



SOUTH DAKOTA

LONG-TERM CARE OMBUDSMAN PROGRAM ANNUAL REPORT

Federal Fiscal Year 2019
October 1, 2018 – September 30, 2019



MESSAGE FROM THE STATE LONG-TERM CARE OMBUDSMAN

I am honored to present the annual report of the South Dakota Long-Term Care Ombudsman Program for federal fiscal year 2019. This report is presented to you in accordance with the federal regulations and the Older American's Act.

Long-Term Care Ombudsman (LTCO) are mandated to advocate for and protect the rights of individuals residing in long-term care facilities. The care settings covered by the South Dakota LTCO program are board and care homes (assisted living centers, adult 60+ transitional care units, adult 60+ care centers), nursing homes (skilled and non-skilled), registered residential centers, and long-term geriatric psychiatric care centers.

A certified, designated, dedicated, and passionate staff of seven promote a person-centered approach to advocacy. Ombudsmen work for resolutions that preserve dignity, health, rights, safety, and welfare of this valued population of South Dakotans. It is our belief that person-centered care leads to better outcomes for residents and contributes to higher staff satisfaction and retention.

Ensuring that residents have regular and timely access to the LTCOP is a requirement of the State Long-Term Care Ombudsman Programs; Final Rule 45 Code of Federal Regulations part 1324. To meet this requirement 2,173 visits were made to the long-term care communities (nursing home, assisted living, adult foster care, registered residential centers) in South Dakota during federal fiscal year 2019.

Donna Fischer, CDP

South Dakota State Long-Term Care Ombudsman

TABLE OF CONTENTS

Ombudsman Code of Ethics.....	4
Role and Collaboration	5
Authority.....	8
Purpose	8
Philosophy	9
Complaint Category Definitions as designated by the Administration for Community Living	9
Top five complaints as reported to the SD Ombudsman Program in FFY19.....	12
Advocacy in Action	13
Barriers and Recommendations	15
Quick Facts FFY2019.....	16
When Should I Contact the LTC Ombudsman Program?	17
Long-Term Care Ombudsman Program Staff Coverage Map.....	18





OMBUDSMAN CODE OF ETHICS AS DEVELOPED BY THE NATIONAL ASSOCIATION OF STATE LONG-TERM CARE OMBUDSMAN

- ✓ 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.
- ✓ The ombudsman respects and promotes the client's right to self-determination.
- ✓ The ombudsman makes every reasonable effort to ascertain and act in accordance with the client's wishes.
- ✓ The ombudsman acts to protect vulnerable individuals from abuse and neglect.
- ✓ The ombudsman safeguards the client's right to privacy by protecting confidential information.
- ✓ The ombudsman remains knowledgeable in areas relevant to the Long-Term care system, especially regulatory and legislative information, and Long-Term care service options.
- ✓ The ombudsman acts in accordance with the standards and practices of the Long-Term Care Ombudsman Program and with respect for the policies of the sponsoring organization.
- ✓ The ombudsman provides professional advocacy services unrestricted by his/her personal belief or opinion.
- ✓ The ombudsman participates in efforts to promote a quality, Long-Term care system.

- ✓ The ombudsman participates in efforts to maintain and promote the integrity of the Long-Term Care Ombudsman Program.
- ✓ 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.
- ✓ The ombudsman conducts himself/herself in a manner that will strengthen the statewide and national ombudsman network.¹



¹ <https://www.nasop.org/about/code-of-ethics/>



ROLE AND COLLABORATION

The State and Local Long-Term Care Ombudsmen provide 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. The State Ombudsman screens, trains, supervises, coaches, evaluates, and provides direction to Local Ombudsmen. Local Ombudsmen make unannounced visits to facilities, conduct complaint investigations, make unannounced complaint visits to facilities, support resident and family councils, participate in federal and state inspections, inform the public, and provide community education.

A significant amount of the local ombudsman's role is to conduct routine visits to facilities to meet the federal mandate of providing regular and timely access to the Ombudsman Program. Routine visitation to individuals residing in long-term care helps develop a working relationship of trust where individuals share their concerns and request assistance in increasing the quality of care. Advocating for the rights and interests of residents is a prominent aspect of Ombudsman duties. All covered nursing home and assisted living centers are visited on a routine basis. Ombudsmen promote and provide technical support for the development of, and provide ongoing support for, family and/or resident councils as requested by a resident or residents. The second activity that utilizes a majority of the ombudsman's time is providing consultations, technical assistance, brainstorming, and collaboration with facility staff to develop a cohesive working relationship which strengthens the Ombudsman ability to best advocate for the residents. These routine visits and consultations to facility staff account for most of the Ombudsman's time and attention.

Ombudsmen regularly provide information and assistance on issues relating to long-term care. Information is routinely provided to the public, residents, and staff of long-term care facilities, community organizations, and other interested parties through individual conversations and formal presentations.

The State Long-Term Care Ombudsman serves as a member of the Medicaid Fraud Control Unit's quarterly liaison meetings, advocating for the rights of residents. The Attorney General's Medicaid Fraud Control Unit 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 charged with the 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. The Unit's interests include the prevention, detection, investigation, and prosecution of provider fraud, abuse, neglect, financial exploitation, and improper medical practices.

The formal mechanism to exchange case data, information, and reports between the Department of Health, Department of Human Services, and Medicaid Fraud Control Unit is outlined in the Memorandum of Understanding between the agencies. The purpose of this memorandum is to discuss and refer potential cases between interested agencies, address concerns and problems between agencies and discuss systemic concerns.

Additionally, the State Long-Term Care Ombudsman participates as a member of the Dementia Coalition, The Long-Term Care Collaboration Workgroup, The National Association of State Long-Term Care Ombudsman Programs, National Council of Certified Dementia Practitioners, The Community of Practice, and the National Consumer Voice.



AUTHORITY

The South Dakota Long-Term Care Ombudsman Program is authorized under the Older Americans Act, and is organizationally located within the Department of Human Services' Division of Long-Term Services and Supports.

In accordance with the Ombudsman Final Rule of 2015, standards have been developed to ensure a timely response to complaints by the State and/or Local Long-Term Care Ombudsman. The Ombudsman will use their best efforts to initiate investigations of complaints in a timely manner to resolve the complaint to the satisfaction of the resident. The Ombudsman Program is not an emergency response entity. Complaints involving abuse and/or gross neglect will be categorized and responded to within seven (7) days. Other complaints will be started within 30 days of the date of the complaint.

PURPOSE

The purpose of the Long-Term Care Ombudsman Program 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 Older Americans Act directs the Ombudsman Program to receive, investigate and 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 and at the direction of the resident. Complaints may relate to the actions, inactions, or decisions of providers or their representatives, public or private agencies, guardians or others which may adversely affect or be perceived by the resident to adversely affect the health, safety, welfare, or rights of residents. The Long-Term Care Ombudsman is available to any resident of a long-term care facility in the state of South Dakota.

The Older Americans Act requires the Long-Term Care Ombudsman Program to “analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, policies and actions that relate 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.”



PHILOSOPHY

The Long-Term Care Ombudsman Program is a person-centered advocacy program. The Ombudsman advocates, mediates, investigates, and educates residents as well as others and has a responsibility to act in situations involving vulnerable individuals. The Ombudsman advocates by providing information, assisting in problem solving, and by promoting individual and group self-advocacy skills.

COMPLAINT CATEGORY DEFINITIONS AS DETERMINED BY THE ADMINISTRATION FOR COMMUNITY LIVING

- ✓ **Abuse, Gross Neglect and Exploitation** - The term abuse means the willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or the willful deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness. Gross neglect is the deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness. The term (financial) exploitation means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain.
- ✓ **Access to information** - Complaints involving access to information or assistance, including resident records, inspection reports, or information regarding outside resources.
- ✓ **Admission, Transfer, Discharge, or eviction** - Complaints involving placement and proper notice for discharge, including appeal rights.

- ✓ **Autonomy, Choice, Exercise Rights, and Privacy** - Complaints involving the resident's right to self-determination, exercising their rights, and privacy in treatment.
- ✓ **Financial or Property Rights** - Complaints involving non-criminal mismanagement or carelessness with residents' funds and property or billing problems. This category does not include financial exploitation.
- ✓ **Care** - Complaints involving negligence, lack of attention and poor quality in the care of residents.
- ✓ **Maintenance or Rehabilitation of Function** - Complaints involving failure to provide needed rehabilitation or services necessary to maintain the expected level of function.
- ✓ **Restraints** - Complaints involving the use of physical or chemical restraint.
- ✓ **Staffing** - Complaints involving staff unavailability, training, turnover, and supervision.
- ✓ **Activities, Community Interaction, Resident Conflict, and Social Services** - Complaints involving social services for residents and social interaction of residents. Transportation is included because community interaction is sometimes dependent upon transportation. This category also includes complaints about the lack of activities appropriate for each resident and any complaint involving conflict between residents, including roommate conflict and inappropriate behaviors, that impact another resident's quality of life.
- ✓ **Food Services** - Complaints involving food and fluid intake, quality, quantity, or specialized dietary needs, including assistance with eating or drinking.
- ✓ **Environment** - Complaints involving the physical environment of the facility and resident's space.
- ✓ **Administration** - Complaints under this heading are for acts of commission or omission by facility managers, operators, or owners in areas other than staffing.

- ✓ **Agency Response to Complaints and Discharge Hearings** - Complaints involving decisions, policies, actions, or inactions by the state agencies which license facilities and certify them for participation in Medicaid and Medicare.
- ✓ **Denial of Eligibility** - Complaints about Medicaid coverage, benefits, and services, including denial of eligibility for Medicaid.
- ✓ **Conflict with Family, Physician, Legal Representative or Others** - Complaints about family conflict that interferes with resident's care; or a resident's physician or assistant who fails to provide information, services, is not available, or makes inappropriate or fraudulent charges; or complaints that involve any of the legal issues involving a guardian, power of attorney or another resident representative.²



² <https://acl.gov/programs/Protecting-Rights-and-Preventing-Abuse/Long-term-Care-Ombudsman-Program>

TOP FIVE COMPLAINTS AS REPORTED TO THE SOUTH DAKOTA OMBUDSMAN PROGRAM IN FFY19

NURSING HOME

	Verified*	Partially/Fully Resolved*
Abuse, Gross Neglect, Exploitation	52%	66%
Care	45%	48%
Admission, Transfer, Discharge Eviction	80%	67%
Autonomy, Choice, Rights	75%	73%
Facility Policies, Procedures, and Practices	48%	40%

CARE COMMUNITIES

(assisted living centers, community living homes, registered residential homes)

	Verified*	Partially/Fully Resolved*
Care	56%	56%
Autonomy, Choice, Rights	60%	67%
Abuse, Gross Neglect, Exploitation	77%	77%
Admission, Transfer, Discharge, Eviction	100%	79%
Facility Policies, Procedures, and Practices	63%	47%

*Dispositions as defined by the Older Americans Act Performance System (OAAPS)

*Additional dispositions not indicated above include unverified, withdrawn, no action needed, and not resolved



ADVOCACY IN ACTION

****Names have been changed to protect the confidentiality of the individuals assisted****

In federal fiscal year 2019, four nursing homes made the difficult decision to close. In South Dakota the Ombudsman Program works to inform residents of their rights during a facility closure, assists in options planning, and visits the residents who move within South Dakota. Due to relocation, the Ombudsman program visits these residents for several month to monitor their overall quality of life. This follow up ensures the resident is getting additional support and if possible, helps ease any negative effects from the move.

Due to being displaced from their homes, residents can experience transfer trauma also known as relocation stress syndrome. RSS can be especially difficult with individuals who are living with dementia. The term is used to describe a combination of physiologic and psychosocial reactions to an abrupt physical transfer, the stress that a person may experience when changing living environments. RSS is a nursing diagnosis that can be identified, care planned and worked to resolve. There are five characteristics defining the nursing diagnosis of RSS: loneliness, anger, anxiety, depression, and apprehension.

Factual representation of one individual's experience:

A nursing home closure forced Jacob, a resident with dementia, to be displaced. This was his third move in one year. The Ombudsman Program was unable to obtain a physical description of his room, dining room, or what the windows looked out onto, in order to make a comparison in his emotional or social changes from nursing home one and two.

During his stay in nursing home two, Jacob had been living on the ground floor in a secured unit where there were lots of windows. The dining hall overlooked a courtyard with green grass and flowers in the summer. The double doors were disguised with a colorful mural. The local ombudsman visited the facility a number of times for regular visits and to establish Ombudsman presence in the facility. As a result of these regular visits the ombudsman became familiar with Jacob. When the Ombudsman program was notified that the facility was going to close, the Ombudsman program increased their visitation.

The closure of nursing home two resulted in Jacob being moved into nursing home three. Family contacted the ombudsman program to express concerns due to Jacob's increased behavior and difficulty adjusting. Unbeknownst to the family the ombudsman was already following Jacob due to the move; since the

ombudsman had been involved since Jacob resided at facility two, the ombudsman was aware of Jacob's prior demeanor and noticed the changes. Home three lacked the pleasing décor, views, and home like feel that home two had provided. Jacob had difficulty adjusting to his new environment. He began having increased behaviors and patterns of pacing up and down the hall during waking hours. The family did not want the ombudsman to advocate for the resident with the facility. Therefore, the ombudsman worked with family to provide potential solutions and resources the family could then take to the facility. Family and staff worked together to increase Jacob's quality of life by making changes to provide a more homelike environment. Even with the changes implemented, Jacob continued to exhibit increased behaviors resulting in a short stay in a geriatric mental health unit for medication review. Jacob returned to facility three following his short admission; family and staff continue to work together to provide the best quality of life possible and the ombudsman continues to check in on Jacob regularly.

Factual representation of another individual's experience:

A nursing home closure forced Stella, a resident with advanced dementia, to be displaced. The Ombudsman Program had observed Stella during regular visits to the facility. Stella's overall decline in verbal and non-verbal communication limited her quality interactions with others.

Stella moved to her new nursing home, and after a small period of adjustment, Stella started speaking individual words. As time continued to pass, she appeared more alert and communicative even speaking in short sentences. It was evident the new facility improved Stella's overall quality of life. The Ombudsman Program commended the facility staff on their interactions and encouraged them to keep up the good work. Through regular visitation to facilities, the ombudsman program can make observations and bring issues up for discussion as well as provide encouragement on positive practices.

When the Ombudsman Program completed their regular visits to the facility, Stella would always flash a big smile. Stella appeared happy, content, and flourishing in her new home, which was evidenced by her increase in communication with staff, residents, and visitors. She was often found sitting in the common areas motioning others to come over and sit with her. The Ombudsman Program also observed Stella having freedom of movement, increased attention on a more consistent basis, ongoing interactions with residents and staff and was encouraged to attend activities even if she could not fully participate. This facility was smaller, which does lend itself to being a better fit for individuals living with dementia.

BARRIERS AND RECOMMENDATIONS

Barrier: Behavioral health is a continued concern for older South Dakotans. As people are living and remaining in their homes longer, negative, disruptive, and sometimes aggressive behaviors are more prevalent in long-term care communities.

Recommendation: Further development of specific skill sets for direct care staff would increase the quality of care and quality of life for residents. To better assist facility staff, the LTCO program representatives became Certified Dementia Practitioners through the National Council of Certified Dementia Practitioners during FFY2019. Additional development of educational programs addressing the behavioral health, dementia care, mental health, and long-term care intersect would improve the quality of life and care for residents and improve staff experience.



QUICK FACTS FFY2019

Complaints 604

2,173
routine visits
(60.4% of all activities)

195
*consultations
to individuals*



536
consultations
to facility
staff
members

Attended 82 Resident Council Meetings



287 complaint
related visits

79 survey participations

WHEN SHOULD I CONTACT THE OMBUDSMAN PROGRAM?

- ✓ If a resident is being discharged from a facility against their wishes
- ✓ Report an issue or concern
- ✓ Ask for help addressing care concerns
- ✓ Get information when beginning to consider out of home placement
- ✓ When a loved one has dementia, and you are considering out of home placement options
- ✓ Other concerns regarding quality of care or quality of life in long-term care settings

DEPARTMENT OF HUMAN SERVICES LONG-TERM CARE OMBUDSMAN PROGRAM



Amber Longe, CDP

605-487-7213 – Office
Amber.Longe@state.sd.us



Brad Mathison, CDP

605-367-4777 (2) – Office
Brad.Mathison@state.sd.us



Christina Ruml, CDP

605-822-5010 (2) – Office
Christina.Ruml@state.sd.us



Dan Frieden, CDP

605-745-5014 (2) – Office
Dan.Frieden@state.sd.us



Maria Poppe, CDP

605-668-3001 (4) – Office
Maria.Poppe@state.sd.us



Nikala Phillips, CDP

605-626-7858 (5) – Office
Nikala.Phillips@state.sd.us



Donna Fischer, CDP – State Long-Term Care Ombudsman

866-854-5465 – State Office
Donna.Fischer@state.sd.us

[illegible]

Your Life. Your Rights. Your Voice.