The grievance statement must include the specific facts related to the grievance, the nature of the grievance, and any request for resolution.
- The grievance must be made in writing within thirty (30) calendar days of the action.
- The grievance will be discussed with the SLTCO named in the grievance within seven (7) working days and a written copy of the grievance statement will be given to them at this time.
- The SLTCO will have five (5) working days to provide a written response.
- The Director will respond to the SLTCO and complainant regarding the grievance within five (5) working days of the receipt of the response from the SLTCO.

If an Ombudsman is de-certified, they will have appeal rights as established through the Department's grievance procedure.

The grievance procedure has been adopted for career service employees employed by the Department of Human Services in accordance with South Dakota Bureau of Human Resources Rules and Regulations, [ARSD 55:10:08](#). The grievance procedure provides an opportunity to provide a just and equitable method for the resolution of grievances without discrimination, coercion, restraint, or reprisal against any employee who may submit or be involved in a grievance.

Appeal from Dismissals, Demotion, Suspension, or Reduction in Pay or Termination

A status employee may appeal disciplinary action taken in accordance with chapter §[55:10:07](#) Disciplinary Actions or a termination pursuant to [§55:10:09:02](#) Inability to perform essential functions of position. (See [ARSD 55:10:08:02](#))

Other Appeals

An employee may appeal the misinterpretation, misapplication, or violation of any existing agreement, contract, policy, or rule, excluding overtime pay issues, as they apply to the conditions of employment. (See [ARSD 55:10:08:05](#))

Appeal on Grounds of Discrimination

An employee may appeal any personnel action or condition or privilege of employment on grounds of discrimination as set forth in [SDCL 3-6D-14](#) or [20-13-10](#). (See [ARSD 55:10:08:04](#))

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Step 1: Division Director

The employee shall submit a written statement of the grievance and remedy sought to the Division Director within fourteen days after the event(s) causing the grievance. The Division Director shall respond to the employee in writing within fourteen days after receipt of the written grievance. If not satisfied with the response, the employee may, within fourteen days from the date of the notice, proceed to Step 2.

Step 2: Appeal to Department Secretary

The employee shall submit a written statement of the grievance and remedy sought to the Department Secretary. The Department Secretary shall reply in writing within thirty days after receipt of the written grievance form. If not satisfied with the response, employee may, within fourteen14 days from the date of the notice, proceed to Step 3.

Step 3: Appeal to Civil Service Commission

The employee who wishes to appeal to the commission shall submit a written statement of the grievance and remedy sought to the Civil Service Commission. The Civil Service Commission, c/o The Bureau of Human Resources. The employee shall also send a copy of the appeal to the Department Secretary.

Step 4: Appeal to Court

The employee may appeal the decision of the Civil Service Commission to the circuit court in accordance with [SDCL chapter 1-26](#).

Any written grievance or appeal may be delivered personally or mailed by first class mail with sufficient postage. The notice is effective on the date of postmark. A notice to the employee may be delivered personally or mailed by first class mail to the employee's last known address. The notice is effective on the date the notice is deposited in the mail.

Employees who resign their employment after a grievance has been filed will have their grievance immediately withdrawn and will not benefit by any later settlement of an individual or group grievance.

Failure to Comply with Time Limitations

Failure by a grievant to comply with the time limitations shall constitute a withdrawal of the grievance. Failure of the employer to comply with the time limits for response allows the grievant to initiate the next successive step of the grievance procedure. Written request for time extensions may be made by either party.

ARSD 55:10:08:01 Appeal from Selection Process and ARSD 55:10:08:03 Appeal of Classification

Appeals of this nature are filed directly with the Commissioner of Human Resources within fourteen days of notification of the decision. Appeals on the selection process must be based on discrimination as per [SDCL 3-6D-14](#).

OMBUDSMAN SERVICES

Ombudsman Services can be accessed by individuals living within a long term care facility without regard for income or resources and are based on an individual's request for assistance.

Why do Residents Need Advocacy?

In an institutional setting, certain methods of operation develop for the convenience and efficiency of operation of the facility which may create conflict with the individual needs of residents. Yet residents may be unable to express their particular needs without assistance from others.

Barriers to Self-Advocacy

Barriers to self-advocacy may include the following:

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- Loss of hearing, sight, and/ or speech
- Loss of physical strength
- Immobility
- Mental impairment
- Effects of medications
- Depression
- Inaccessibility of staff
- Loss of family support
- Fear of retaliation
- Sense of isolation
- Disorientation
- Loss of confidence
- Result of depersonalization
- Sense of weakness resulting from illness
- Apprehension of being labeled a “complainer”
- Social pressure to conform
- Belief that this is the best it can be
- Sense of hopelessness and/or despair
- Fear of upsetting family members
- Inability to question authority
- Unfamiliarity with medical issues
- Unfamiliarity with staff
- Lack of experience with assertive behavior
- Fears of stereotypical labeling due to age

Individual Problems that May Surface in Long Term Care Facilities

Individual problems that may surface in long term care facilities include but are not limited to the following:

- Loneliness
- Boredom
- Problems with roommates
- Lack of privacy
- Dissatisfaction with food quality
- Inability to obtain adequate services, care or attention because of physical or communication problems
- Physical or chemical restraints
- Safekeeping of personal funds and possessions
- Desire to participate in community activities
- Need for assistance to locate or purchase services
- Insufficient medical care
- Insufficient or nonexistent rehabilitative care
- Neglect
- Physical and/or mental abuse
- Medication administration in a timely manner
- Loss of dignity and feeling of respect based on general treatment in the facility
- Additional charges for “extra” service
- Room transfers without appropriate notice
- Attempts to transfer resident to a different facility due to payment source
- Need for legal assistance

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Requests by Consumers for Information in Selecting a Nursing Facility

Callers should be encouraged to take the information from several resources into consideration when choosing a long term care facility for a loved one. It is especially important to visit the facility in person if at all possible. The following resources are available to anyone calling requesting information about a nursing facility:

- The Medicare Nursing Home Compare website. www.medicare.gov
- The Medicare publication "How to Choose a Nursing Home". This may also be accessed through the Medicare website.
- Long Term Care Facilities Resident's Rights Bill of Rights brochure.
- Staff may share generalized complaint data from the OmbudsManager complaint analysis by complaint code.
- Select REPORTS > FACILITY > (then select the identified facility).
- A report for the 12 month minimum period should be utilized.
- No specific cases should be mentioned.
- The most recent survey from the Department of Health for the identified facility.

For more complete information, see the Centers for Medicare & Medicaid Services publications "[Your Guide to Choosing a Nursing Home or Other Long Term Care](#)" and "[Medicare Coverage of Skilled Nursing Facility Care](#)".

Facilities Subject to Ombudsman Services

In South Dakota, facilities that are subject to Ombudsman services include:

- Nursing facilities
- Assisted living facilities
- Licensed adult foster care homes
- Residential living facilities
- The geriatric/nursing facility unit at the Human Services Center in Yankton

Intermediate Care Facilities/Mental Retardation (ICF/MR) and Community Support Providers are not included in the State or Local Long Term Care Ombudsmen responsibilities. Reports of alleged abuse, neglect or exploitation should be referred to Adult Protective Services. Any other calls regarding these facilities or programs should be referred to the Department of Human Services.

Routine Facility Visits

Friendly visits to the facility to maintain a presence and advocate for the rights and interests of residents is a routine part of the Ombudsman duties. In making these visits, the Ombudsman should:

- Make unannounced visits at random dates and times
- Be observant and document any conditions in the facility which could adversely affect the health, safety, welfare or rights of the residents
- Assure that brochures regarding the Resident's Bill of Rights and the Ombudsman Program are readily available
- Protocol for facility visits:
 - Introduce themselves to residents of the facility and explain the purpose of the Ombudsman Program
 - Follow the facility sign-in procedure
 - An Ombudsman must always knock on the resident's room door before entering. They must introduce themselves, state their purpose and ask permission to visit with the resident
 - Follow the facility sign-out procedure
 - Follow all infection control measures required to visit with a resident
 - If visiting with a resident in a public area ask the resident about moving to a private area or attempt to have a discussion not within audible range of other persons
- The Ombudsman Program has established the following standards for facility visits:
 - Nursing Care Facilities will be visited at a minimum on a quarterly basis

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- Assisted Living Facilities will be visited at a minimum on a quarterly basis
- The Ombudsman may enter long term care facilities at any time
- A visit for the purpose of complaint investigation, working with resident or family council, in-service presentation, survey participation or other related reason may be combined with a non-complaint visit if the following condition is met:
 - Additional residents (minimum of three (3)) are visited with not related to one of the other reasons for the visit.
- Purpose for facility visits shall be:
 - To visit with residents, and/or family members, and staff to determine if there are any issues that need to be resolved.
 - Meet new residents and introduce them and any family members to the Ombudsman Program.
 - Provide them with Ombudsman and Resident Rights Brochures along with the LLTCO business card.
 - To observe the condition of the residents and the facility and make recommendations as appropriate.
 - Observe that facilities have information about the ombudsman program posted in an area accessible to the residents.
- There may be times when the frequency of visits may be increased this includes but may not be limited to if a facility has:
 - A change in ownership or administration
 - A history of serious or frequent complaints
 - an imminent closure
 - imposition of a serious state or federal sanction or plan of correction
 - by request of the SLTCO in the interests of protecting residents' rights.

Quality of Life Determinations

In accordance with federal regulations: "A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life." The intention of the quality of life requirement is to specify the facility's responsibilities toward creating and sustaining an environment that humanizes and individualizes each resident. The purpose of the following is to help direct attention to possible quality of life issues in a nursing facility. While conducting quality of life observations, it is important to assess and determine whether the nursing home staff is doing everything appropriate to achieve the highest practicable quality of life for each resident, given the resident's condition and desires.

Observations when making visit:

1. Resident's room
 - Appropriateness of residents' grooming and appearance. If appropriate, query to the resident's wishes;
 - Limitations of residents' mobility, including restraints, lack of or access to appropriate equipment, or lack of response by staff when assistance is needed; and
 - Attractive and comfortable environment. Presence of personal items and modifications desired by resident, ease of reaching call bells and getting to the bathroom, accommodations for privacy, including adequate bed curtains.
3. Common areas
 - Homelike environment: decorated like a home, no inappropriate odors, reasonable noise level;
 - Variety of places to go outside of residents' rooms--both to socialize and to be alone;
 - Private areas for residents to visit or use the telephone;
 - Variety of on-going activities that seem purposeful. Observe if residents look interested and engaged instead of just passing time;
 - Meal choices offered along with snack choices;
 - Extent to which residents' mobility appears to be facilitated or limited. Note any restraints and physical barriers;

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- Extent to which residents appear to be asserting their independence, doing as they wish, initiating contacts and informal activities to the best of their physical ability;
- Are survey results from Dept. of Health, Licensure and Certification available upon request and is an Ombudsman poster displayed?

4. Staff interactions with residents

- The type of frequency, and quality of staff interactions with residents;
- Interactions not in compliance with dignity or privacy requirements, and interactions jeopardizing the physical or psychological well-being of the resident;
- If interactions are inappropriate or inadequate, record the time, circumstance, staff/resident involved and the nursing facility's response;
- How does staff act with residents? Does staff ignore residents in the hallways, talk to other staff members as if residents are not in the room? Does staff acknowledge residents in an appropriate way and display a positive attitude toward them?;
- Does staff appear to know the residents as individuals? Does staff call the resident's by name?;
- Does staff encourage passivity and compliance? Do they tell residents they can't do the things they want to do when restriction is not warranted? Note the things they praise residents for or encourage them to do.
- How quickly does staff respond to resident requests? Notice accidents, mishaps, or agitated residents that could have been avoided if staff had intervened more quickly;
- Are call lights answered in a timely manner? Does staff turn call light off without meeting residents' request?
- Does staff appear to foster residents' self-esteem? Do they make the resident feel embarrassed or childish? How does staff treat incontinent residents who have accidents?
- Is there any evidence of abuse or neglect?
- Are disoriented residents integrated with oriented residents and how is it handled? Does staff avoid unnecessary restrictions for the disoriented and minimize disturbing incidents for the oriented

COMPLAINT PROCESS

The Local and State Long Term Care Ombudsman will identify, investigate, and resolve complaints made by or on behalf of residents regardless of the source of the complaint. Processing complaints made by or on behalf of residents of long term care facilities is the long term care Ombudsman Program's highest priority service. Many people who make complaints need help focusing on the issue. The Ombudsman will need to sort out the issues and determine which are most important. Many people will not complain until an issue has persisted for a long time, and may then have a lengthy history of events and circumstances to consider.

Complainants may be highly emotional, and the Ombudsman will need to work with the complainant to pinpoint the issue. Although the issues and circumstances of the complaints will vary, the following general guidelines apply to all complaint handling. Whenever questions arise regarding appropriate practice in handling complaints, the State Ombudsman should be contacted for guidance.

Who May File a Complaint?

Complaints may be reported by:

- Residents, family members of residents, friends of residents long term care facility staff and any other person in the community
- An anonymous reporter. An anonymous complainant could limit the ability of the LTCOP to investigate and resolve the complaint. Every however, due diligence must be used to resolve the complaint.
- An ombudsman when they have personal knowledge of an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of residents. All confidentiality and disclosure laws, regulations and policies must be followed.

When a complaint is received regarding a deceased resident the ombudsman shall:

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- Determine if the issues are systemic.
 - If the issues are systemic a case will be opened.
 - If the issues are not systemic the complainant will be told there is no resident for which an issue can be resolved for.
- Refer the complainant to the SD Department of Health Licensure and Certification if appropriate
- Suggest other referral options including, but not limited to law enforcement, private attorneys, etc. as appropriate

Local Ombudsmen will file a complaint with the SLTCO if he/she has personal knowledge of an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of residents and no other person has made a complaint on such action, inaction, or decision.

Complaint Intake

1. Gather information:

- Offer privacy to the resident
- Listen attentively to determine the type of complaint as presented by the complainant
- Determine the wishes of the resident with respect to resolution of the complaint, including whether the allegations are to be reported and, if so, whether permission is given to report identifying information or other relevant information to the facility staff or other appropriate agencies
- Ask who are the persons involved
- Ask what attempts, if any, have already been made to resolve the complaint
- Determine if the complaint is appropriate for Long Term Care Ombudsman activity
 - Examples of complaints which are not appropriate for Long Term Care Ombudsman activity include those which:
 - Do not directly impact a resident or former resident of a long term care facility;
 - Are outside the scope of the mission or authority of the Ombudsman Program
- Determine if the complaint needs to be referred to another Ombudsman (i.e., SLTCO) due to a conflict of interest between a Local Ombudsman and the interest of a resident or residents
- The Ombudsman may seek resolution of complaints in which the rights of one resident and the rights of another resident or residents appear to be in conflict
- Advise resident of their rights as a resident
- Determine the desired outcome both from the complainant and the resident, the resident's desired outcome will take precedence
- Discuss all actions/attempts that have been made to resolve the complaint and their outcomes
- Explain that the Ombudsman contacts the resident to determine his/her wishes and as the resident advocate will act in accordance with the direction given by the resident.
- Complaints may be reported by:
 - Residents, family members of residents, friends of residents, long term care facility staff and any other person in the community, anonymously, or an Ombudsman (All confidentiality and disclosure laws, regulations and policies must be followed)
- Complaints involving a deceased resident
 - Determine if the issues are systemic. If so then a case can be opened. If not the complainant will be told there is no resident for which an issue can be resolved.
 - Refer the complainant to the SD Department of Health or other referral options (police, attorney, coroner, etc.) as appropriate

2. Information to be provided to complainant:

- Alternatives for handling the complaint
- Encourage self-advocacy, educate on the action steps of advocacy, recommend taking the concern to the resident/family
- Explain the confidentiality policy

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- Explain that the ombudsman is resident directed therefore will contact the resident and act in accordance with the direction provided by the resident

Timeliness of Response to Complaints

Standards have been developed to assure prompt response to complaints by the State and/or Local Long Term Care Ombudsmen which prioritize abuse, neglect, exploitation and time-sensitive complaints and which consider the severity of the risk to the resident, the imminence of the threat of harm to the resident, and the opportunity for mitigating harm to the resident through provision of Ombudsman Program services.

1. An Ombudsman must use his or her best efforts to initiate investigations of complaints in a timely manner in order to resolve the complaint to the satisfaction of the resident
2. Whenever a Local Ombudsman is not available to respond to complaints in their region for whatever reason, the State Ombudsman will implement a plan for coverage in order to meet the standard of promptness
3. The Ombudsman Program is not designed to serve as an emergency response system - emergency situations should be referred to "911" for immediate response
4. The date on which the first action is taken to investigate the complaint by the assigned Ombudsman (reported as the "action date") is considered timely as noted in the below chart and in taking into account abuse, neglect, exploitation and time-sensitive complaints and considering the severity of the risk to the resident, the imminence of the threat of harm to the resident, and the opportunity for mitigating harm to the resident through provision of Ombudsman Program services

If a complaint involves...	The standard of promptness for Ombudsman response (the initial action date) is...
Abuse or gross neglect, AND the Long Term Care Ombudsman has reason to believe that a resident may be at risk	Immediately or within the next working day
Imminence of the threat of harm to the resident exists	Immediately or within the next working day
Abuse or gross neglect, AND the Long Term Care Ombudsman has no reason to believe that a resident is at risk	Within 7 working days of the date of the complaint
Actual or threatened transfer or discharge from a facility	Whichever occurs first: - 5 working days - The last day of bed-hold period (if resident is hospitalized) - The last day for filing an appeal for an administrative hearing
Other types of complaints	Within 30 days of the date of the complaint

Note: When immediate action must be taken in order to protect resident rights, the LTCO may take necessary immediate action if it is not possible to first consult with the resident. The LTCO will inform the resident of the action taken by the LTCO as soon as practicably possible and seek to follow resident wishes during the remainder of the complaint process.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Incident Reports

Facility records, including incident reports are the property of the facility. The facility is only mandated to report to South Dakota Department of Health. Facilities are NOT mandated to send incident reports to the Ombudsman Program.

- Facilities are required to keep incident reports that relate the specifics of all accidents and "unusual" incidents occurrences.

Standards for Interview Process

The following standards have been established for Long Term Care Ombudsmen to follow throughout the interview process:

1. Guidelines to Follow During Interviews
 - Maintain objectivity
 - Try to establish rapport before addressing the problem
 - Explain the purpose of the interview and the function of the Ombudsman
 - Use open-ended questions to encourage responses about the problem
 - Use language that is easy to understand
 - Explain how the information will be used and other steps anticipated in conducting the investigation and resolving the complaint
 - Secure the resident's consent to the course of action
 - Let the resident know when the interview is about to end and summarize what has been accomplished
2. Interviewing Skills
 - Active listening is the act of hearing and responding both to the content and the feeling of what is being said; notice inflection of speech, qualities and tone of voice, facial expressions, body language, gestures and general behavior
 - Try to determine if the complainant is glossing over some facts
 - Attempt to distinguish fact from opinion and/or hearsay
3. Observation Skills
 - Use all senses to determine conditions;
 - Sight
 - Are the residents clean, shaved, hair combed?
 - Are call lights left unanswered?
 - Are the staff pleasant, do they smile at residents, do they wear name tags?
 - Sound
 - Are the call bells ringing often without being answered or turned off?
 - Are residents actively involved in activities which promote conversation?
 - Are the staff interacting with residents and answering their questions?
 - Smell
 - Are there strong, unpleasant odors in the hall?
 - Do residents and rooms smell clean?
 - Does the food smell appetizing?
4. Review the complaint to determine whether the complaint can be verified
 - Interview the resident and/or complainant to gain more information if needed
 - personally observe the situation if possible
 - Interview any staff, administration, physician, other residents, family members, etc. that may have relevant knowledge
 - Research relevant laws, rules, regulations, and policies
 - Examine any relevant records while following access and confidentiality policies and procedures
 - An review of concerns shall include, at minimum, the following activities

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- Direct contact and interview with the resident and/or the resident representative. This may be face to face contact, telephone call, email, or letter
 - Direct contact and interview with the complainant. This may be face to face contact, telephone call, email, or letter.
5. If a complaint or review indicates alleged abuse or neglect of a resident the ombudsman shall"
- Explain the role of the ombudsman as an advocate and the role of other investigative agencies
 - Assist any individual who wants to further report the alleged abuse or neglect
 - Advise the complainant, the resident who is the alleged victim of the abuse, or the resident representative, to report the matter to the facility, the Department of Health, Adult Protective Services, and/or Law Enforcement as appropriate
 - Request consent from the resident, or resident representative, to report the suspected abuse or neglect to the appropriate entities. If the resident does not wish to report the incident themselves.
 - Determine the residents wants and obtained informed consent
 - Determine if the resident has fear of retaliation or is in need of assistance and/or protection
 - Assist the resident in getting connected with the available protections and service providers
 - Inform complainant if they are a mandatory reporter
 - Remain available for consultation with the resident or resident representative and any involved entities. Follow all rules of confidentiality, informed consent and disclosure
 - If the resident is unable to provide consent the LTCOP shall advocate for a resident's wishes to the extent the resident can express them, even if the resident has limited decision making capacity
 - When a resident is determined unable to provide informed consent to the Ombudsman Program the ombudsman shall:
 - Determine the name and contact information for the resident from the resident's records with permission from the SLTCO
 - Consult with the resident's representative – unless the representative is implicated in the complaint or is seen to be not acting in the best interests of the resident
 - If no resident representative is designated the Ombudsman shall:
 - Seek information from family, friends, and other sources that indicate what the resident would have likely desired and work from that premise
 - Be guided on the principal of 'reasonable – best interest' and that the resident would likely have wanted his or her health, safety, welfare and rights protected
 - Staff with the SLTCO for final approval before proceeding

Building Trust

The Ombudsman cannot help resolve problems unless they are trusted by residents, staff, and administrators. Specific actions can be done to help convince people that an Ombudsman is trustworthy and is working to help the residents and the facility:

1. Let the parties explain their view of the problem, even if you have prior knowledge - much can be gained by letting the complainant or staff person do the talking and listening attentively
2. Listen with understanding; be alert, interested and encourage the speaker to elaborate
3. Be comfortable with silence - use silence to organize what you have heard and allow the speaker to fill the gap by elaborating
4. Use note-taking positively - explain that you take notes so you can remember everything that was said
5. Reduce defensive communication - ask questions in a way that supports open communication and reduces defensive responses:
 - Describe, don't evaluate. Avoid value judgments
 - Practice problem resolution, not control. Be open and help the parties resolve the problem to their satisfaction
 - Empathy, not neutrality. Exhibit concern for all parties, even if you do not agree with their position. You may understand the administrator's problems but are primarily interested in resolving the resident's

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

complaints. Over identification with either the resident or staff may result in ineffectiveness as an Ombudsman

Resident-Centered Focus

Regardless of the source of a complaint, a Long Term Care Ombudsman will personally discuss the complaint with the affected resident in order to:

- Determine the resident's perception of the complaint
- Determine the resident's wishes with respect to resolution of the complaint
- Advise the resident of his or her rights

If, at any point during the complaint process, the resident expresses that he or she does not want the Ombudsman to take further action on a complaint involving the resident the Ombudsman must not continue with this specific resident's complaint.

If significant care issues are identified, the complaint may be transferred to a generalized facility concern, rather than resident specific and further investigated.

If a complaint is received from a resident who is unable to make decisions for themselves, but has not been legally declared incapacitated the complaint should still be investigated.

- The LTCOP shall advocate for a resident's wishes to the extent the resident can express them, even if the resident has limited decision – making capacity
- When a resident is determined unable to provide informed consent to the ombudsman the ombudsman shall:
 - Determine the name and contact information for the resident from the resident's record. Permission from the SLTCO is needed
 - Consult with the resident's representative – unless the representative is implicated in the complaint or is seen to be not acting in the best interests of the resident
- If the resident is determined unable to provide informed consent and there is no resident representative designated the ombudsman shall:
 - Seek information from family, friends, and other sources that indicate what the resident would likely have desired and work from that premise
 - Be guided on the principal of reasonable / best interest and that the resident would likely have wanted for their health, safety, welfare and rights to be protected
 - Staff with the SLTCO for final approval before proceeding

Complaint Resolution

Once a complaint has been reviewed, the Ombudsman moves forward toward resolution of the problem. Resolution simply means to come up with a solution by bringing people together to help them work out a lasting solution that is meaningful to them. For example, replacement of lost clothing may be a temporary solution, but does not provide a lasting solution to a problem of mishandling of laundry or personal items.

The resident shall be informed of the actions taken during the investigation and the information gathered. The Ombudsman shall discuss with the resident and/or resident's representative the administrative, legal, and other remedies available to resolve the complaint. The Ombudsman shall work with the resident and/or resident representative to develop a plan of action to resolve the complaint. The plan of action shall be mutually agreed upon by the resident and the Ombudsman. The resident and/or resident's representative to the fullest extent possible shall be involved and empowered in self-advocacy to participate in the resolution of the complaint. The Ombudsman may need to negotiate with the resident and then on behalf of the resident to develop an agreement or course of action that resolves the complaint.

Attempts should be made to resolve the dispute directly with the appropriate staff of the facility or the other party that is the source or cause of the complaint. The ombudsman should always work first to bring problems

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

to the attention of the appropriate facility staff so that they can solve them before they rise to the level of referring to the licensing agency (Department of Health).

Roles in Resolution

The process may require the Ombudsman to adopt a variety of roles, depending on the type of remedy being pursued:

1. Mediator - Working with two opposing sides to facilitate discussion and exchange of information in order to achieve a mutually agreeable solution and resolve the complaint
2. Educator - Provide information about applicable laws and regulations to the involved parties
3. Planner - Identifies people (administrator, complainant, resident) who will be responsible to carry out steps in the plan of action designed to accomplish desired change
 - o Work with the resident to develop a plan of action for resolution of the complaint
4. Advocate - Works on behalf of the complainant to argue their cause. The advocate differs from the mediator in that the advocate takes on a stance on behalf of the resident, rather than a neutral stance

Self-Advocacy

Self-advocacy is an important potential remedy which complainants should be encouraged to perform when possible. When people are able to resolve their own problems, they become more confident and less dependent. Providing empowerment to individuals is an important strategy. An excellent way to encourage self-advocacy is to help residents' voice concerns and resolve problems through the resident council. The more independent the resident council is of facility staff involvement, the more likely it will be useful in solving problems.

Complaint Resolution Factors

Complaints may be resolved in many ways. Most are resolved by simply speaking with the staff or administrator of the facility. It is important to recognize when a solution has been reached. Some people get so involved in investigations or negotiations that they fail to realize they have solved the problem. Two factors must be kept in mind when trying to resolve a complaint:

1. Some complaints cannot be resolved. This may happen in spite of a thorough investigation, unquestionable verification and a wise and persistent course of action during the resolution process.
2. Complaint resolution is not always clear-cut. In some cases a problem may appear to go away, then reappear. In other situations, parts of the problem will be resolved while others persist. In some instances the complainant will not be completely satisfied, while at other times the complainant will be satisfied regardless of the Ombudsman's desire to pursue resolution further.
3. The findings of the investigation may lead the ombudsman to explain there is not a need for a change or advocacy to resolve the complaint.

If a complaint is related to a nursing facility regulatory violation, the Ombudsman will inform the resident and/or complainant that the State Ombudsman is able to provide information to the Department of Health, Office of Licensure and Certification surveyors prior to standard scheduled surveys. The Ombudsman should request the resident's and/or complainant's permission to share the complaint information.

1. If permission is granted, the State Ombudsman will provide the name of the complainant and/or resident to surveyors with a summary of the complaint.
2. If permission is not granted, the State Ombudsman must not reveal the complainant or resident's identity, but may still provide a summary of anonymous complaints regarding regulated conditions at the facility.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Administrative Hearing Request

Requests for fair hearing related to a nursing home or assisted living center resident, who has been issued a 30 day notice of discharge, must be in writing and follow established protocol (see below). The Ombudsman will educate and inform individuals about fair hearing processes. The Ombudsman is to provide any needed information and assistance to the resident, family and/or resident representative making the request for fair hearing. If the resident cannot consent and does not have family members or a resident representative the Ombudsman can make the request for fair hearing on their behalf.

Fair Hearing Protocol

A fair hearing is a legal proceeding, similar to a non-jury trial in a court of law, in which the rights of a person who is adversely affected by a center or facility action are determined after impartial review of evidence on both sides of the issue. The review is conducted by an administrative law judge who was not involved in any way in the action. If either party is dissatisfied with the result of the fair hearing, they may appeal to the Circuit Court.

To request a fair hearing a written request for the hearing will be submitted by, email, fax or postal service to the Department of Social Services
Office of Administrative Hearings
700 Governors Drive
Pierre, SD 57501
Email: admhrngs@state.sd.us
Fax: 605-773-6873
Phone: 605-773-6851

The notice must include:

- The reason for the request
- Individual's current address and phone number
 - Information as to if the resident is in the hospital at the present time
- Power of Attorney, Durable Power of Attorney, or Guardian name, address and phone number and copy of the documentation designating such authority to the individual.
- Facility/center name, address and phone number
- A copy of the 30 day notice from the facility/center
- Attorney name and contact for the facility/center (if known)
- Ombudsman assigned to the case (if known)

Once the request reaches the Office of Administrative Hearings, the administrative law judge's clerk will mail a Notice of Hearing to both parties. If there is a need to change the date and time of the hearing a contact will need to be made to the Office of Administrative Hearings at (605) 773-6851 at least 10 days prior to the scheduled hearing or by mail.

Complaint Follow-Up

After resolving a complaint but prior to closing it, the Ombudsman will:

1. Assure that the resident (or representative or complainant, where appropriate) continues to be satisfied with the outcome;
2. Determine whether further actions on behalf of the resident should be taken by the Ombudsman;
3. If the resident has left the facility, the Ombudsman will make reasonable attempts to follow-up with the resident in the resident's new location prior to closing the case;
If further action is necessary, the Ombudsman will keep the case open, revise the resolution category and date if necessary, and continue to work towards resolution of the complaint.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Note: For most complaints, the date of follow-up will be a date subsequent to the date of resolution.

Closing a Complaint and Case

Determine if the complaint is resolved to the satisfaction of the resident. Ombudsman activity on a complaint is complete and may be closed when follow up steps indicate no further action is necessary and there is no change in the resolution of the case. A case is closed in the OmbudsManager database when all of the complaints related to that case have been resolved or when a resident or complainant asks that no further activity be taken. A complaint is 'verified' when an ombudsman determines, after interview, record review, observation, etc. that the circumstances described in the complaint are generally accurate.

The resolution action, outcome, and subsequent closure of the case should be discussed with the resident and/or resident representative. With the informed consent of the resident/resident representative a referring agency or the complainant can also be told of the actions taken during the investigative and resolution process and the outcome.

Every attempt should be made to complete work and documentation to close a case within 45 days from the date on which the complaint was received.

Documentation

For each complaint, the Ombudsman will document in OmbudsManager as follows:

1. Complete Complaint Intake Information Including:
 - Complainant name (list as anonymous if they refuse to give name)
 - Telephone number and/or address of complainant
 - Complaint category
 - Affected resident(s) name(s)
 - Facility name
 - Name of Ombudsman taking complaint
2. Quarterly Visits to Nursing Facilities
 - LLTCO are required to complete quarterly visits to nursing facilities; however the goal of the Ombudsman is to complete monthly visits
 - Each routine visit must be an Ombudsman visit
 - Each routine visit must be documented under Program Activity
 - If a complaint is made by a resident during this visit, a Case will be opened
3. Quarterly Visits to Assisted Living Facilities
 - Each quarterly visit must be an Ombudsman visit
 - When possible Assisted Living Facilities will be visited Monthly or Bi-Monthly
 - Each visit must be documented under Program Activity
 - If a complaint is made by a resident during this visit, a Case will be opened
4. Visitation to other Facilities subject to Ombudsman oversight
 - Visitation will be when there are complaints at the facilities
 - When possible visitation to the other facilities will be on a quarterly basis
5. Documentation requirements
 - Every complaint received and all steps taken to review, verify and resolve the complaint shall be documented in OmbudsManager;
 - Documentation must be maintained in an organized manner which can be readily located and understood by others;

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- Consent forms, notices of involuntary transfer or discharge, relevant emails, and any other such written documents obtained by the ombudsman shall be scanned and attached electronically to the case file in OmbudsManager. The original will then be shredded.
- If consent has been obtained to discuss the issue with anyone or any other department, this will be documented in OmbudsManager and the appropriate box will be checked
- Objective language shall be used:
 - Describe behavior, rather than label
 - Describe observations, rather than conclusions
- Consultations, Information to individuals
 - Information shall be documented as needed for reporting to the federal authority.
- All other activities reportable through NORS will be documented using OmbudsManager.
- Documentation is maintained for a minimum of six years from the date of closure and longer where the case or facility files contain information which is likely to be valuable for legal or historical purposes.

State Long Term Care Ombudsman Complaint Monitoring

The SLTCO will routinely monitor the volume and documentation of complaints in the OmbudsManager system in order to evaluate the effectiveness of the program and the effectiveness of the Local Ombudsman. General responses to monitoring are as follows:

IF complaint numbers are...	THEN the State Ombudsman will take the following steps...
Low related to a particular facility (10% below the statewide average or 10% below the previous year's federal report)	<ul style="list-style-type: none"> - Determine whether residents, families, or staff feel free to make complaints to Local Ombudsman - Determine whether residents, families, and staff are familiar with the existence of and purpose of the Ombudsman Program - Review whether Ombudsman-generated complaints are being accurately recorded by all staff - Identify trainings/actions by the facility which may have contributed to a low number of complaints
Low related to a particular region (10% below the statewide average or 10% below the previous year's federal report)	<ul style="list-style-type: none"> - Determine whether residents, families, or staff feel free to make complaints to Local Ombudsman - Determine whether residents, families, and staff are familiar with the existence of and purpose of the Ombudsman Program - Review whether Ombudsman-generated complaints are being accurately recorded by all staff
High related to a particular facility (10% above the statewide average or 10% above the previous year's federal report)	<ul style="list-style-type: none"> - Review whether complaint categories are being used appropriately - Review whether sufficient resources and information are being provided to enable residents and families to personally resolve minor complaints - Review the complaint resolution comments – are complaints being truly resolved - Review training records and explore options to provide training to the facility to reduce future complaints

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

High related to a particular company that manages several facilities or to a region (10% above the statewide average or 10% above the previous year's federal report)	<ul style="list-style-type: none"> - Look to systemic approaches to resolve common complaints - Review the complaint resolution comments – are complaints being truly resolved - Review training records and explore options to provide training to the facility to reduce future complaints
---	---

Complaint Referrals

A plan for resolution may involve a referral to another entity if the initial advocacy efforts are unsuccessful. With consent from the resident the Ombudsman can make the referral to the SLTCO for additional referral outside of the Ombudsman Program.

If the complaint involves a possible violation of a regulatory issue and cannot be resolved through advocacy or involves serious threats to the health, safety, welfare and rights of a resident the Ombudsman shall refer residents or complainants to directly contact the appropriate agency to file a complaint and provide the contact information and/or share the information with the Department of Health. Information may also be shared with surveyors at the time of the annual survey.

The SLTCO will make a referral to another agency when:

- The resident (or representative or the complainant, where the resident is unable to grant permission and the referral is in the resident's interest) gives permission;
- One or more of the following applies:
 - Another agency has resources that may benefit the resident (e.g., Adult Protective Services can provide emergency relocation funds to assist in relocating the resident to another placement)
 - The complaint involves regulatory concerns or care issues
 - There is evidence of criminal activity
 - The Ombudsman needs additional assistance in order to achieve resolution of the complaint
 - The resident requests the referral be made
- For every referral, the Ombudsman will include documentation of such referral in the Ombudsman case record and the complaint log
- For every referral, the Ombudsman will have the resident's permission unless the resident is unable to provide informed consent at which time the ombudsman will follow policy previously stated

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- If a complaint has been referred to another investigative agency, other than licensing or an attorney, with permission of the resident the ombudsman will follow up with the entity at least once every thirty days to determine resolution.

All referrals made outside of the Ombudsman Program must adhere to the standard confidentiality and disclosure policies.

Communication of Informed Consent

Communication of informed consent may be made in writing, including through the use of auxiliary aids and services. Alternatively, communication may be made orally or visually, including through the use of auxiliary aids and services, and such consent must be documented contemporaneously by the State or Local Long Term Care Ombudsmen. In situations where a resident is unable to communicate their informed consent, or perspective on the extent to which the matter has been satisfactorily resolved, the State or Local Long Term Care Ombudsmen may rely on the communication of informed consent and/or perspective regarding the resolution of the complaint of a resident representative so long as the State or Local Long Term Care Ombudsmen have no reasonable cause to believe that the resident representative is not acting in the best interests of the resident.

The State or Local Long Term Care Ombudsmen may refer a matter and disclose resident-identifying information to the appropriate agency (ies) for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances:

- The resident is unable to communicate informed consent to the Ombudsman or representative of the Office;
- The resident has no resident representative;
- There is reasonable cause to believe that an action, inaction or decision may adversely affect the health, safety, welfare, or rights of the resident;
- There is no evidence indicating that the resident would not wish a referral to be made;
- There is reasonable cause to believe that it is in the best interest of the resident to make a referral; and
- The LLTCO obtains the approval of the SLTCO.

In situations where the State or Local Long Term Care Ombudsmen personally witnesses suspected abuse, gross neglect, or exploitation of a resident, they, must open a case as the complainant; follow the Ombudsman Program's complaint resolution procedures. The ombudsman shall seek communication of informed consent from such resident to disclose resident-identifying information to appropriate agencies § 1324.11(e)(3).

Referrals to South Dakota Department of Health (DOH)

The SLTCO will make a referral to the Department of Health, Office of Licensure and Certification when conditions warrant. The LLTCO will be involved, as necessary, in gathering preliminary information regarding the complaint, but will always involve the SLTCO to make the referral to the DOH. The LLTCO's involvement may be requested in the on-going investigation if deemed necessary. Regular and consistent communication with the SLTCO is required whenever a LLTCO is working with outside agencies.

- The SLTCO will submit the complaint in writing, or by telephone and subsequently submit a document detailing the complaint when possible
- The referral must be documented in the case record in OmbudsManager
- The DOH, Office of Licensure and Certification, will act on the referral by either investigating immediately (complaint survey) or during the next regularly scheduled survey visit
- A LLTCO receiving a call directly from the DOH should provide answers to any questions asked and notify the SLTCO of the conversation immediately
- A LLTCO will consult with SLTCO before contacting law enforcement or any outside agency

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Referrals to Legal Services

For a resident who requests or is in need of legal advice and/or representation, the Ombudsman will refer the resident to the Legal Assistance Program in the region. The Ombudsmen will have the Legal Service Brochure available to provide any resident in need of legal representation. The Ombudsman will encourage residents or complainants to directly contact the appropriate regulatory agency to file a complaint and offer information and assistance to residents or complainants in making such contact.

Referrals to Law Enforcement

Reports of abuse, serious neglect, and financial exploitation of older persons are fully investigated regardless of the relationship between the victim and the suspect(s).

Collaboration and coordination of efforts with provider agencies will be made in response to elder abuse, neglect, financial exploitation and self-neglect. The Ombudsman will encourage providers to contact law enforcement and/or the adult protective services agency as indicated. Expedient and full reporting is made to appropriate agencies on any case of confirmed or suspected abuse, neglect, and financial exploitation, including non-criminal acts, and organized scam/fraud.

- LLTCO will consult with SLTCO before contacting law enforcement or any outside agency.

Referrals to Medicaid Fraud Control Unit (MFCU)

The Attorney General's Office, by and through the Medicaid Fraud Control Unit (MFCU), is charged pursuant to its federal certification with the responsibility of detection, investigation and prosecution of fraud and abuse by providers of medical services to recipients of Medicaid. The Unit is also charged with the additional responsibility for the investigation and prosecution of incidents of abuse, neglect and exploitation of individuals receiving benefits under State and Federal Medical Assistance Programs and individuals residing in facilities that receive such funds. These interests include the prevention, detection, investigation, and prosecution of provider fraud, abuse, neglect, financial exploitation, and the provision of improper medical practices. This is not to interpret that potential abuse or neglect to residents in facilities that do not receive Medicaid funding is not important, just that those allegations are more appropriately handled by standard law enforcement agencies.

Based on reported and projected incidents and conservative estimates of abuse, neglect and exploitation case load volume mandates that all concerned agencies combine their efforts at detection, investigation and prosecution.

There is a formal mechanism for the exchange of case data, information, and reports between representatives of the Department of Health, Department of Human Services and Medicaid Fraud Control Unit, which are formally set forth in a Memorandum of Understanding between the agencies. The purpose of this memorandum is to discuss and refer potential cases between interested agencies as well as address concerns and problems between agencies. The designation of the MFCU is for the express purpose of providing a completely independent review of possible provider fraud in the Medical Assistance Program.

A LLTCO should consult with the SLTCO to report any case of an alleged criminal offense directly to local law enforcement and/or the state's attorney. MFCU should simultaneously receive the same information, as they will make their office available to law enforcement for investigation purposes. MFCU requests that referring agencies complete the on-line referral form for tracking purposes.

Determining Outcome of a Referral

After a complaint has been referred, the SLTCO will determine:

- Resident satisfaction with the outcome of actions taken by the referral agency; and
- If further advocacy is necessary to achieve further action by the referring agency.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

SURVEY PROCESS AND RELATIONSHIP WITH THE OMBUDSMAN

State Licensure of Long Term Care Facilities

It is important for the Ombudsman to understand the standards, process and agencies involved in licensing a nursing home. When complaints come to the Ombudsman Program the minimum standards contained in state law tell the consumer and the Ombudsman what kind of services, care, and physical surroundings to expect. If the Ombudsman needs to intervene because a nursing home fails to meet those standards, the standards are a guide to the residents, Ombudsman and the nursing home as to how to comply with the law. To participate in the Medicare or Medicaid programs, long term care facilities must be certified as meeting federal participation requirements. These requirements are specified in the CMS regulations at 42 CFR part 483, subparts B.

In 1987 Congress enacted the Nursing Home Reform Provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA). In 1992 regulations were published describing how state and federal agencies are to survey facilities for compliance with the law and impose enforcement remedies for non-compliance.

The following issues are the most significant changes, which became effective July 1, 1995.

- a. The requirement of perfect compliance has been abandoned in favor of substantial compliance defined as: "a level of compliance with requirements of participation such that any identified deficiencies pose no greater risk to resident health and safety than the potential for causing minimal harm.
- b. In reconciling the concepts of substantial compliance and harm, CMS has taken a step at orienting deficiencies toward outcomes. In doing so, CMS has tied deficiencies to actual facility practice in the provision of care and services.
- c. A second critical issue is creation of a method of resolving disagreements about what constitutes a deficiency without forcing the disagreement into court.
- d. A third critical issue is sanctions. CMS has attempted to move away from the concept of punishment and toward correction as it deals with sanctions.

The final rule gives considerable flexibility to state survey agencies in defining terms like actual harm, more than minimal harm, isolated, pattern, and widespread.

CMS's intentions are clear. Not all deficiencies require remedies. Some, those which are isolated and do not cause actual harm or the potential for more than minimal harm, neither require a plan of correction nor will they appear on the Statement of Deficiencies.

Remedies are applicable only for those deficiencies that do cause actual harm or have the potential for more than minimal harm. The remedy must be commensurate with the seriousness of the deficiency, and most remedies cease upon a return by the facility to substantial compliance.

If a facility is not in substantial compliance and remedies are therefore imposed, remedies remain in place only until the facility has reached substantial compliance. The exceptions to this rule are the remedies of:

- a. Temporary management; and
- b. State monitoring following a finding of repeat substandard care.

In those two instances, the facility must not only reach substantial compliance, but also demonstrate the ability to remain in substantial compliance to have the remedies end.

Licensing and Survey Process

Licensing is an annual process. The main review, done by surveyors from the Department of Health, requires an unannounced on-site visit and inspection of the facility. The surveyors compare the facility's operation to the

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

standards set in the law. The surveyors are generally nurses and environmental specialists who examine resident care, quality of life, and the physical surroundings respectively.

There are several types of surveys:

- **STANDARD SURVEY** - means a periodic, resident-centered inspection that gathers information about the quality of service furnished in a facility to determine compliance with the requirements of participation.
- **EXPANDED SURVEY** - means an increase beyond the core tasks of a standard survey. A standard survey may be expanded at the surveying entity's discretion. When surveyors suspect substandard quality of care, they may expand the survey to determine if substandard quality of care does exist.
- **EXTENDED SURVEY** - means a survey that evaluates additional participation requirements subsequent to finding substandard quality of care during a standard survey.
- **COMPLAINT SURVEY** – means the survey team may be entering the facility in response to either a series of complaints, or a single complaint of such a serious nature that they believe immediate action is necessary. The survey may involve a single issue, or the team may elect to survey the entire facility. Complaint surveys may be initiated before the one year survey window is due. The Office of Licensure and Certification may not necessarily notify the State Ombudsman or a Local Ombudsman when doing a complaint survey.

Facilities must correct deficiencies to remain in compliance with the requirements of participation. To assure that deficiencies have been corrected the Department of Health may conduct a follow up survey.

The licensure agency can issue a conditional or a probationary license while violations are being corrected. The license also can be denied or revoked if the violations are substantial and it is unlikely that the situation can be corrected.

The survey process requires the survey agency, prior to the survey, to gather information which will help surveyors determine areas of potential concern. Aspects of this pre-survey task include notifying the LTCOP of the survey schedule in advance so that the Ombudsman can prepare information relating to concerns, complaints, etc. with respect to a particular facility. This should include a summary of the previous twelve months of complaint activity from OmbudsManager.

The expectation of the Centers for Medicare and Medicaid Services (CMS) is that the survey agency will share the actual survey schedule, including dates, with the Ombudsman. The goal of giving the Ombudsman this information is two-fold:

- It will enable the Ombudsman to review their files, complaints, etc. to determine what concerns, if any, they have with respect to a particular facility.
- When the Ombudsman is notified of a survey, the Ombudsman may be able to arrange their schedules in order to participate in the exit conference and, if requested, the resident group interview. Local Ombudsmen should NOT alert facilities to a scheduled survey time.

As schedules allow, a LLTCO may attend the exit conference with the survey team. If the Ombudsman is available to attend, it is appropriate, and he/she is encouraged to attend the exit conference.

Enforcement in Long Term Care Facilities

Complaints registered with the Ombudsman Program often involve a violation of either the licensure or certification standards. Given that resident care and residents' rights are the most frequently recorded complaints, involvement with care standards and residents' rights is great. The Ombudsman should use the state and federal enforcement system to further the wishes of the residents.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Types of Enforcement Processes

The Department of Health, Office of Licensure and Certification, is the enforcement agency for the state and federal requirements. The surveyors record the deficiencies and plans for correction in documents which are a matter of public record and are available for inspection by the public.

If a facility does not correct a deficiency after a survey or the facility has repeatedly violated the same requirement, the state has other enforcement mechanisms it can use including:

- Assessing a fine;
- Placing a monitor in the facility;
- Denying, refusing or revoking a license; and
- Suspending a license or issuing a provisional license.

The goal of the nursing home inspection system is not to close down facilities but to assure that they operate safely. Enforcement experts believe that assessing fines for repeat offenders is the more effective enforcing mechanism or sanction. Closing a facility is the last resort.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

APPENDIX A – CODE OF ETHICS FOR LONG TERM CARE OMBUDSMEN

The Code of Ethics for Long Term Care Ombudsmen are listed per the National Association of State Long Term Care Ombudsman Programs and includes:

1. The Ombudsman provides services with respect for human dignity and the individuality of the client, unrestricted by considerations of age, social or economic status, personal characteristics, or lifestyle choices.
2. The Ombudsman respects and promotes the client's right to self-determination.
3. The Ombudsman makes every reasonable effort to ascertain and act in accordance with the client's wishes.
4. The Ombudsman acts to protect vulnerable individuals from abuse and neglect.
5. The Ombudsman safeguards the client's right to privacy by protecting confidential information.
6. The Ombudsman remains knowledgeable in areas relevant to the long term care system, especially regulatory and legislative information, and long term care service options.
7. The Ombudsman acts in accordance with the standards and practices of the LTCOP, and with respect for the policies of the sponsoring organization.
8. The Ombudsman will provide professional advocacy services unrestricted by their personal belief or opinion.
9. The Ombudsman participates in efforts to promote a quality, long term care system.
10. The Ombudsman participates in efforts to maintain and promote the integrity of the LTCOP.
11. The Ombudsman supports a strict conflict of interest standard that prohibits any financial interest in the delivery or provision of nursing home, board, and care services, or other long term care services that are within their scope of involvement.
12. The Ombudsman shall conduct himself/herself in a manner that will strengthen the statewide and national Ombudsman network.

I will do my best to uphold these ethics and carry out my responsibilities in a professional manner.

Signature: _____ Date: _____

Printed Name: _____ EE #: _____

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

APPENDIX B – LONG TERM CARE OMBUDSMAN CONFLICT OF INTEREST AGREEMENT

Ombudsmen must be held to a strict standard of "no conflict of interest" while attending to Ombudsman duties. Any real or perceived conflict of interest erodes the credibility of the LTCOP. Any indication of partiality or self-interest by Ombudsmen may weaken the ability to find solutions that help residents attain a better quality of life.

To ensure compliance with laws and regulations that govern the Ombudsman Program, it is necessary that staff understand and acknowledge any possible existence of a conflict of interest. Laws and regulations stipulate that an Ombudsman or an immediate member of their family:

1. Do not have a direct involvement in the licensing or certification of a long term care facility or of a provider of a long term care service;
2. Do not have an association with a long term care facility that serves older individuals or individuals with disabilities;
3. Do not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long term care facility or long term care service;
4. Are not a governing board member with any ownership, investment or employment interest in long term care facilities; within the past twelve months
5. Do not provide long term care to residents of long term care facilities, including the operation of programs which control access to or services for long term care facilities;
6. Do not provide long term care coordination or case management for residents of long term care facilities;
7. Do not set reimbursement rates for long term care facilities;
8. Do not provide adult protective services;
9. Are not responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long term care facilities;
10. Do not conduct preadmission screenings for long term care facility placements;
11. Do not make decisions regarding admission or discharge of individuals to or from long term care facilities;
12. Do not provide guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long term care facilities;
13. Have not been employed by a long-term care facility within the past twelve months; and
14. Have not accepted money or any other consideration from anyone other than the Department for the performance of an act in the regular course of your duties as an Ombudsman.

All possible conflicts of interest should be declared to the SLTCO and recorded with the provider agency. Minor conflicts may be eliminated or appropriately remedied by the Office of the State Long Term Care Ombudsman. Most conflicts, however, exclude participation of the Ombudsman Program or service as an Ombudsman in a particular long term care facility.

Describe briefly any areas in which you believe you may be in "conflict" with the above regulations:

I have read the above and affirm that my service as an Ombudsman is in compliance with the stated "conflict of interest" standard.

Signature: _____ Date: _____

Printed Name: _____ EE #: _____

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

APPENDIX C - DEPARTMENT OF HUMAN SERVICES CONFIDENTIALITY POLICY

Employees of the Department of Human Services have varying levels of access to confidential information. Due to the fact that confidentiality is an essential element of the effective functioning of the Department of Human Services, it is necessary that department employees comply with this policy.

- The Department of Human Services' employees shall respect the privacy of our customers and hold in confidence all information obtained in the course of their position with the Department.
- The employee shall respect confidences shared by colleagues in the course of their professional relationships and transactions.
- Employees shall not use confidential information for their own benefit or for the benefit of others.
- Employees shall not divulge or communicate confidential information to any unauthorized person either during or after their employment with the Department of Human Services.
- Employees shall not attempt (successful or not) to access information on any individual (private or public) for which they are not authorized or for any reason other than those which are prescribed.
- Employees shall not acquire, use, copy or transfer confidential information except to the extent necessary to fulfill their employment duties.
- Employees shall not discuss confidential information in any setting unless privacy can be ensured. Confidential information should not be discussed in public or semipublic areas such as hallways, waiting rooms, elevators and restaurants.
- Employees shall take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology. Disclosure of identifying information shall be avoided whenever possible.

Department of Human Services' programs may have additional confidentiality policies relating to program issues. Employees shall review all materials provided by their supervisor to acquaint them with program confidentiality policies.

The Department of Human Services has zero-tolerance for disclosure of confidential information. Any unauthorized disclosure of confidential information is a violation of Department of Human Services' policies and may be a violation of South Dakota and United States laws. Employees may be held subject to the penalties for any such unauthorized disclosures. Violations will result in disciplinary action, including termination.

Name (Please Print)

Employee Number

Signature

Date

(REV 8//06)

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

APPENDIX D – RESIDENTS' RIGHTS

["Your Rights and Protections as a Nursing Home Resident"](#) are listed per the Official U.S. Government Site for Medicare, Medicare.gov, Nursing Home Compare.

Resident Rights

Nursing home residents have certain rights and protections under the law. The nursing home must list and give all new residents a copy of these rights.

These resident rights include, but aren't limited to:

- The right to be treated with dignity and respect.
- The right to be informed in writing about services and fees before you enter the nursing home.
- The right to manage your own money or to choose someone else you trust to do this for you.
- The right to privacy, and to keep and use your personal belongings and property as long as it doesn't interfere with the rights, health, or safety of others.
- The right to be informed about your medical condition, medications, and to see your own doctor. You also have the right to refuse medications and treatments.
- The right to have a choice over your schedule (for example, when you get up and go to sleep), your activities and other preferences that are important to you.
- The right to an environment more like a home that maximizes your comfort and provides you with assistance to be as independent as possible.

For more complete information, see the Centers for Medicare & Medicaid Services publications ["Your Guide to Choosing a Nursing Home or Other Long Term Care"](#) and ["Medicare Coverage of Skilled Nursing Facility Care"](#).

What are my rights in a nursing home?

As a nursing home resident, you have certain rights and protections under Federal and state law that help ensure you get the care and services you need. You have the right to be informed, make your own decisions, and have your personal information kept private.

The nursing home must tell you about these rights and explain them in writing in a language you understand. They must also explain in writing how you should act and what you're responsible for while you're in the nursing home. This must be done before or at the time you're admitted, as well as during your stay. You must acknowledge in writing that you got this information.

At a minimum, Federal law specifies that nursing homes must protect and promote the following rights of each resident. You have the right to:

- **Be Treated with Respect:** You have the right to be treated with dignity and respect, as well as make your own schedule and participate in the activities you choose. You have the right to decide when you go to bed, rise in the morning, and eat your meals.
- **Participate in Activities:** You have the right to participate in an activities program designed to meet your needs and the needs of the other residents.
- **Be Free from Discrimination:** Nursing homes don't have to accept all applicants, but they must comply with Civil Rights laws that say they can't discriminate based on race, color, national origin, disability, age, or religion. The Department of Health and Human Services, Office for Civil Rights has more information. Visit <http://www.hhs.gov/ocr>.
- **Be Free from Abuse and Neglect:** You have the right to be free from verbal, sexual, physical, and mental abuse. Nursing homes can't keep you apart from everyone else against your will. If you feel you have been

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

mistreated (abused) or the nursing home isn't meeting your needs (neglect), report this to the nursing home, your family, your Local Long Term Care Ombudsman, or State Survey Agency. The nursing home must investigate and report all suspected violations and any injuries of unknown origin within 5 working days of the incident to the proper authorities.

- **Be Free from Restraints:** Nursing homes can't use any physical restraints (like side rails) or chemical restraints (like drugs) to discipline you for the staff's own convenience.
- **Make Complaints:** You have the right to make a complaint to the staff of the nursing home, or any other person, without fear of punishment. The nursing home must address the issue promptly.
- **Get Proper Medical Care:** You have the following rights regarding your medical care:
 - To be fully informed about your total health status in a language you understand.
 - To be fully informed about your medical condition, prescription and over-the-counter drugs, vitamins, and supplements.
 - To be involved in the choice of your doctor.
 - To participate in the decisions that affects your care.
 - To take part in developing your care plan. By law, nursing homes must develop a care plan for each resident. You have the right to take part in this process. Family members can also help with your care plan with your permission.
 - To access all your records and reports, including clinical records (medical records and reports) promptly (on weekdays). Your legal guardian has the right to look at all your medical records and make important decisions on your behalf.
 - To express any complaints (sometimes called "grievances") you have about your care or treatment.
 - To create advance directives (a health care proxy or power of attorney, a living will, after-death wishes) in accordance with State law.
 - To refuse to participate in experimental treatment.
- **Have Your Representative Notified:** The nursing home must notify your doctor and, if known, your legal representative or an interested family member when the following occurs:
 - You're involved in an accident and are injured and/or need to see a doctor.
 - Your physical, mental, or psychosocial status starts to get worse.
 - You have a life threatening condition.
 - You have medical complications.
 - Your treatment needs to change significantly.
 - The nursing home decides to transfer or discharge you from the nursing home.
- **Get Information on Services and Fees:** You have the right to be told in writing about all nursing home services and fees (those that are charged and not charged to you) before you move into the nursing home and at any time when services and fees change. In addition:
 - The nursing home can't require a minimum entrance fee if your care is paid for by Medicare or Medicaid.
 - For people seeking admission to the nursing home, the nursing home must tell you (both orally and in writing) and also display written information about how to apply for and use Medicare and Medicaid benefits.
 - The nursing home must also provide information on how to get a refund if you paid for an item or service, but because of Medicare and Medicaid eligibility rules, it's now considered covered.
- **Manage Your Money:** You have the right to manage your own money or to choose someone you trust to do this for you. In addition:

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- If you deposit your money with the nursing home or ask them to hold or account for your money, you must sign a written statement saying you want them to do this.
- The nursing home must allow you access to your bank accounts, cash, and other financial records.
- The nursing home must have a system that ensures full accounting for your funds and can't combine your funds with the nursing home's funds.
- The nursing home must protect your funds from any loss by providing an acceptable protection, such as buying a surety bond.
- If a resident with a fund dies, the nursing home must return the funds with a final accounting to the person or court handling the resident's estate within 30 days.
- **Get Proper Privacy, Property, and Living Arrangements:** You have the following rights:
 - To keep and use your personal belongings and property as long as they don't interfere with the rights, health, or safety of others.
 - To have private visits.
 - To make and get private phone calls.
 - To have privacy in sending and getting mail and email.
 - To have the nursing home protect your property from theft.
 - To share a room with your spouse if you both live in the same nursing home (if you both agree to do so).
 - The nursing home has to notify you before your room or your roommate is changed and should take your preferences into account.
 - To review the nursing home's health and fire safety inspection results.
- **Spend Time with Visitors:** You have the following rights:
 - To spend private time with visitors.
 - To have visitors at any time, as long as you wish to see them, as long as the visit does not interfere with the provision of care and privacy rights of other residents
 - To see any person who gives you help with your health, social, legal, or other services may at any time. This includes your doctor, a representative from the health department, and your Long Term Care Ombudsman, among others.
- **Get Social Services:** The nursing home must provide you with any needed social services, including the following:
 - Counseling.
 - Help solving problems with other residents.
 - Help in contacting legal and financial professionals.
 - Discharge planning.
- **Leave the Nursing Home:**
 - **Leaving for visits:** If your health allows, and your doctor agrees, you can spend time away from the nursing home visiting family or friends during the day or overnight, called a "leave of absence." Talk to the nursing home staff a few days ahead of time so the staff has time to prepare your medicines and write your instructions. **Caution:** If your nursing home care is covered by certain health insurance, you may not be able to leave for visits without losing your coverage.
 - **Moving out:** Living in a nursing home is your choice. You can choose to move to another place. However, the nursing home may have a policy that requires you to tell them before you plan to leave. If you don't, you may have to pay an extra fee.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- **Have Protection Against Unfair Transfer or Discharge:** You can't be sent to another nursing home, or made to leave the nursing home, unless any of the following are true:
 - It's necessary for the welfare, health, or safety of you or others.
 - Your health has improved to the point that nursing home care is no longer necessary.
 - The nursing home hasn't been paid for services you got.
 - The nursing home closes.

You have the following rights:

- You have the right to appeal a transfer or discharge to the State.
 - The nursing home can't make you leave if you're waiting to get Medicaid.
 - Except in emergencies, nursing homes must give a 30-day written notice of their plan and reason to discharge or transfer you.
 - The nursing home has to safely and orderly transfer or discharge you and give you proper notice of bed-hold and/or readmission requirements.
-
- **Form or Participate in Resident Groups:** You have a right to form or participate in a resident group to discuss issues and concerns about the nursing home's policies and operations. Most homes have such groups, often called "resident councils." The home must give you meeting space and must listen to and act upon grievances and recommendations of the group.
-
- **Have Your Family and Friends Involved:** Family and friends can help make sure you get good quality care. They can visit and get to know the staff and the nursing home's rules. Family members and legal guardians may meet with the families of other residents and may participate in family councils, if one exists. Family members can help with your care plan with your permission. If a family member or friend is your legal guardian, he or she has the right to look at all medical records about you and make important decisions on your behalf.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

APPENDIX E - RESIDENT RIGHTS [§483.10](#)

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility, including those specified in this section.

(1) A facility must treat each resident with respect and dignity and care for each resident in a manner and in an environment that promotes maintenance or enhancement of his or her quality of life, recognizing each resident's individuality. The facility must protect and promote the rights of the resident.

(2) The facility must provide equal access to quality care regardless of diagnosis, severity of condition, or payment source. A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all residents regardless of payment source.

(b) Exercise of rights. The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(1) The facility must ensure that the resident can exercise his or her rights without interference, coercion, discrimination, or reprisal from the facility

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights and to be supported by the facility in the exercise of his or her rights as required under this subpart.

(3) In the case of a resident who has not been adjudged incompetent by the state court, the resident has the right to designate a representative, in accordance with State law and any legal surrogate so designated may exercise the resident's rights to the extent provided by state law. The same-sex spouse of a resident must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

(i) The resident representative has the right to exercise the resident's rights to the extent those rights are delegated to the resident representative.

(ii) The resident retains the right to exercise those rights not delegated to a resident representative, including the right to revoke a delegation of rights, except as limited by State law.

(4) The facility must treat the decisions of a resident representative as the decisions of the resident to the extent required by the court or delegated by the resident, in accordance with applicable law.

(5) The facility shall not extend the resident representative the right to make decisions on behalf of the resident beyond the extent required by the court or delegated by the resident, in accordance with applicable law.

(6) If the facility has reason to believe that a resident representative is making decisions or taking actions that are not in the best interests of a resident, the facility shall report such concerns in the manner required under State law.

(7) In the case of a resident adjudged incompetent under the laws of a State by a court of competent jurisdiction, the rights of the resident devolve to and are exercised by the resident representative appointed under State law to act on the resident's behalf. The court-appointed resident representative exercises the

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

resident's rights to the extent judged necessary by a court of competent jurisdiction, in accordance with State law

(i) In the case of a resident representative whose decision-making authority is limited by State law or court appointment, the resident retains the right to make those decisions outside the representative's authority.

(ii) The resident's wishes and preferences must be considered in the exercise of rights by the representative.

(iii) To the extent practicable, the resident must be provided with opportunities to participate in the care planning process.

(c) Planning and implementing care. The resident has the right to be informed of, and participate in, his or her treatment, including:

(1) The right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition.

(2) The right to participate in the development and implementation of his or her person-centered plan of care, including but not limited to:

(i) The right to participate in the planning process, including the right to identify individuals or roles to be included in the planning process, the right to request meetings and the right to request revisions to the person-centered plan of care.

(ii) The right to participate in establishing the expected goals and outcomes of care, the type, amount, frequency, and duration of care, and any other factors related to the effectiveness of the plan of care.

(iii) The right to be informed, in advance, of changes to the plan of care.

(iv) The right to receive the services and/or items included in the plan of care.

(v) The right to see the care plan, including the right to sign after significant changes to the plan of care.

(3) The facility shall inform the resident of the right to participate in his or her treatment and shall support the resident in this right. The planning process must—

(i) Facilitate the inclusion of the resident and/or resident representative.

(ii) Include an assessment of the resident's strengths and needs.

(iii) Incorporate the resident's personal and cultural preferences in developing goals of care.

(4) The right to be informed, in advance, of the care to be furnished and the type of care giver or professional that will furnish care.

(5) The right to be informed in advance, by the physician or other practitioner or professional, of the risks and benefits of proposed care, of treatment and treatment alternatives or treatment options and to choose the alternative or option he or she prefers.

(6) The right to request, refuse, and/or discontinue treatment, to participate in or refuse to participate in experimental research, and to formulate an advance directive.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(7) The right to self-administer medications if the interdisciplinary team, as defined by § 483.21(b)(2)(ii), has determined that this practice is clinically appropriate.

(8) Nothing in this paragraph should be construed as the right of the resident to receive the provision of medical treatment or medical services deemed medically unnecessary or inappropriate.

(d) Choice of attending physician. The resident has the right to choose his or her attending physician.

(1) The physician must be licensed to practice, and

(2) If the physician chosen by the resident refuses to or does not meet requirements specified in this part, the facility may seek alternate physician participation as specified in paragraphs (d)(4) and (5) of this section to assure provision of appropriate and adequate care and treatment.

(3) The facility must ensure that each resident remains informed of the name, specialty, and way of contacting the physician and other primary care professionals responsible for his or her care.

(4) The facility must inform the resident if the facility determines that the physician chosen by the resident is unable or unwilling to meet requirements specified in this part and the facility seeks alternate physician participation to assure provision of appropriate and adequate care and treatment. The facility must discuss the alternative physician participation with the resident and honor the resident's preferences, if any, among options.

(5) If the resident subsequently selects another attending physician who meets the requirements specified in this part, the facility must honor that choice.

(e) Respect and dignity. The resident has a right to be treated with respect and dignity, including:

(1) The right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms, consistent with § 483.12(a)(2).

(2) The right to retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(3) The right to reside and receive services in the facility with reasonable accommodation of resident needs and preferences except when to do so would endanger the health or safety of the resident or other residents.

(4) The right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

(5) The right to share a room with his or her roommate of choice when practicable, when both residents live in the same facility and both residents consent to the arrangement.

(6) The right to receive written notice, including the reason for the change, before the resident's room or roommate in the facility is changed.

(7) The right to refuse to transfer to another room in the facility, if the purpose of the transfer is:

(i) To relocate a resident of a SNF from the distinct part of the institution that is a SNF to a part of the institution that is not a SNF, or

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(ii) To relocate a resident of a NF from the distinct part of the institution that is a NF to a distinct part of the institution that is a SNF.

(iii) Solely for the convenience of staff.

(8) A resident's exercise of the right to refuse transfer does not affect the resident's eligibility or entitlement to Medicare or Medicaid benefits.

(f) Self-determination. The resident has the right to and the facility must promote and facilitate resident self-determination through support of resident choice, including but not limited to the rights specified in paragraphs (f) (1) through (11) of this section.

(1) The resident has a right to choose activities, schedules (including sleeping and waking times), health care and providers of health care services consistent with his or her interests, assessments, plan of care and other applicable provisions of this part.

(2) The resident has the right to make choices about aspects of his or her life in the facility that are significant to the resident.

(3) The resident has a right to interact with members of the community and participate in community activities both inside and outside the facility.

(4) The resident has a right to receive visitors of his or her choosing at the time of his or her choosing, subject to the resident's right to deny visitation when applicable, and in a manner that does not impose on the rights of another resident.

(i) The facility must provide immediate access to any resident by—

(A) Any representative of the Secretary,

(B) Any representative of the State,

(C) Any representative of the Office of the State long term care ombudsman, (established under section 712 of the Older Americans Act of 1965, as amended 2016 (42 U.S.C. 3001 et seq.),

(D) The resident's individual physician,

(E) Any representative of the protection and advocacy systems, as designated by the state, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.),

(F) Any representative of the agency responsible for the protection and advocacy system for individuals with a mental disorder (established under the Protection and Advocacy for Mentally Ill Individuals Act of 2000 (42 U.S.C. 10801 et seq.), and

(G) The resident representative.

(ii) The facility must provide immediate access to a resident by immediate family and other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time;

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(iii) The facility must provide immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable clinical and safety restrictions and the resident's right to deny or withdraw consent at any time;

(iv) The facility must provide reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

(v) The facility must have written policies and procedures regarding the visitation rights of residents, including those setting forth any clinically necessary or reasonable restriction or limitation or safety restriction or limitation, when such limitations may apply consistent with the requirements of this subpart, that the facility may need to place on such rights and the reasons for the clinical or safety restriction or limitation.

(vi) A facility must meet the following requirements:

(A) Inform each resident (or resident representative, where appropriate) of his or her visitation rights and related facility policy and procedures, including any clinical or safety restriction or limitation on such rights, consistent with the requirements of this subpart, the reasons for the restriction or limitation, and to whom the restrictions apply, when he or she is informed of his or her other rights under this section.

(B) Inform each resident of the right, subject to his or her consent, to receive the visitors whom he or she designates, including, but not limited to, a spouse (including a same-sex spouse), a domestic partner (including a same-sex domestic partner), another family member, or a friend, and his or her right to withdraw or deny such consent at any time.

(C) Not restrict, limit, or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.

(D) Ensure that all visitors enjoy full and equal visitation privileges consistent with resident preferences.

(5) The resident has a right to organize and participate in resident groups in the facility.

(i) The facility must provide a resident or family group, if one exists, with private space; and take reasonable steps, with the approval of the group, to make residents and family members aware of upcoming meetings in a timely manner.

(ii) Staff, visitors, or other guests may attend resident group or family group meetings only at the respective group's invitation.

(iii) The facility must provide a designated staff person who is approved by the resident or family group and the facility and who is responsible for providing assistance and responding to written requests that result from group meetings.

(iv) The facility must consider the views of a resident or family group and act promptly upon the grievances and recommendations of such groups concerning issues of resident care and life in the facility.

(A) The facility must be able to demonstrate their response and rationale for such response.

(B) This should not be construed to mean that the facility must implement as recommended every request of the resident or family group.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(6) The resident has a right to participate in family groups.

(7) The resident has a right to have family member(s) or other resident representative(s) meet in the facility with the families or resident representative(s) of other residents in the facility.

(8) The resident has a right to participate in other activities, including social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(9) The resident has a right to choose to or refuse to perform services for the facility and the facility must not require a resident to perform services for the facility. The resident may perform services for the facility, if he or she chooses, when—

(i) The facility has documented the resident's need or desire for work in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for paid services is at or above prevailing rates; and

(iv) The resident agrees to the work arrangement described in the plan of care.

(10) The resident has a right to manage his or her financial affairs. This includes the right to know, in advance, what charges a facility may impose against a resident's personal funds.

(i) The facility must not require residents to deposit their personal funds with the facility. If a resident chooses to deposit personal funds with the facility, upon written authorization of a resident, the facility must act as a fiduciary of the resident's funds and hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in this section.

(ii) Deposit of funds.

(A) In general: Except as set out in paragraph (f)(10)(ii)(B) of this section, the facility must deposit any residents' personal funds in excess of \$100 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.) The facility must maintain a resident's personal funds that do not exceed \$100 in a noninterest bearing account, interest-bearing account, or petty cash fund.

(B) Residents whose care is funded by Medicaid: The facility must deposit the residents' personal funds in excess of \$50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.) The facility must maintain personal funds that do not exceed \$50 in a non-interest bearing account, interest-bearing account, or petty cash fund.

(iii) Accounting and records.

(A) The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(B) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(C) The individual financial record must be available to the resident through quarterly statements and upon request.

(iv) Notice of certain balances. The facility must notify each resident that receives Medicaid benefits—

(A) When the amount in the resident's account reaches \$200 less than the SSI resource limit for one person, specified in section 1611(a)(3)(B) of the Act; and

(B) That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person; the resident may lose eligibility for Medicaid or SSI.

(v) Conveyance upon discharge, eviction, or death. Upon the discharge, eviction, or death of a resident with a personal fund deposited with the facility, the facility must convey within 30 days the resident's funds, and a final accounting of those funds, to the resident, or in the case of death, the individual or probate jurisdiction administering the resident's estate, in accordance with State law.

(vi) Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(11) The facility must not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare (except for applicable deductible and coinsurance amounts). The facility may charge the resident for requested services that are more expensive than or in excess of covered services in accordance with § 489.32 of this chapter. (This does not affect the prohibition on facility charges for items and services for which Medicaid has paid. See § 447.15 of this chapter, which limits participation in the Medicaid program to providers who accept, as payment in full, Medicaid payment plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual.)

(i) Services included in Medicare or Medicaid payment. During the course of a covered Medicare or Medicaid stay, facilities must not charge a resident for the following categories of items and services:

(A) Nursing services as required at § 483.35.

(B) Food and Nutrition services as required at § 483.60.

(C) An activities program as required at § 483.24(c).

(D) Room/bed maintenance services.

(E) Routine personal hygiene items and services as required to meet the needs of residents, including, but not limited to, hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection, razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services, bathing assistance, and basic personal laundry.

(F) Medically-related social services as required at § 483.40(d).

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(G) Hospice services elected by the resident and paid for under the Medicare Hospice Benefit or paid for by Medicaid under a state plan.

(ii) Items and services that may be charged to residents' funds. Paragraphs

(f)(11)(ii)(A) through (L) of this section are general categories and examples of items and services that the facility may charge to residents' funds if they are requested by a resident, if they are not required to achieve the goals stated in the resident's care plan, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:

(A) Telephone, including a cellular phone.

(B) Television/radio, personal computer or other electronic device for personal use.

(C) Personal comfort items, including smoking materials, notions and novelties, and confections.

(D) Cosmetic and grooming items and services in excess of those for which payment is made under Medicaid or Medicare.

(E) Personal clothing.

(F) Personal reading matter.

(G) Gifts purchased on behalf of a resident.

(H) Flowers and plants.

(I) Cost to participate in social events and entertainment outside the scope of the activities program, provided under § 483.24(c).

(J) Non-covered special care services such as privately hired nurses or aides.

(K) Private room, except when therapeutically required (for example, isolation for infection control).

(L) Except as provided in (e)(11)(ii)(L)(1) and (2) of this section, specially prepared or alternative food requested instead of the food and meals generally prepared by the facility, as required by § 483.60.

(1) The facility may not charge for special foods and meals, including medically prescribed dietary supplements, ordered by the resident's physician, physician assistant, nurse practitioner, or clinical nurse specialist, as these are included in accordance with § 483.60.

(2) In accordance with § 483.60(c) through (f), when preparing foods and meals, a facility must take into consideration residents' needs and preferences and the overall cultural and religious make-up of the facility's population.

(iii) Requests for items and services.

(A) The facility can only charge a resident for any non-covered item or service if such item or service is specifically requested by the resident. (B) The facility must not require a resident to request any item or service as a condition of admission or continued stay.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(C) The facility must inform, orally and in writing, the resident requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.

(g) Information and communication.

(1) The resident has the right to be informed of his or her rights and of all rules and regulations governing resident conduct and responsibilities during his or her stay in the facility.

(2) The resident has the right to access personal and medical records pertaining to him or herself.

(i) The facility must provide the resident with access to personal and medical records pertaining to him or herself, upon an oral or written request, in the form and format requested by the individual, if it is readily producible in such form and format (including in an electronic form or format when such records are maintained electronically); or, if not, in a readable hard copy form or such other form and format as agreed to by the facility and the individual, within 24 hours (excluding weekends and holidays); and

(ii) The facility must allow the resident to obtain a copy of the records or any portions thereof (including in an electronic form or format when such records are maintained electronically) upon request and 2 working days advance notice to the facility. The facility may impose a reasonable, cost based fee on the provision of copies, provided that the fee includes only the cost of:

(A) Labor for copying the records requested by the individual, whether in paper or electronic form;

(B) Supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media; and

(C) Postage, when the individual has requested the copy be mailed.

(3) With the exception of information described in paragraphs (g)(2) and (g)(11) of this section, the facility must ensure that information is provided to each resident in a form and manner the resident can access and understand, including in an alternative format or in a language that the resident can understand. Summaries that translate information described in paragraph (g)(2) of this section may be made available to the patient at their request and expense in accordance with applicable law.

(4) The resident has the right to receive notices orally (meaning spoken) and in writing (including Braille) in a format and a language he or she understands, including;

(i) Required notices as specified in this section. The facility must furnish to each resident a written description of legal rights which includes—

(A) A description of the manner of protecting personal funds, under paragraph (f)(10) of this section;

(B) A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment of resources under section 1924(c) of the Social Security Act.

(C) A list of names, addresses (mailing and email), and telephone numbers of all pertinent State regulatory and informational agencies, resident advocacy groups such as the State Survey Agency, the State licensure office, the State Long-Term Care Ombudsman program, the protection and advocacy agency, adult protective

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

services where state law provides for jurisdiction in long-term care facilities, the local contact agency for information about returning to the community and the Medicaid Fraud Control Unit; and

(D) A statement that the resident may file a complaint with the State Survey Agency concerning any suspected violation of state or federal nursing facility regulations, including but not limited to resident abuse, neglect, exploitation, misappropriation of resident property in the facility, noncompliance with the advance directives requirements and requests for information regarding returning to the community.

(ii) Information and contact information for State and local advocacy organizations, including but not limited to the State Survey Agency, the State Long-Term Care Ombudsman program (established under section 712 of the Older Americans Act of 1965, as amended 2016 (42 U.S.C. 3001 et seq.) and the protection and advocacy system (as designated by the state, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);

(iii) Information regarding Medicare and Medicaid eligibility and coverage;

(iv) Contact information for the Aging and Disability Resource Center (established under Section 202(a)(20)(B)(iii) of the Older Americans Act); or other No Wrong Door Program

(v) Contact information for the Medicaid Fraud Control Unit; and

(vi) Information and contact information for filing grievances or complaints concerning any suspected violation of state or federal nursing facility regulations, including but not limited to resident abuse, neglect, exploitation, misappropriation of resident property in the facility, noncompliance with the advance directives requirements and requests for information regarding returning to the community.

(5) The facility must post, in a form and manner accessible and understandable to residents, and resident representatives:

(i) A list of names, addresses (mailing and email), and telephone numbers of all pertinent State agencies and advocacy groups, such as the State Survey Agency, the State licensure office, adult protective services where state law provides for jurisdiction in long-term care facilities, the Office of the State Long-Term Care Ombudsman program, the protection and advocacy network, home and community based service programs, and the Medicaid Fraud Control Unit; and

(ii) A statement that the resident may file a complaint with the State Survey Agency concerning any suspected violation of state or federal nursing facility regulations, including but not limited to resident abuse, neglect, exploitation, misappropriation of resident property in the facility, noncompliance with the advance directives requirements (42 CFR part 489 subpart I) and requests for information regarding returning to the community.

(6) The resident has the right to have reasonable access to the use of a telephone, including TTY and TDD services, and a place in the facility where calls can be made without being overheard. This includes the right to retain and use a cellular phone at the resident's own expense.

(7) The facility must protect and facilitate that resident's right to communicate with individuals and entities within and external to the facility, including reasonable access to:

(i) A telephone, including TTY and TDD services;

(ii) The internet, to the extent available to the facility; and

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(iii) Stationery, postage, writing implements and the ability to send mail.

(8) The resident has the right to send and receive mail, and to receive letters, packages and other materials delivered to the facility for the resident through a means other than a postal service, including the right to:

(i) Privacy of such communications consistent with this section; and

(ii) Access to stationery, postage, and writing implements at the resident's own expense.

(9) The resident has the right to have reasonable access to and privacy in their use of electronic communications such as email and video communications and for Internet research.

(i) If the access is available to the facility

(ii) At the resident's expense, if any additional expense is incurred by the facility to provide such access to the resident.

(iii) Such use must comply with state and federal law.

(10) The resident has the right to—

(i) Examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility; and

(ii) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(11) The facility must—

(i) Post in a place readily accessible to residents, and family members and legal representatives of residents, the results of the most recent survey of the facility.

(ii) Have reports with respect to any surveys, certifications, and complaint investigations made respecting the facility during the 3 preceding years, and any plan of correction in effect with respect to the facility, available for any individual to review upon request; and

(iii) Post notice of the availability of such reports in areas of the facility that are prominent and accessible to the public.

(iv) The facility shall not make available identifying information about complainants or residents.

(12) The facility must comply with the requirements specified in 42 CFR part 489, subpart I (Advance Directives).

(i) These requirements include provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the resident's option, formulate an advance directive.

(ii) This includes a written description of the facility's policies to implement advance directives and applicable State law.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(iii) Facilities are permitted to contract with other entities to furnish this information but are still legally responsible for ensuring that the requirements of this section are met.

(iv) If an adult individual is incapacitated at the time of admission and is unable to receive information or articulate whether or not he or she has executed an advance directive, the facility may give advance directive information to the individual's resident representative in accordance with State law.

(v) The facility is not relieved of its obligation to provide this information to the individual once he or she is able to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.

(13) The facility must display in the facility written information, and provide to residents and applicants for admission, oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(14) Notification of changes.

(i) A facility must immediately inform the resident; consult with the resident's physician; and notify, consistent with his or her authority, the resident representative(s), when there is—

(A) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the resident's physical, mental, or psychosocial status (that is, a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (that is, a need to discontinue or change an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the resident from the facility as specified in § 483.15(c)(1)(ii).

(ii) When making notification under paragraph (g)(14)(i) of this section, the facility must ensure that all pertinent information specified in § 483.15(c)(2) is available and provided upon request to the physician.

(iii) The facility must also promptly notify the resident and the resident representative, if any, when there is—

(A) A change in room or roommate assignment as specified in § 483.10(e)(6); or

(B) A change in resident rights under Federal or State law or regulations as specified in paragraph (e)(10) of this section.

(iv) The facility must record and periodically update the address (mailing and email) and phone number of the resident representative(s).

(15) Admission to a composite distinct part. A facility that is a composite distinct part (as defined in § 483.5 must disclose in its admission agreement its physical configuration, including the various locations that comprise the composite distinct part, and must specify the policies that apply to room changes between its different locations under § 483.15(c)(9).

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(16) The facility must provide a notice of rights and services to the resident prior to or upon admission and during the resident's stay.

(i) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility.

(ii) The facility must also provide the resident with the State-developed notice of Medicaid rights and obligations, if any.

(iii) Receipt of such information, and any amendments to it, must be acknowledged in writing;

(17) The facility must—

(i) Inform each Medicaid-eligible resident, in writing, at the time of admission to the nursing facility and when the resident becomes eligible for Medicaid of—

(A) The items and services that are included in nursing facility services under the State plan and for which the resident may not be charged;

(B) Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and

(ii) Inform each Medicaid-eligible resident when changes are made to the items and services specified in § 483.10(g)(17)(i)(A) and (B) of this section.

(18) The facility must inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicare/ Medicaid or by the facility's per diem rate.

(i) Where changes in coverage are made to items and services covered by Medicare and/or by the Medicaid State plan, the facility must provide notice to residents of the change as soon as is reasonably possible.

(ii) Where changes are made to charges for other items and services that the facility offers, the facility must inform the resident in writing at least 60 days prior to implementation of the change.

(iii) If a resident dies or is hospitalized or is transferred and does not return to the facility, the facility must refund to the resident, resident representative, or estate, as applicable, any deposit or charges already paid, less the facility's per diem rate, for the days the resident actually resided or reserved or retained a bed in the facility, regardless of any minimum stay or discharge notice requirements.

(iv) The facility must refund to the resident or resident representative any and all refunds due the resident within 30 days from the resident's date of discharge from the facility.

(v) The terms of an admission contract by or on behalf of an individual seeking admission to the facility must not conflict with the requirements of these regulations.

(h) Privacy and confidentiality. The resident has a right to personal privacy and confidentiality of his or her personal and medical records.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident.

(2) The facility must respect the residents right to personal privacy, including the right to privacy in his or her oral (that is, spoken), written, and electronic communications, including the right to send and promptly receive unopened mail and other letters, packages and other materials delivered to the facility for the resident, including those delivered through a means other than a postal service.

(3) The resident has a right to secure and confidential personal and medical records.

(i) The resident has the right to refuse the release of personal and medical records except as provided at § 483.70(i)(2) or other applicable federal or state laws.

(ii) The facility must allow representatives of the Office of the State Long-Term Care Ombudsman to examine a resident's medical, social, and administrative records in accordance with State law.

(i) Safe environment. The resident has a right to a safe, clean, comfortable and homelike environment, including but not limited to receiving treatment and supports for daily living safely. The facility must provide—

(1) A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible.

(i) This includes ensuring that the resident can receive care and services safely and that the physical layout of the facility maximizes resident independence and does not pose a safety risk.

(ii) The facility shall exercise reasonable care for the protection of the resident's property from loss or theft.

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) Clean bed and bath linens that are in good condition;

(4) Private closet space in each resident room, as specified in § 483.90(d)(2)(iv);

(5) Adequate and comfortable lighting levels in all areas;

(6) Comfortable and safe temperature levels. Facilities initially certified after October 1, 1990 must maintain a temperature range of 71 to 81 °F; and

(7) For the maintenance of comfortable sound levels.

(j) Grievances.

(1) The resident has the right to voice grievances to the facility or other agency or entity that hears grievances without discrimination or reprisal and without fear of discrimination or reprisal. Such grievances include those with respect to care and treatment which has been furnished as well as that which has not been furnished, the behavior of staff and of other residents; and other concerns regarding their LTC facility stay.

(2) The resident has the right to and the facility must make prompt efforts by the facility to resolve grievances the resident may have, in accordance with this paragraph.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(3) The facility must make information on how to file a grievance or complaint available to the resident.

(4) The facility must establish a grievance policy to ensure the prompt resolution of all grievances regarding the residents' rights contained in this paragraph. Upon request, the provider must give a copy of the grievance policy to the resident. The grievance policy must include:

(i) Notifying resident individually or through postings in prominent locations throughout the facility of the right to file grievances orally (meaning spoken) or in writing; the right to file grievances anonymously; the contact information of the grievance official with whom a grievance can be filed, that is, his or her name, business address (mailing and email) and business phone number; a reasonable expected time frame for completing the review of the grievance; the right to obtain a written decision regarding his or her grievance; and the contact information of independent entities with whom grievances may be filed, that is, the pertinent State agency, Quality Improvement Organization, State Survey Agency and State Long-Term Care Ombudsman program or protection and advocacy system;

(ii) Identifying a Grievance Official who is responsible for overseeing the grievance process, receiving and tracking grievances through to their conclusion; leading any necessary investigations by the facility; maintaining the confidentiality of all information associated with grievances, for example, the identity of the resident for those grievances submitted anonymously; issuing written grievance decisions to the resident; and coordinating with state and federal agencies as necessary in light of specific allegations;

(iii) As necessary, taking immediate action to prevent further potential violations of any resident right while the alleged violation is being investigated;

(iv) Consistent with § 483.12(c)(1), immediately reporting all alleged violations involving neglect, abuse, including injuries of unknown source, and/or misappropriation of resident property, by anyone furnishing services on behalf of the provider, to the administrator of the provider; and as required by State law;

(v) Ensuring that all written grievance decisions include the date the grievance was received, a summary statement of the resident's grievance, the steps taken to investigate the grievance, a summary of the pertinent findings or conclusions regarding the resident's concern(s), a statement as to whether the grievance was confirmed or not confirmed, any corrective action taken or to be taken by the facility as a result of the grievance, and the date the written decision was issued;

(vi) Taking appropriate corrective action in accordance with State law if the alleged violation of the residents' rights is confirmed by the facility or if an outside entity having jurisdiction, such as the State Survey Agency, Quality Improvement Organization, or local law enforcement agency confirms a violation of any of these residents' rights within its area of responsibility; and

(vii) Maintaining evidence demonstrating the results of all grievances for a period of no less than 3 years from the issuance of the grievance decision.

(k) Contact with external entities. A facility must not prohibit or in any way discourage a resident from communicating with federal, state, or local officials, including, but not limited to, federal and state surveyors, other federal or state health department employees, including representatives of the Office of the State Long-Term Care Ombudsman, and any representative of the agency responsible for the protection and advocacy system for individuals with mental disorder (established under the Protection and Advocacy for Mentally Ill

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Individuals Act of 2000 (42 U.S.C. 10801 et seq.), regarding any matter, whether or not subject to arbitration or any other type of judicial or regulatory action.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

APPENDIX F – FREEDOM FROM ABUSE, NEGLECT, AND EXPLOITATION [§483.12](#)

The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in this subpart. This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms.

(a) The facility must—

(1) Not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;

(2) Ensure that the resident is free from physical or chemical restraints imposed for purposes of discipline or convenience and that are not required to treat the resident's medical symptoms. When the use of restraints is indicated, the facility must use the least restrictive alternative for the least amount of time and document ongoing re-evaluation of the need for restraints.

(3) Not employ or otherwise engage individuals who—

(i) Have been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law;

(ii) Have had a finding entered into the State nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents or misappropriation of their property; or

(iii) Have a disciplinary action in effect against his or her professional license by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property.

(4) Report to the State nurse aide registry or licensing authorities any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff.

(b) The facility must develop and implement written policies and procedures that:

(1) Prohibit and prevent abuse, neglect, and exploitation of residents and misappropriation of resident property,

(2) Establish policies and procedures to investigate any such allegations, and

(3) Include training as required at paragraph § 483.95.

(4) Establish coordination with the QAPI program required under § 483.75.

(5) Ensure reporting of crimes occurring in federally-funded long-term care facilities in accordance with section 1150B of the Act. The policies and procedures must include but are not limited to the following elements.

(i) Annually notifying covered individuals, as defined at section 1150B(a)(3) of the Act, of that individual's obligation to comply with the following reporting requirements.

(A) Each covered individual shall report to the State Agency and one or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime against any individual who is a resident of, or is receiving care from, the facility.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(B) Each covered individual shall report immediately, but not later than 2 hours after forming the suspicion, if the events that cause the suspicion result in serious bodily injury, or not later than 24 hours if the events that cause the suspicion do not result in serious bodily injury.

(ii) Posting a conspicuous notice of employee rights, as defined at section 1150B(d)(3) of the Act.

(iii) Prohibiting and preventing retaliation, as defined at section 1150B(d)(1) and (2) of the Act.

(c) In response to allegations of abuse, neglect, exploitation, or mistreatment, the facility must:

(1) Ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property, are reported immediately, but not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury, to the administrator of the facility and to other officials (including to the State Survey Agency and adult protective services where state law provides for jurisdiction in long-term care facilities) in accordance with State law through established procedures.

(2) Have evidence that all alleged violations are thoroughly investigated.

(3) Prevent further potential abuse, neglect, exploitation, or mistreatment while the investigation is in progress.

(4) Report the results of all investigations to the administrator or his or her designated Representative and to other officials in accordance with State law, including to the State Survey Agency, within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

APPENDIX G – ADMISSION, TRANSFER AND DISCHARGE RIGHTS [§483.15](#)

- (a) Admissions policy.
- (1) The facility must establish and implement an admissions policy.
- (2) The facility must—
- (i) Not request or require residents or potential residents to waive their rights as set forth in this subpart and in applicable state, federal or local licensing or certification laws, including but not limited to their rights to Medicare or Medicaid; and
- (ii) Not request or require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.
- (iii) Not request or require residents or potential residents to waive potential facility liability for losses of personal property
- (3) The facility must not request or require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may request and require a resident representative who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.
- (4) In the case of a person eligible for Medicaid, a nursing facility must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the facility. However,—
- (i) A nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State plan as included in the term "nursing facility services" so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for and receipt of such additional services; and
- (ii) A nursing facility may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid eligible resident.
- (5) States or political subdivisions may apply stricter admissions standards under State or local laws than are specified in this section, to prohibit discrimination against individuals entitled to Medicaid.
- (6) A nursing facility must disclose and provide to a resident or potential resident prior to time of admission, notice of special characteristics or service limitations of the facility.
- (7) A nursing facility that is a composite distinct part as defined in § 483.5 must disclose in its admission agreement its physical configuration, including the various locations that comprise the composite distinct part, and must specify the policies that apply to room changes between its different locations under paragraph (b)(10) of this section.
- (b) Equal access to quality care.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(1) A facility must establish, maintain and implement identical policies and practices regarding transfer and discharge, as defined in § 483.5 and the provision of services for all individuals regardless of source of payment, consistent with § 483.10(a)(2);

(2) The facility may charge any amount for services furnished to non-Medicaid residents unless otherwise limited by state law and consistent with the notice requirement in § 483.10(g)(3) and (g)(4)(i) describing the charges; and

(3) The State is not required to offer additional services on behalf of a resident other than services provided in the State plan.

(c) Transfer and discharge—

(1) Facility requirements—

(i) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

(A) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;

(D) The health of individuals in the facility would otherwise be endangered;

(E) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Nonpayment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

(F) The facility ceases to operate.

(ii) The facility may not transfer or discharge the resident while the appeal is pending, pursuant to § 431.230 of this chapter, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility pursuant to § 431.220(a)(3) of this chapter, unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

(2) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (c)(1)(i)(A) through (F) of this section, the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

(i) Documentation in the resident's medical record must include:

(A) The basis for the transfer per paragraph (c)(1)(i) of this section.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(B) In the case of paragraph (c)(1)(i)(A) of this section, the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).

(ii) The documentation required by paragraph (c)(2)(i) of this section must be made by—

(A) The resident's physician when transfer or discharge is necessary under paragraph (c)(1)(A) or (B) of this section; and

(B) A physician when transfer or discharge is necessary under paragraph (b)(1)(i)(C) or (D) of this section.

(iii) Information provided to the receiving provider must include a minimum of the following:

(A) Contact information of the practitioner responsible for the care of the resident

(B) Resident representative information including contact information.

(C) Advance Directive information.

(D) All special instructions or precautions for ongoing care, as appropriate.

(E) Comprehensive care plan goals,

(F) All other necessary information, including a copy of the residents discharge summary, consistent with § 483.21(c)(2), as applicable, and any other documentation, as applicable, to ensure a safe and effective transition of care.

(3) Notice before transfer. Before a facility transfers or discharges a resident, the facility must—

(i) Notify the resident and the resident's representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. The facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.

(ii) Record the reasons for the transfer or discharge in the resident's medical record in accordance with paragraph (c)(2) of this section; and

(iii) Include in the notice the items described in paragraph (b)(5) of this section.

(4) Timing of the notice.

(i) Except as specified in paragraphs (b)(4)(ii) and (b)(8) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice must be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the facility would be endangered under paragraph (b)(1)(ii)(C) of this section;

(B) The health of individuals in the facility would be endangered, under paragraph (b)(1)(ii)(D) of this section;

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (b)(1)(ii)(B) of this section;

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (b)(1)(ii)(A) of this section; or

(E) A resident has not resided in the facility for 30 days.

(5) Contents of the notice. The written notice specified in paragraph (b)(3) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged;

(iv) A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;

(v) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;

(vi) For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402, codified at 42 U.S.C. 15001 et seq.); and

(vii) For nursing facility residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act.

(6) Changes to the notice. If the information in the notice changes prior to effecting the transfer or discharge, the facility must update the recipients of the notice as soon as practicable once the updated information becomes available.

(7) Orientation for transfer or discharge. A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.

(8) Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the Office of the State Long-Term Care Ombudsman, residents of the facility, and the resident representatives, as well as the plan for the transfer and adequate relocation of the residents, as required at § 483.70(l).

(9) Room changes in a composite distinct part. Room changes in a facility that is a composite distinct part (as defined in § 483.5) are subject to the requirements of § 483.10(e)(7) and must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.

(d) Notice of bed-hold policy and return—

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(1) Notice before transfer. Before a nursing facility transfers a resident to a hospital or the resident goes on therapeutic leave, the nursing facility must provide written information to the resident or resident representative that specifies—

(i) The duration of the state bed-hold policy, if any, during which the resident is permitted to return and resume residence in the nursing facility;

(ii) The reserve bed payment policy in the state plan, under § 447.40 of this chapter, if any;

(iii) The nursing facility's policies regarding bed-hold periods, which must be consistent with paragraph (c)(3) of this section, permitting a resident to return; and

(iv) The information specified in paragraph (c)(3) of this section.

(2) Bed-hold notice upon transfer. At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and the resident representative written notice which specifies the duration of the bed-hold policy described in paragraph (c)(1) of this section.

(e)(1) Permitting residents to return to facility. A facility must establish and follow a written policy on permitting residents to return to the facility after they are hospitalized or placed on therapeutic leave. The policy must provide for the following.

(i) A resident, whose hospitalization or therapeutic leave exceeds the bed hold period under the State plan, returns to the facility to their previous room if available or immediately upon the first availability of a bed in a semiprivate room if the resident

(A) Requires the services provided by the facility; and

(B) Is eligible for Medicare skilled nursing facility services or Medicaid nursing facility services.

(ii) If the facility that determines that a resident who was transferred with an expectation of returning to the facility cannot return to the facility, the facility must comply with the requirements of paragraph (c) as they apply to discharges.

(2) Readmission to a composite distinct part. When the facility to which a resident returns is a composite distinct part (as defined in § 483.5), the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of return, the resident must be given the option to return to that location upon the first availability of a bed there.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

APPENDIX H – ARTICLE 44:73, NURSING FACILITIES, CHAPTER 44:73:11, RESIDENT'S RIGHTS

CHAPTER 44:73:11

RESIDENT'S RIGHTS

Section

44:73:11:01	Application of chapter -- Residents' rights policies.
44:73:11:02	Facility to inform resident of rights.
44:73:11:03	Facility to provide information on available services.
44:73:11:04	Notification when resident's condition changes.
44:73:11:05	Repealed.
44:73:11:06	Right to manage financial affairs.
44:73:11:07	Repealed.
44:73:11:08	Privacy and confidentiality.
44:73:11:09	Quality of life.
44:73:11:10	Grievances.
44:73:11:11	Availability of survey results.
44:73:11:12	Right to refuse to perform services.
44:73:11:13	Self-administration of drugs.
44:73:11:14	Admission, transfer, and discharge policies.

44:73:11:01. Application of chapter -- Residents' rights policies. Each facility shall establish policies consistent with this chapter to protect and promote the rights of each resident.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 38 SDR 115, effective January 9, 2012; transferred from § 44:04:17:01, 42 SDR 51, effective October 13, 2015.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:73:11:02. Facility to inform resident of rights. Prior to or at the time of admission, a facility shall inform the resident, both orally and in writing, of the resident's rights and of the rules governing the resident's conduct and responsibilities while living in the facility. The resident shall acknowledge in writing that the resident received the information. During the resident's stay the facility shall notify the resident, both orally and in writing, of any changes to the original information.

Visiting hours and policies of the facility shall permit and encourage the visiting of residents by friends and relatives. Visitors may not cause a disruption to the care and services residents receive or infringement on other residents' rights or place an undue burden on the facility.

Source: SL 1975, ch 16, § 1; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 19 SDR 95, effective January 7, 1993; subdivision (8) transferred from § 44:04:12:03, 22 SDR 70, effective November 19, 1995; 27 SDR 59, effective December 17, 2000; transferred from § 44:04:17:02, 42 SDR 51, effective October 13, 2015.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:73:11:03. Facility to provide information on available services. A facility shall provide the following information in writing to each resident:

(1) A list of services available in the facility and the charges for such services. The facility shall specify which items and services are included in the services for which the resident may not be charged, those other

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

items and services that the facility offers and for which the resident may be charged, and the amount of any such charges;

(2) A description of how to apply for and use Medicare and Medicaid benefits, and the right to establish eligibility for Medicaid, including the addresses and telephone numbers of the nearest office of the South Dakota Department of Social Services and of the United States Social Security Administration;

(3) A description of the bed-hold policy which indicates the length of time the bed will be held for the resident, any policies regarding the held bed, and readmission rights of the resident; and

(4) A description explaining the responsibilities of the resident and family members regarding self-administered medication.

A signed and dated admission agreement between the resident or the resident's legal representative and the facility must include subdivisions (1) to (4), inclusive, of this section. The resident or resident's legal representative and the facility shall complete the admission agreement before or at the time of admission and before the resident has made a commitment for payment for proposed or actual care. The agreement shall be printed for ease of reading by the resident. Any change in the information shall be given to the resident or the resident's legal representative as a signed and dated addendum to the original agreement.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 24 SDR 90, effective January 4, 1998; 26 SDR 96, effective January 23, 2000; 28 SDR 83, effective December 16, 2001; transferred from § 44:04:17:03, 42 SDR 51, effective October 13, 2015.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:73:11:04. Notification when resident's condition changes. A facility shall immediately inform the resident, consult with the resident's physician, physician assistant, or nurse practitioner, and, if known, notify the resident's legal representative or interested family member when any of the following occurs:

- (1) An accident involving the resident which results in injury or has the potential for requiring intervention by a physician, physician assistant, or nurse practitioner;
- (2) A significant change in the resident's physical, mental, or psychosocial status;
- (3) A need to alter treatment significantly; or
- (4) A decision to transfer or discharge the resident from the facility.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; transferred from § 44:04:17:04, 42 SDR 51, effective October 13, 2015.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:73:11:05. Notification of resident's room assignment or rights change. Repealed.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 29 SDR 81, effective December 11, 2002; transferred from § 44:04:17:05, repealed, 42 SDR 51, effective October 13, 2015.

44:73:11:06. Right to manage financial affairs. A resident may manage personal financial affairs. A facility may not require residents to deposit their personal funds with the facility. If the resident chooses to deposit funds with the facility and gives written authorization, the facility shall hold the funds in accordance with SDCL 34-12-15.1 to 34-12-15.10, inclusive.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 38 SDR 115, effective January 9, 2012; transferred from § 44:04:17:06, 42 SDR 51, effective October 13, 2015.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:73:11:07. Choice in planning care. Repealed.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; transferred from § 44:04:17:07, repealed, 42 SDR 51, effective October 13, 2015.

44:73:11:08. Privacy and confidentiality. A facility shall provide for privacy and confidentiality for the resident. A facility shall permit residents to perform the following:

(1) To visit a spouse or, if both are residents of the same facility, to share a room with the spouse, within the capacity of the facility, upon the consent of both spouses;

(2) Except in an emergency, to have room doors closed and to require knocking;

(3) To have only authorized staff present during treatment or activities of personal hygiene;

(4) To retire and rise according to the resident's wishes, as long as the resident does not disturb other residents;

(5) To meet, associate, and communicate with any person of the residents choice in a private place within the facility;

(6) To participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility; and

(7) To approve or refuse the release of personal and medical records to any individual outside the facility, except when the resident is transferred to another health care facility or when the release of the record is required by law. With the resident's permission, a facility must allow the state ombudsman or a representative of the ombudsman access to the resident's medical records.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995.; transferred from § 44:04:17:08, 42 SDR 51, effective October 13, 2015.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

Cross-Reference: Written policies and confidentiality of records, § 44:73:09:03.

44:73:11:09. Quality of life. A facility shall provide care and an environment that contributes to the resident's quality of life, including:

(1) A safe, clean, comfortable, and homelike environment;

(2) Maintenance or enhancement of the residents ability to preserve individuality, exercise self-determination, and control everyday physical needs;

(3) Freedom from physical or chemical restraints imposed for purposes of discipline or convenience;

(4) Freedom from verbal, sexual, physical, and mental abuse and from involuntary seclusion, neglect, or exploitation imposed by anyone, and theft of personal property;

(5) Retention and use of personal possessions, including furnishings and clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents; and

(6) Support and coordination to assure pain is recognized and addressed appropriately.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 28 SDR 83, effective December 16, 2001; transferred from § 44:04:17:09, 42 SDR 51, effective October 13, 2015.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

Cross-Reference: Care policies, § 44:73:04:12.

44:73:11:10. Grievances. A resident's grievance may be in writing or oral and may relate to treatment furnished, treatment that has not been furnished, the behavior of other residents, and infringement of the resident's rights. A facility shall adopt a grievance process and make the process known to each resident and to the resident's immediate family. The grievance process shall include the facility's efforts to resolve the grievance and documentation of:

- (1) The grievance;
- (2) The names of the persons involved;
- (3) The disposition of the matter; and
- (4) The date of disposition.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 29 SDR 81, effective December 11, 2002; transferred from § 44:04:17:10, 42 SDR 51, effective October 13, 2015.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:73:11:11. Availability of survey results. Survey results, along with the corresponding Plan of Correction shall be provided to residents and individuals upon request.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 27 SDR 59, effective December 17, 2000; transferred from § 44:04:17:11, 42 SDR 51, effective October 13, 2015.

General Authority: SDCL 34-12-13(15)

Law Implemented: SDCL 34-12-13(15)

44:73:11:12. Right to refuse to perform services. A resident may refuse to perform services on behalf of the facility, unless otherwise agreed to in the residents plan of care. The resident may perform services for the facility when the following conditions are met:

- (1) The plan of care includes documentation of the need or desire for work;
- (2) The nature of the services performed is specified, including whether the services are voluntary or paid;
- (3) Compensation for paid services is at or above prevailing rates; and
- (4) The resident agrees to the work arrangement.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; transferred from § 44:04:17:12, 42 SDR 51, effective October 13, 2015.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:73:11:13. Self-administration of drugs. A resident may self-administer drugs if the interdisciplinary team consisting of selected healthcare workers and licensed health professionals has determined the practice to be safe. The determination shall state whether the resident or the nursing staff is responsible for storage of the drug and documentation of its administration in accordance with chapter 44:73:08.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 28 SDR 83, effective December 16, 2001; 29 SDR 81, effective December 11, 2002; 32 SDR 128, effective January 30, 2006; 38 SDR 115, effective January 9, 2012; transferred from § 44:04:17:13, 42 SDR 51, effective October 13, 2015.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

Cross-Reference: Medication control, ch 44:73:08.

44:73:11:14 Admission, transfer, and discharge policies. A facility shall establish and maintain policies and practices for admission, discharge, and transfer of residents which prohibit discrimination based upon payment source. The facility shall notify each resident at or before the time of admission of these policies and procedures. The policies and practices shall include the following provisions:

(1) The resident may remain in the facility and may not be transferred or discharged unless the resident's needs and welfare cannot be met by the facility, the residents health has improved sufficiently so the resident no longer needs the services provided by the facility, the safety or health of individuals in the facility is endangered by the resident, the resident has failed to pay for allowable billed services as agreed to, or the facility ceases to operate;

(2) The facility must notify the resident and a family member or client advocate in writing at least 30 days before the transfer or discharge unless a change in the residents health requires immediate transfer or discharge or the resident has not resided in the facility for 30 days. The written notice shall specify the reason for and effective date of the transfer or discharge and the location to which the resident will be transferred or discharged;

(3) The conditions under which the resident may request or refuse transfer within the facility; and

(4) A description of how the resident may appeal a decision by the facility to transfer or discharge the resident.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 10, 1995; transferred from § 44:04:17:14, 42 SDR 51, effective October 13, 2015.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

APPENDIX I – ARTICLE 44:70, ASSISTED LIVING CENTERS, CHAPTER 44:70:09, RESIDENTS' RIGHTS AND SUPPORTIVE SERVICES

CHAPTER 44:70:09

RESIDENTS' RIGHTS AND SUPPORTIVE SERVICES

Section

44:70:09:01	Application of chapter -- Residents' rights policies.
44:70:09:02	Facility to inform resident of rights.
44:70:09:03	Facility to provide information on available services.
44:70:09:04	Notification when resident's condition changes.
44:70:09:05	Notification of resident's room assignment or rights change.
44:70:09:06	Right to manage financial affairs.
44:70:09:07	Choice in planning care.
44:70:09:08	Privacy and confidentiality.
44:70:09:09	Quality of life.
44:70:09:10	Grievances.
44:70:09:11	Availability of survey results.
44:70:09:12	Right to refuse to perform services.
44:70:09:13	Self-administration of drugs.
44:70:09:14	Admission, transfer, and discharge policies.
44:70:09:15	Spiritual needs.
44:70:09:16	Activities program.

44:70:09:01. Application of chapter -- Residents' rights policies. An assisted living center shall establish policies consistent with this chapter to protect and promote the rights of each resident.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:02. Facility to inform resident of rights. Prior to or at the time of admission, a facility shall inform the resident, both orally and in writing, of the resident's rights and of the rules governing the resident's conduct and responsibilities while living in the facility. The resident shall acknowledge in writing that the resident received the information. During the resident's stay the facility shall notify the resident, both orally and in writing, of any changes to the original information. The information shall contain the following:

(1) The resident's right to exercise the resident's rights as a resident of the facility and as a citizen of the United States;

(2) The resident's right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising the resident's rights;

(3) The resident's right to have a person appointed to act on the resident's behalf. If a resident has been adjudged incompetent or incapacitated, the resident's rights shall be exercised by the person appointed under state law to act on the resident's behalf. If a resident has not been adjudged to be incompetent or incapacitated, the resident's rights may be exercised by the legal surrogate recognized under state law, whether statutory or as recognized by the courts of the state to act on the resident's behalf. The facility shall record and keep up to date the appointed person's address and phone number;

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(4) The resident's right to access records pertaining to the resident. The resident may purchase photocopies of the resident's records or any portions of them. The cost to the resident may not exceed community standards for photocopying. The facility shall provide the photocopies within two working days of the request;

(5) The resident's right to be fully informed of the resident's total health status, including functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health, psychosocial status, and sensory and physical impairments;

(6) The resident's right to refuse treatment and to refuse to participate in experimental research. A resident's right to refuse treatment does not absolve a facility from responsibility to provide for necessary medical services and treatment. Any resident who refuses treatment shall be informed of the results of that refusal, plus any alternatives that may be available;

(7) The resident's right to formulate a durable power of attorney for health care as provided in SDCL chapter 59-7 and a living will declaration as provided in SDCL chapter 34-12D; and

(8) The resident's right to receive visitors. Visiting hours and policies of the facility shall permit and encourage the visiting of residents by friends and relatives.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:03. Facility to provide information on available services. A facility shall provide the following information in writing to each resident:

(1) A list of services available in the facility and the charges for such services. The facility shall specify which items and services are included in the services for which the resident may not be charged, those other items and services that the facility offers and for which the resident may be charged, and the amount of any such charges;

(2) A description of how a resident may protect personal funds;

(3) A list of names, addresses, and telephone numbers of client advocates;

(4) A description of how to file a complaint with the department concerning abuse, neglect, and misappropriation of resident property;

(5) A description of how the resident can contact the resident's physician, physician assistant, or nurse practitioner, including the name and specialty of the physician;

(6) A description of how to apply for and use Medicare and Medicaid benefits, and the right to establish eligibility for Medicaid, including the addresses and telephone numbers of the nearest office of the South Dakota Department of Social Services and of the United State Social Security Administration;

(7) A description of the bed-hold policy that indicates the length of time the bed will be held for the resident, any policies regarding the held bed, and readmission rights of the resident; and

(8) A description explaining the responsibilities of the resident and family members regarding self-administered medication.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

A signed and dated admission agreement between the resident or the resident's legal representative and the facility shall include subdivisions (1) to (8), inclusive, of this section. The resident or resident's legal representative and the facility shall complete the admission agreement before or at the time of admission and before the resident has made a commitment for payment for proposed or actual care. The agreement may not include ambiguous or misleading information and may not be in conflict with this chapter. The agreement shall be printed for ease of reading by the resident. If the agreement exceeds three pages, the agreement shall contain a table of contents or an index of principal sections. Any change in the information shall be given to the resident or the resident's legal representative as a signed and dated addendum to the original agreement.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:04. Notification when resident's condition changes. A facility shall immediately inform the resident, consult with the resident's physician, physician assistant, or nurse practitioner, and, if known, notify the resident's legal representative or interested family member when any of the following occurs:

- (1) An accident involving the resident that results in injury or has the potential for requiring intervention by a physician;
- (2) A significant change in the resident's physical, mental, or psychosocial status;
- (3) A need to alter treatment significantly; or
- (4) A decision to transfer or discharge the resident from the facility.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:05. Notification of resident's room assignment or rights change. A facility shall promptly notify the resident and, if known, the resident's legal representative, as specified in SDCL 34-12C-3, or interested family member if there has been a change in the resident's room or roommate assignment or if there has been a change in the resident's rights.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:06. Right to manage financial affairs. A resident may manage personal financial affairs. A facility may not require any resident to deposit any personal funds with the facility. If the resident chooses to deposit funds with the facility and gives written authorization, the facility shall hold the funds in accordance with the provisions of SDCL 34-12-15.1 to 34-12-15.10, inclusive. This section does not apply to any facility that does not manage a resident's personal funds.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:07. Choice in planning care. A resident may choose a personal attending physician, physician assistant, or nurse practitioner, be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being, and, unless adjudged incompetent or otherwise found to be incapacitated under the laws of the state, participate in planning care and treatment or changes in care or treatment.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

Cross-References:

Right to choose own physician, physician assistant, or nurse practitioner unimpaired by public health programs -- Misdemeanor, SDCL 34-1-20.

Rights of authorized person as incapacitated person, SDCL 34-12C-6.

Liability of health care provider -- Liability of authorized decision maker, SDCL 34-12C-7.

44:70:09:08. Privacy and confidentiality. A facility shall provide for privacy and confidentiality for the resident, including the resident's accommodations, medical treatment, written and telephone communications, personal care, visits, and meeting of family and resident groups. A facility is not required to provide a private room for each resident. A facility shall permit residents to perform the following:

- (1) To send and receive unopened mail and to have access to stationery, postage, and writing implements at the residents own expense;
- (2) To access and use a telephone without being overheard;
- (3) To visit a spouse or, if both are residents of the same facility, to share a room with the spouse, within the capacity of the facility, upon the consent of both spouses;
- (4) Except in an emergency, to have room doors closed and to require knocking before entering the resident's room;
- (5) To have only authorized staff present during treatment or activities of personal hygiene;
- (6) To retire and rise according to the resident's wishes, as long as the resident does not disturb other residents;
- (7) To meet, associate, and communicate with any person of the residents choice in a private place within the facility;
- (8) To participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility; and
- (9) To approve or refuse the release of personal and care records to any individual outside the facility, except if the resident is transferred to another health care facility or if the release of the record is required by law. With the resident's permission, a facility shall allow the state ombudsman or a representative of the ombudsman access to the resident's medical records.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

Cross-Reference: Record service, § 44:70:08:01.

44:70:09:09. Quality of life. A facility shall provide care and an environment that contributes to the resident's quality of life, including:

- (1) A safe, clean, comfortable, and homelike environment;

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

(2) Maintenance or enhancement of the residents ability to preserve individuality, exercise self-determination, and control everyday physical needs;

(3) Freedom from physical or chemical restraints imposed for purposes of discipline or convenience;

(4) Freedom from verbal, sexual, physical, and mental abuse and from involuntary seclusion, neglect, or exploitation imposed by anyone, and theft of personal property;

(5) Retention and use of personal possessions, including furnishings and clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents; and

(6) Support and coordination to assure pain is recognized and addressed appropriately.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:10. Grievances. A resident may voice grievances without discrimination or reprisal. A resident's grievance may be in writing or oral and may relate to treatment furnished, treatment that has not been furnished, the behavior of other residents, and infringement of the resident's rights. A facility shall adopt a grievance process and make the process known to each resident and to the resident's immediate family. The grievance process shall include the facility's efforts to resolve the grievance and documentation of:

- (1) The grievance;
- (2) The names of the persons involved;
- (3) The disposition of the matter; and
- (4) The date of disposition.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:11. Availability of survey results. A resident may examine the results of the department's most recent survey of the facility and any plan of correction in effect. A facility shall make available, in a place readily accessible to residents, results of the department's most recent survey.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:12. Right to refuse to perform services. A resident may refuse to perform services on behalf of the facility, unless otherwise agreed to in the residents plan of care. The resident may perform services for the facility if the following conditions are met:

- (1) The plan of care includes documentation of the need or desire for work;
- (2) The nature of the services performed is specified, including whether the services are voluntary or paid;
- (3) Compensation for paid services is at or above prevailing rates; and
- (4) The resident agrees to the work arrangement.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

44:70:09:13. Self-administration of drugs. The determination shall state whether the resident or the nursing staff is responsible for storage of the drug and documentation of its administration in accordance with the provisions of chapter 44:70:07. In an assisted living center, a resident may self-administer drugs if the registered nurse (if applicable) and physician, physician assistant, or nurse practitioner have determined the practice to be safe.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

Cross-Reference:

Medication control, ch 44:70:07.

Optional services, subdivision 44:70:04:14(2).

44:70:09:14. Admission, transfer, and discharge policies. A facility shall establish and maintain policies and practices for admission, discharge, and transfer of residents that prohibit discrimination based upon payment source. The facility shall notify each resident at or before the time of admission of these policies and practices. The policies and practices shall include the following provisions:

(1) The resident may remain in the facility and may not be transferred or discharged unless the resident's needs and welfare cannot be met by the facility, the residents health has improved sufficiently so the resident no longer needs the services provided by the facility, the safety or health of persons in the facility is endangered by the resident, the resident has failed to pay for allowable billed services as agreed to, or the facility ceased to operate;

(2) The facility shall notify the resident and a family member or client advocate in writing at least 30 days before the transfer or discharge unless a change in the residents health requires immediate transfer or discharge or the resident has not resided in the facility for 30 days. The written notice shall specify the reason for and effective date of the transfer or discharge and the location to which the resident will be transferred or discharged;

(3) The conditions under which the resident may request or refuse transfer within the facility; and

(4) A description of how the resident may appeal a decision by the facility to transfer or discharge the resident.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:15. Spiritual needs. The facility shall provide for the spiritual needs of the residents. Any resident's request to see a clergyman shall be honored. No specific religious beliefs or practices may be imposed on any resident contrary to the residents choice.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:16. Activities program. A planned activities program shall be provided with therapeutic activities designed to meet the needs and interests of each individual resident. Supplies and equipment shall be provided for activities to satisfy the individual interests of each resident.

Source: 38 SDR 115, effective January 9, 2012.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

APPENDIX J - FAMILY COUNCIL

Family Council

A family council is defined as a consumer group composed of the friends and relatives of the facility residents. Although each family council is unique, a typical council:

- has 5 to 10 active members;
- meets monthly at the facility;
- is run by relatives and friends of residents;
- has an advisor (usually a staff person of the home) who assists the council but is not considered a member; and
- has a variety of activities.

Purpose

The main purpose for having a family council is to protect and improve the quality of life in the home and within the long-term care system as a whole. Beyond these general goals specific purposes exist:

- support for families;
- education and information;
- services and activities for residents;
- joint activities for families and residents;
- action on concerns and complaints;
- encouraging legislative action and others.

Purposes vary greatly from council to council depending upon the interests of council members. A general set of purposes should be agreed upon when a council is new and revised as the goals and interests of members change.

Benefits of Family Council

Effective family councils benefit families, residents and the home in which they are involved in many ways. No one knows as well as a family member how difficult it is to place a loved one in a nursing home. Even after placement, families continue to share similar concerns, problems and questions. Family councils allow families to give each other the support, encouragement and information they need. Council involvement helps to resolve feelings of helplessness because families have a channel to express their concerns and ideas and a way to work for positive change. By being involved in issues that affect their resident/loved one, families feel less isolated and powerless.

Studies have repeatedly shown that residents receive better care in homes where families and friends visit and are involved. In addition, family involvement makes a nursing or boarding care home more like a home and less like an institution. Because family council activities benefit all residents, even those who do not have concerned families are helped. Family involvement also protects residents who are physically or mentally unable to voice their concerns and needs for themselves.

The nursing or boarding care home also benefits. Councils allow administration and staff to deal directly with family concerns and ideas, to convey needed information to families and to decrease resident staff turnover by creating workable ways to deal with family dissatisfaction. Many administrators have said that there have been instances when they were unaware that families had a concern but because the concern was raised at a council meeting it was easily resolved. Administrators have also shared examples of problems that were solved because of the good ideas or assistance of a council.

Family councils also give families, administrators and staff opportunities to get to know each other better and to establish meaningful lines of communication.

Council Success

Some basic ingredients to council success:

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- Commitment/involvement of staff including top administration;
- Designation of support liaison staff to council;
- Delegation of some decision making responsibility to council;
- Regular meetings (well publicized);
- Written minutes posted on bulletin board or published in newsletter;
- Prompt, specific and respectful answers to problems;
- Access to and provision of information to the council;
- Publicity on grievance resolution process;
- Emphasis on constructive involvement in planning activities, programs, projects, etc.;
- Desk, bulletin board and financial support are helpful.

Refer to an example of a Family Council Bylaws form on the next page.

**DEPARTMENT OF SOCIAL SERVICES
DIVISION OF ADULT SERVICES AND AGING
South Dakota Long Term Care Ombudsman Program**

FAMILY COUNCIL BYLAWS

I. NAME

The name of the organization shall be the _____ Family Council.

II. PURPOSE

The purpose of the Family Council is to:

1. Comfort, inform and motivate friends and relatives of nursing home residents;
2. Improve the quality of life, well-being and happiness of all residents of the nursing home;
3. Provide input on nursing home decisions and act on shared concerns and problems;
4. Promote positive attitudes toward aging and the role of nursing homes in long-term care;
5. Promote education in the community about aging and the Nursing Home;
6. Be involved in legislative decisions to benefit residents and nursing homes.

III. MEMBERSHIP AND ATTENDANCE

A friend or relative of a resident may become a member of the Family Council.

Residents of the Nursing Home are precluded from Family Council Meetings unless designated for special events.

Members of deceased residents are encouraged to continue their active membership.

IV. OFFICERS AND COMMITTEES

Officers of the organization shall be president, vice-president and secretary-treasurer.

The president shall preside over all meetings. In the event of their absence, the vice-president shall preside.

The secretary shall record the minutes of each meeting and maintain the minutes as a permanent record.

The executive committee shall consist of council officers. Committees may be set up as needed by the executive committee.

V. ELECTIONS

Elections shall be held every year in June. A nominating committee shall be selected by the executive committee; the committee, in turn will present to the membership a list of candidates for election.

VI. MEETINGS

Meetings of the _____ Family Council shall be held every other month.

Meetings of the executive committee shall be held as deemed necessary by the executive committee.

Meetings may be changed with a majority vote of the membership.

VII. AMENDMENTS

All proposed amendments shall be mailed to all council members prior to a meeting.

Amendments may be made to these bylaws at any regular or special meeting of the council by a majority vote. Amendments go into effect immediately

VIII. RULES OF ORDER

Each meeting will follow the agenda prepared by the executive committee. Each person wishing to speak shall raise their hand and be recognized by the chairperson.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

APPENDIX K – RESIDENT COUNCIL

RESIDENT COUNCIL

The Nursing Home Resident Council is a resident organization within the nursing home whose members usually are residents of the home. All residents of the home can participate in the Resident council just by the fact that they reside within the home. The Resident Council has powerful rights in nursing homes, these rights help protect the Rights of Residents.

Size and structure of councils vary from a few members to a large group. Residents' councils are successful with a few active members. Leadership styles differ as does the amount of resident involvement. The resident council is not governed by nursing homes. The LTCO is mandated to protect the rights of resident councils in nursing homes. The LTCO also protects residents' rights, quality of life and care in nursing homes.

What does it do?

The resident council provides a "vehicle" for residents to participate in decision-making and for residents to voice grievances and resolve differences. Usually residents, who are able, take on the role of speaking up for those who cannot; acting as a representative for the population of the nursing home. Every nursing home resident council is different, due to differences in both the residents' needs who participate and in the level of support and responsiveness from the facility.

An Effective Resident Council Can:

- Improve communications within their homes. They are known as places to get the facts and can help dispel rumors
- Help identify problems early which make it easier to do something about them in a timely fashion. They are important part of the grievance process and help avoid the necessity of discussing problems with outside sources.
- Serve as a sounding board for new ideas.
- Help Individual speak out about what's bothering them and help overcome fear of retaliation. When people are dependent on others for their needs, there is fear that they may make others so angry that care will be withheld. Resident Councils lessen the fear, because speaking up as a group is easier than as an individual.
- Improve the atmosphere of the homes where they are active. The staff appreciates having residents share in some of the responsibilities of planning activities and events.
- Promote friendship by working in small groups that meet regularly. Residents have a chance to get to know each other well in this type of setting.

Why Have a Council?

South Dakota and Federal government promote the rights of residents to meet as a council. Councils have the right to meet privately or to invite members of the home's staff, relatives, friends, or members of community organizations to participate in the meetings. The home must designate a staff person to serve as a liaison to the council, to attend council meetings if requested, and to provide needed support services and assistance, such as typing of minutes and correspondence.

Resident Council Rights:

- Each facility shall have resident council consisting of representatives elected by facility residents. Elections shall be held annually, depending on how the residents prefer the meetings to be run.
- The council shall annually elect a chair form among its members. The chair shall call and preside at council meetings.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- The resident council shall serve in an advisory capacity to the respective administration and to the director in all matters related to policy and operational decisions affecting resident care and life in the facility, to include, but not be limited to, input into the biennial budget making process and facility supplementary policies and procedures. The administration shall give due and proper consideration to such input.
- Each resident council shall:
 - Actively participate in development of choices regarding activities, food, living arrangements, personal care and other aspects of resident life; and
 - When so requested by a resident, serve as an advocate in resolving grievances and ensuring resident rights are observed.

In smaller nursing facilities resident councils are frequently operated as open meetings for all interested residents. There may be a steering committee to help plan meeting agendas and to follow up on decisions made by the council.

Larger nursing facilities will often have councils made up of representatives elected or recruited from different sections of the facility. Council representatives are responsible for seeking the concerns and suggestions of residents in their area and for bringing this information to the meetings.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

APPENDIX L – AVOIDING AND RESPONDING TO DELINQUENT FACILITY ACCOUNTS

The following guidelines may be offered to facilities in the interest of avoiding delinquent patient accounts:

A. Prior to admission to the facility, facility staff should:

- Participate in an orientation meeting with future residents, family members, and responsible parties that will emphasize, clarify, and put in writing expectations regarding the following:
 - Payment methods;
 - Date payment is due;
 - Person responsible for payments;
 - Written court or other "legal" documentation of designated financial authorities held by a representative payee, agent with power of attorney, conservator, trust administrator, guardian, or other person;
 - Repercussions of late or non-payment, such as the facility's/corporation's collection policies and procedures;
 - Review the limitations of the resident's payment sources;
 - Number of days limited by Medicare;
 - Payment thresholds of long term care insurance.

If the future resident is applying for medical assistance, or will soon apply for medical assistance, the facility may help the resident/responsible party with the application process.

B. At admission the facility should:

- Provide resident and/or legal representative with a copy of the Facility Admission Policy as defined in [Federal Regulation \(§ 483.15\)](#).
- Identify to the resident and responsible party the person who will be monitoring their monthly financial obligations to the facility. Each facility should have one staff person (from the business or accounting office) designated and trained to oversee the financial obligations of residents.
- Provide to the resident and responsible party an information sheet or brochure on billing procedures, payment expectations, and non-payment consequences. The information provided should include:
 - Contact names and phone numbers for the facility, for medical (financial) assistance information, and for other payment sources;
 - Clearly outlined financial obligations of the resident and/or the responsible party as they pertain to funding sources, such as Social Security benefits, pensions or other income sources.

If a Medicaid application is expected or pending, the following process must be followed:

- Obtain resident/responsible party consent for the facility to assist in the Medicaid eligibility application process, or find a reputable and qualified person outside the facility who will assist with the application process.
- Obtain a release from the resident/responsible party and send it to the local Department of Social Services, Division of Economic Assistance, Long Term Care Benefits Specialist advising that an application for Long Term Care Assistance was either recently filed or is expected to be filed soon.
- If necessary, file the initial Medicaid application, on behalf of the resident, with appropriate resident/responsible party signatures. This action secures the date for determining eligibility for Medicaid.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

The provider may enter into a contract with resident and/or responsible party to provide facility payment from resident's income or resources.

C. 30 Days Post-Admission/Payment Transition:

- Determine whether payment was made for the first month.
- If no payment was made for the first month, the designated financial staff person and the facility social worker should meet with the resident and responsible party to clarify why the non-payment issue has developed.
- Follow up by a designated financial staff person (and facility social worker, if appropriate) should be made with the resident and family member 30 days prior to the expiration of any current payment source to determine how future payments will be made.

If Medicaid is in "pending" status for more than 30 days, the facility may need to check with the local Long Term Care Benefits Specialist to determine the status of the application.

If Medicaid is denied and there are questions regarding the reason, contact the local Long Term Care Benefits Specialist for clarification.

If problems are anticipated for any reason in receiving regular payments from the responsible party, the designated financial staff person (or facility administrator) should have a business policy in place that requires the responsible party to petition the court for the appointment of a conservator to better assure the proper use of the resident's assets.

D. 30 Days After Non-Payment Determined:

The facility should conduct an internal assessment to determine:

- The name and location of the responsible party, if different from the resident.
- If the non-payment is related to problems with other payer sources, facility staff should assist the resident/family in the appropriate appeal/complaint process.
- If the non-payment appears to be intentional. In this case, the facility should:
 - Initiate collections proceedings against the responsible party, as set forth in the facility's business policies and procedures.
 - Request that the Ombudsman research the issue for possible financial exploitation. If indicators of financial exploitation are present the Ombudsman will make a referral to the Attorney General's Office of Medicaid Fraud Control.
 - Refer the case to law enforcement. If indicators of financial exploitation are present the Ombudsman will make a referral to the Attorney General's Office of Medicaid Fraud Control, Adult Protection Services and/or Law enforcement.

E. Unresolved Payment Issues:

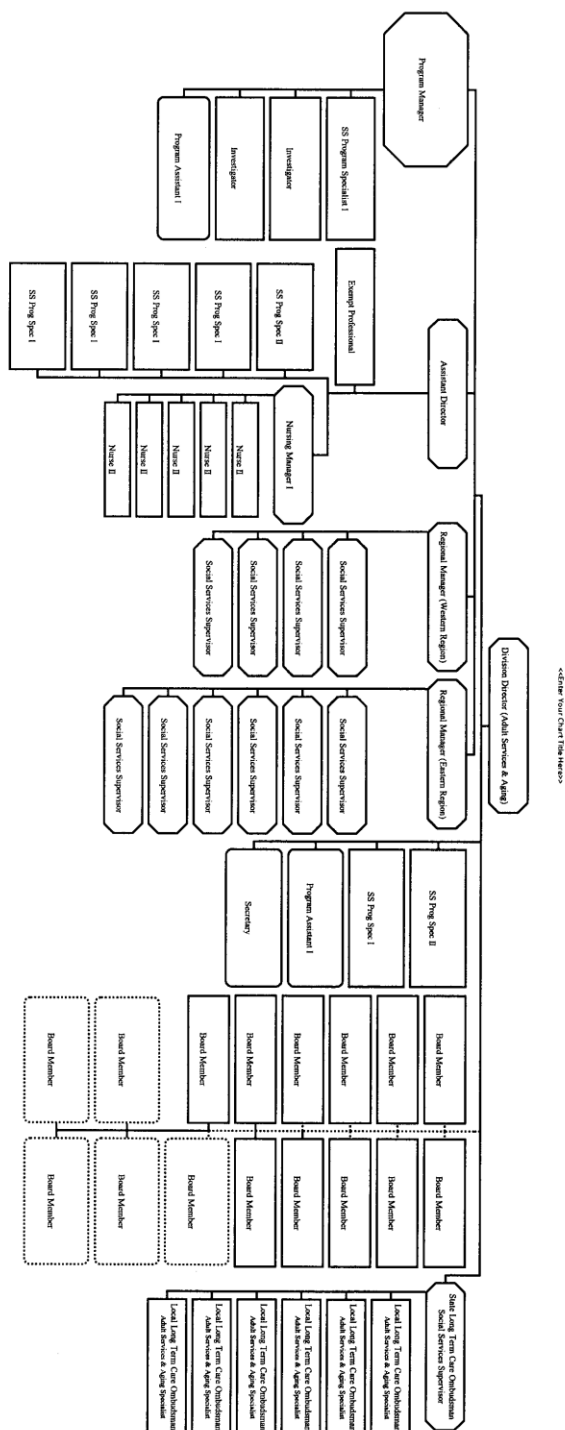
The transfer/discharge of a resident due to non-payment is always a last resort response. In order to avoid this action, the facility should consider the following steps:

- Action may be taken to have the resident's monthly income deposited into a facility/resident account, or to become the resident's representative payee. (See <https://www.socialsecurity.gov/payee/LessonPlan-2005-2.htm>)
- Contact and provide proof to the Social Security Administration (1-800-772-1213) regarding non-payment of the facility account due to the misuse of the resident's Social Security benefits by the acting representative payee
- Apply to the Social Security Administration using their Request to be Selected as Payee form (SSA-11-BK) to be accepted as an organizational representative payee for the resident. (See <https://www.socialsecurity.gov/forms/ssa-11-bk.pdf>)
- Initiate civil action for non-payment – [Small Claims Court Limit](#) is \$12,000.00

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- Appropriate action may be pursued under [SDCL 25-7-27](#) – Adult Child's Duty To Support A Parent When Necessary
- Appropriate action may be pursued under [SDCL 22-46](#) – Abuse, Neglect or Exploitation of Elders or Adults with Disabilities
- Appropriate action may be pursued under [SDCL 21-24-5](#) – Determination of rights under trust or decedent's estate
- [SDCL 29A-5](#) – South Dakota Guardianship and Conservatorship Act
- Refer legal issues/problems, such as delinquent facility accounts due to non-payment by a responsible party, i.e., family members, representative payees, conservators or guardians, to:
 - East River Legal Services (1-800-952-3015)
 - Dakota Plains Legal Services (1-800-658-2297)
 - State Bar of South Dakota/Lawyer Referral Services (1-800-952-2333)(See www.sdbar.org)

APPENDIX M – SOUTH DAKOTA DEPARTMENT OF HUMAN SERVICES’ DIVISION OF
LONG TERM SERVICES AND SUPPORTS ORGANIZATIONAL CHART



**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

**APPENDIX N: INITIAL AND ONGOING LONG TERM CARE OMBUDSMAN TRAINING
MANUAL FOR STATE OF SOUTH DAKOTA OMBUDSMEN**

The Initial and Ongoing LTCO Training Manual for State of South Dakota Ombudsmen is located in its entirety on the J: Drive. J:ASA\Ombudsman Final Rule 2015\Ombudsman Training Materials

Part I: Classroom training session with the SLTCO in Pierre

Program Topic / Presenter(s)	Comments	Hours of Credit
SD Facilities Mini Mental Examinations Brief Interview for Mental Status Conflict of Interest (forms / definitions) Confidentiality form	SLTCO	1
History and Role of the LTCOP	SLTCO	2.5
Motivational Interviewing	Outside entity	2
Ombudsman Problem Solving Process Introduction	SLTCO	1
Ombudsman Problem Solving Investigation	SLTCO	3
Ombudsman Problem Solving Process Resolution	SLTCO	2
Resident Rights	SLTCO	3
Department of Health office of Licensure and Certification for Nursing Homes	LTC Process, regulations	1
Department of Health office of Licensure and Certification for Assisted Living Facilities	ALC Survey Process, LOC	1
Conference call with a SLTCO from another State	State Ombudsman	1.5
Involuntary Discharge and Transfer	http://www.nclc.org/national-elder-rights-training-program/involuntary-transfer-and-discharge-from-nursing-homes-prevention-advocacy-and-appeals.html Specifics on what is required in the discharge notice, what is required when requesting a fair hearing	2.5
NORS introduction, practice, annual report	Introduction, Activities, Cases, practice classifying and documenting	2.5
Policies Overview	SLTCO	1.5
LTCO Final Rule	SLTCO	1
Introduction: Olmsted Act	SLTCO	.5
Adult Protection	APS Program Specialist Responsibilities / Law	1
TOTAL HOURS		27

Part II: Post Classroom training

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

Program Topic	Comments	Hours of Credit
Review of Law – Older Americans Act, amendment, and reauthorization	http://legis.sd.gov/rules/DisplayRule.aspx?Rule=44:70; http://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=44:73 http://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=44:73:11 http://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=44:73:11:14 http://legis.sd.gov/Rules/DisplayRule.aspx?Rule=67:16:04:41&Type=Rule&SearchString=routine; http://www.aoa.gov/AOA_programs/OAA/oa_full.asp http://theconsumervoice.org/uploads/files/issues/1-20-14-Older-Americans-Act.pdf https://aoa.acl.gov/AoA_Programs/OAA/reauthorization/2016/docs/Older-Americans-Act-of-1965-Compilation.pdf	2
Adult Foster Care	http://www.sdlegislature.gov/rules/DisplayRule.aspx?Rule=44:77:01	.5
On-Line Training through NORC	http://ltombudsman.org/omb_support/training/norc-curriculum	9
On Site Training	SLTCO	4
Working with Families	http://ltombudsman.org/uploads/files/support/fm-paper.pdf http://ltombudsman.org/omb_support/training/trainings-and-conference-calls/2013	.5
Culture Change	http://ltombudsman.org/uploads/files/support/LTCO-Role-in-Cul-Change-Final1.pdf	1
	TOTAL HOURS	18
	EXAM	1.5

TOTAL INITIAL TRAINING HOURS	45
Exam	1.5 hours
TOTAL CERTIFICATION HOURS	46.5

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

APPENDIX O – STATE LONG TERM CARE OMBUDSMAN JOB DESCRIPTION

**State Long Term Care Ombudsman Job Description
Long Term Services and Supports Supervisor**

A. Purpose:

This position is responsible for investigating complaints about services in long-term care facilities, mediating disputes, offering information/referral services surrounding long-term care, providing advocacy services to residents within these facilities, and conducting outreach activities such as training staff, community groups and other agencies on issues such as residents' rights and other related issues. This position is also responsible for administering state and federal grants and reviewing, analyzing and interpreting state and federal laws, policies, rules, and regulations related to the LTCOP. This position is responsible for completing required state and federal reports as well as the development and implementation of an annual program budget. Duties include development and implementation of program and agency policies and supervision and oversight of Long Term Services and Supports Specialists serving as LLTCO who provide supportive services for the LTCOP.

B. Distinguishing Feature:

The **State Long Term Care Ombudsman – Long Term Services and Supports Supervisor** provides expert advice and training to assigned Long Term Services & Supports Specialists serving as LLTCO regarding the LTCOP. This position provides statewide services and may be required to work a flexible schedule which may include evening, night, holiday and weekend hours. This position will require extensive travel throughout the state.

C. The Ideal Candidate Will Have:

A bachelor's degree with major work in social work, psychology, health or related field may be considered as applicable to the entry-level knowledge, skills and abilities.

The ideal candidate will demonstrate expertise in: long-term services and supports or other direct services for older persons or individuals with disabilities; consumer-oriented public policy advocacy; leadership and program management skills; and negotiation and problem resolution skills.

D. Required Background Investigation:

Successful applicant(s) will be required to undergo a background investigation. An arrest/conviction record will not necessarily bar employment.

E. Functions:

The SLTCO provides services to protect the health, safety, welfare, and rights of residents of long term care facilities. The SLTCO is responsible for providing leadership, planning and direction for the LTCOP to include program management, development of policies and procedures and maintaining adherence to the Ombudsman Code of Ethics.

The SLTCO supervises and provides direction and coordination to the LLTCO and is primarily responsible for the following:

- Appropriately interpreting the LTCOP policies and procedures and accurately responds to team member's questions in a timely manner;
- Assisting team members in appropriately applying policies and procedures to individual resident's circumstances;
- Providing casework guidance and problem solving/critical thinking assistance to team members regarding the LTCOP;

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- *Certification and De-Certification of LLTCO*
- *Determining the use of fiscal resources appropriated or otherwise available for the operation of the Office*
- *Establishing training protocol for LLTCO*
- *Receive grievances and investigate allegations of misconduct by LLTCO in the performance of Ombudsman duties*
- *Coordinating Ombudsman services with Adult Protective services, other state agencies such as the Department of Health and the Medicaid Fraud Control Unit, long term care facilities, law enforcement, advocacy programs and other appropriate agencies;*
- *Maintaining and managing the OmbudsManager data base to include maintenance of case records, submission of data as required to the Administration on Aging, and preparation and distribution of the annual report as required by the Administration on Aging;*
- *Management and analysis of the collection of data relating to complaints and conditions in long term care facilities, for the purpose of identifying and resolving significant problems;*
- *Providing information and assistance regarding long term care issues to the general public, residents and staff of long term care facilities, community organizations, and other interested parties;*
- *Providing specialized technical assistance, consultation, training and resources to LLTCO representatives;*
- *Periodic review of the resolution status of complaints to verify the accuracy of LLTCO reporting;*
- *Maintenance of a quality assurance program to monitor resident satisfaction with complaint resolution;*
- *Providing facility in-service education sessions;*
- *Making regular visits to facilities to provide a presence and build relationships;*
- *Advocating for, mediating, investigating, and educating residents and others and upholding their responsibility to act in situations involving vulnerable individuals;*
- *Providing options planning so residents and families can make informed decisions;*
- *Referring complaints to other agencies and following up as appropriate;*
- *Respecting the confidentiality of sensitive and personal information;*
- *Coordinating with and promoting the development of citizen organizations consistent with the interest of residents;*
- *Promoting, providing technical support for the development of, and providing ongoing support as requested by resident and family councils to protect the well-being and rights of residents;*
- *Analyze, comment on and monitor the development and implementation of federal, state, and local laws regulations and other governmental policies and actions, pertaining to the health, safety, welfare and rights of the residents, with respect to the adequacy of long-term care facilities and services in the state. Facilitation of public comment may be a part of this.*
- *Recommending any changes in such laws, regulations, policies, and actions as determined appropriate for the health, safety, welfare and rights of residents;*
- *Facilitating public comment on the laws, regulations, policies, and actions as necessary;*
- *Providing leadership to statewide systems advocacy efforts of the Office on behalf of long term care facility residents, including coordination of system advocacy efforts carried out by representatives of the Office;*
- *Providing information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns; and*
- *Performing other duties as assigned.*

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

F. Reporting Relationships:

Reports to the Director of the Division of Long Term Services and Supports. Provides daily work direction to assigned Long Term Services & Supports Specialists in their role as LLTCO regarding the LTCOP.

G. Challenges and Problems:

Challenges include working with adults with a wide age range who have mental illnesses, complex medical conditions, addiction problems, competency issues, behavior problems, and dysfunctional families; determining when interventions are necessary in crisis situations; determining accurate implementation; understanding of multiple programs; maintaining a calm environment while working with residents.

H. Decision-making Authority:

Decisions include assignment of work, ensuring prompt response to emergency situations, and development of training plans for staff, reviewing case files, working to resolve problems and complaints from residents and/or facility staff, and establishing protocol and holding meetings with long term care providers. Other decisions include assessing the immediate safety of residents and their individual needs; selecting alternative or long-term care options; interpreting laws, rules, and written procedures governing program areas.

Decisions referred to the Long Term Services and Supports Director include, but are not limited to, input on possible interventions; statute or regulation interpretations; and approval of resources that would have a budgetary impact; establishment of a guardianship or conservatorship, interpretation of unclear or conflicting statewide policy issues, and approval of formal disciplinary actions.

I. Contact with Others:

Frequent contact with residents and their families by phone, person to person, and email in response to requests for information. Contact with other departmental staff and long-term care facilities.

J. Working Conditions:

Work may be performed in a typical office environment or in residential and long term care facilities.

K. Knowledge, Skills, and Abilities:

Knowledge of:

- Concepts related to residents' rights, confidentiality and professional and ethical behaviors;
- Managerial, administrative, and supervisory principles and techniques;
- Cultural, economic, physical, social, and psychological factors that influence family dynamics and interpersonal relationships;
- Federal and state laws and regulations governing the Ombudsman Program including processing and managing state and federal grants; and
- Policy making and implementation, including the legislative processes.

Skills:

- Strong organizational and computer skills that allows for the use of an information and referral database that tracks calls, consumer demographics; and data resources as well as the use of other consumer tracking methods;
- Good interpersonal skills, an openness and flexibility in working with diverse groups, and enthusiasm for working collaboratively and with a team;

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- Moderate skills in listening, customer service, interviewing; and
- Demonstrate sound judgment and responsibility and maintain confidentiality to respect the privacy of the resident and their family members.

Ability to:

- Prepare clear and concise documentation, reports, and correspondence that reflect relevant facts;
- Identify risks, assess needs, and develop intervention strategies;
- Provide prompt, efficient and responsive service;
- Communicate information clearly and effectively;
- Establish and maintain effective and collaborative working relationships and demonstrate compassion, respect, courtesy, and tact when interacting with others;
- Function calmly in situations which require a high degree of sensitivity, tact and diplomacy;
- Exercise good judgment in evaluating situations and in making decisions, and releasing confidential information;
- Maintain consumer records and documentation;
- Summarize data, prepare reports and compose correspondence;
- Gather and analyze data, reason logically and accurately, and draw valid conclusions;
- Interpret and explain laws, regulations, and policies;
- Testify in court;
- Actively listen, elicit needed information and communicate information effectively and accurately, both orally and in writing;
- Utilize computerized data system (Microsoft Word preferred but not required);
- Effectively plan and organize work activities, adjust to multiple demands, and prioritize tasks to complete assignments and meet schedules and deadlines;
- Assume initiative with minimal supervision;
- Observe and correctly assess situations;
- Manage resources and day-to-day responsibilities in a manner that instills public trust;
- Correctly interpret federal laws, regulations and grant requirements;
- Navigate and identify integrity problems with grant management information systems;
- Analyze grant applications and make well reasoned funding recommendations.
- Make difficult decisions and assume accountability for actions and results;
- Recognize individual strengths and weakness, build , lead and motivate teams that are committed to a common goal;
- Adjust and adapt to changing policies and procedures; and
- Establish workloads, deadlines, and performance objectives; and follow-up to ensure proper completion of outcomes and expectations (preferred but not required).
- *Representing the interests of residents before government agencies and assure that individual residents have access to, and pursue administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;*
- *Reviewing, and commenting on existing and proposed laws, regulations, and other government policies and actions that pertain to the rights and well-being of residents and facilitate the ability of the public to provide comments;*
- *Promoting, providing technical support for the development of, and providing ongoing support as requested by resident and family councils;*
- *Performing other duties as assigned.*

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

APPENDIX P – LOCAL LONG TERM CARE OMBUDSMAN JOB DESCRIPTION

**Local Long Term Care Ombudsman Job Description
Long Term Services and Supports Specialist**

A. Purpose:

This position is responsible for investigating complaints about services in long-term care facilities, mediating disputes, offering information/referral services surrounding long-term care, providing advocacy services to residents within these facilities, and conducting outreach activities such as training staff, community groups and other agencies on issues such as residents' rights and other related issues.

B. Distinguishing Feature:

This position provides services in a multi-county area and may be required to work a flexible schedule which may include evening, night, holiday, and weekend hours. This position will require extensive travel within a multi-county area.

The **Local Long Term Care Ombudsman, Long Term Services and Supports Specialist** is responsible for an assigned case load within an assigned multi-county area and reports to the **State Long Term Care Ombudsman, Long Term Services and Supports Division Director**.

C. The Ideal Candidate Will Have:

A bachelor's degree with major work in social work, psychology, health or related field may be considered as applicable to the entry-level knowledge, skills and abilities. The ideal candidate will demonstrate expertise in: long-term services and supports or other direct services for older persons or individuals with disabilities; consumer-oriented public policy advocacy; leadership and program management skills; and negotiation and problem resolution skills.

D. Required Background Investigation:

Successful applicant(s) will be required to undergo a background investigation. An arrest/conviction record will not necessarily bar employment.

E. Functions:

The Local Long Term Care Ombudsman, working under the direction of the State Ombudsman Program, provides services to protect the health, safety, welfare, and rights of residents of long term care facilities. Duties when serving as a Local Long Term Care Ombudsman include:

- *Complaint processing;*
- *Maintaining awareness of current issues and trends in long term care;*
- *Applying policies and procedures to individual resident's circumstances;*
- *Providing ongoing follow-up and monitoring as necessary to residents and families;*
- *Building relationships with residents;*
- *Attending resident council and family council activities when invited and as time allows;*
- *Participating in the collection of data relating to complaints and conditions in long term care facilities, for the purpose of identifying and resolving significant problems;*
- *Attending initial group meeting and exit interviews with Department of Health survey teams whenever possible;*
- *Advocating for, mediating, investigating, and educating residents and others and upholding their responsibility to act in situations involving vulnerable individuals;*
- *Providing options planning so residents and families can make informed decisions;*
- *Respecting the confidentiality of sensitive and personal information;*
- *Maintaining documentation in the OmbudsManager data base to include maintenance of case records;*

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- *Providing information and assistance regarding long term care issues to the general public, residents and staff of long term care facilities, community organizations and other interested parties;*
- *Making regular visits to facilities to provide a presence and build relationships;*
- *Coordinating with and promoting the development of citizen organizations consistent with the interest of residents;*
- *Identifying, investigating, and resolving complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of residents;*
- *Ensuring that residents in the service area of the Local Long Term Care Ombudsman have regular and timely access to the services provided through the Ombudsman Program and that residents and complainants receive timely responses to requests for information and complaints;*
- *Representing the interests of residents before government agencies and assure that individual residents have access to, and pursue administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;*
- *Reviewing, and commenting on existing and proposed laws, regulations, and other government policies and actions that pertain to the rights and well-being of residents and facilitate the ability of the public to provide comments;*
- *Promoting, providing technical support for the development of, and providing ongoing support as requested by resident and family councils;*
- *Analyzing, commenting on, and monitoring the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long term care facilities and services in the state;*
- *Recommending any changes in such laws, regulations, policies, and actions as determined appropriate for the health, safety, welfare and rights of residents;*
- *Facilitating public comment on the laws, regulations, policies, and actions as necessary;*
- *Providing information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns; and*
- *Performing other duties as assigned.*

F. Reporting Relationships:

Report to the State Long Term Care Ombudsman.

G. Challenges and Problems:

Challenges include working with adults with a wide age range who have mental illnesses, complex medical conditions, addiction problems, competency issues, behavior problems, and dysfunctional families; determining when interventions are necessary in crisis situations; determining accurate implementation; understanding of multiple programs; maintaining a calm environment while working with residents.

H. Decision-making Authority:

Decisions include assessing the immediate safety of residents and their individual needs; selecting alternative or long-term care options; interpreting laws, rules, and written procedures governing program areas.

Decisions referred to the State Long Term Care Ombudsman include, but are not limited to, input on possible interventions; statute or regulation interpretations; approval of resources that would have a budgetary impact; and referrals to other entities.

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

I. Contact with Others:

Frequent contact with residents and their families by phone, person to person, and email in response to requests for information. Contact with other departmental staff and long term care facilities.

J. Working Conditions:

Work may be performed in a typical office environment or in residential and long term care facilities.

K. Knowledge, Skills, and Abilities:

Knowledge of:

- Concepts related to residents' rights, confidentiality and professional and ethical behaviors;
- Basic theories, principles, and methods of social work and methods of assessment;
- Principles and techniques of conducting interviews and acquiring information for resolution;
- Cultural, economic, physical, social, and psychological factors that influence family dynamics and interpersonal relationships; and
- Federal and state laws and regulations governing the Ombudsman Program.

Skills:

- Strong organizational and computer skills that allows for the use of an information and referral database that tracks calls, consumer demographics; and data resources as well as the use of other consumer tracking methods;
- Good interpersonal skills, an openness and flexibility in working with diverse groups, and enthusiasm for working collaboratively and with a team;
- Moderate skills in listening, customer service, interviewing; and
- Demonstrate sound judgment and responsibility and maintain confidentiality to respect the privacy of the consumer and their family members.

Ability to:

- Prepare clear and concise documentation, reports, and correspondence that reflect relevant facts;
- Identify risks, assess needs, and develop intervention strategies;
- Provide prompt, efficient and responsive service;
- Communicate information clearly and effectively;
- Establish and maintain effective and collaborative working relationships and demonstrate compassion, respect, courtesy, and tact when interacting with others;
- Function calmly in situations which require a high degree of sensitivity, tact and diplomacy;
- Exercise good judgment in evaluating situations and in making decisions, and releasing confidential information;
- Maintain consumer records and documentation;
- Summarize data, prepare reports and compose correspondence;
- Gather and analyze data, reason logically and accurately, and draw valid conclusions;
- Interpret and explain laws, regulations, and policies;
- Testify in court;
- Actively listen, elicit needed information and communicate information effectively and accurately, both orally and in writing;
- Utilize computerized data system (Microsoft Word preferred but not required);
- Effectively plan and organize work activities, adjust to multiple demands, and prioritize tasks to complete assignments and meet schedules and deadlines;

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS
South Dakota Long Term Care Ombudsman Program**

- Assume initiative with minimal supervision;
- Observe and correctly assess situations; and
- Adjust and adapt to changing policies and procedures.