

2017 Annual Report of the ND Office of the State Long-Term Care Ombudsman (OSLTCO) AKA Long-Term Care Ombudsman Program (LTCOP)

Statistics used are from FFY 2016 (October 1, 2015 – September 30, 2016)

History and Purpose of the Long-Term Care Ombudsman Program

The 1978 amendments to the Older Americans Act put into statute the foundations of the Long-Term Care Ombudsman Program with its purpose to represent resident interests and seek resolution of resident concerns. The opinion was that a resident of a long-term care home has a different perspective than the long-term care home. LTC ombudsmen assist to reframe concerns to the resident viewpoint and to add their voice to that of the resident and work to make that voice heard. The long-term care ombudsmen keep their focus on resident choice, dignity, and respect which are the pervasive values of person centered planning.



Visits to Residents in Long-Term Care Homes

Local ombudsmen make quarterly visits to residents of every long-term care home in the state. The visits serve the purpose of:

- Ombudsmen observing the environment of the long-term care home, observing the interactions between staff and residents etc.
- Providing residents access to their advocates – THE OMBUDSMEN.
- Enhancing knowledge and understanding of the LTC Ombudsman Program and resident rights.

Through these in person visits, as well as phone calls and the online complaint intake form, residents are able to identify their concerns. After sharing concerns the resident may then direct the ombudsman to not move forward with it. Following the LTCOP commitment to being resident directed, the ombudsman only proceeds with the complaint investigation, verification, and resolution with the consent of the resident.

COMPLAINT DATA FFY 2016

346 cases closed
495 complaints received
37% resolved to satisfaction of resident
28% partially resolved with some problem remained

MAJOR CATEGORIES of Complaints:

Residents' Rights

Abuse, Gross Neglect, Exploitation: 14 complaints
Access to Information by Resident or Resident's Representative: 5 complaints
Admission, Transfer, Discharge, Eviction: 50 complaints
Autonomy, Choice, Preference, Exercise of Rights, Privacy: 75 complaints
Financial, Property (Except for Financial Exploitation): 34 complaints

Resident Care

Care: 119

Rehabilitation or Maintenance of Function: 16
Restraints – Chemical and Physical: 1

Quality of Life

Activities and Social Services: 15
Dietary: 39
Environment: 56

Administration

Policies, Procedures, Attitudes, Resources: 6
Staffing: 18
System/Others: 37

Top Three Complaint Sub Categories:

Failure to respond to requests for assistance
Discharge/Eviction
Dignity, respect – staff attitudes

Definition of Complaint for an ombudsman: a concern brought to, or initiated by, the Long-Term Care Ombudsman for investigation and action on behalf of one or more residents relating to the health, safety, welfare or rights of a resident.

In FFY 2016 residents were the number one source of complaints.

CONSULTATIONS: requests from facility staff, family members, individuals in the community, and residents who want information on a topic

658 consultations documented in FFY 2016

**Top three categories:
Transfer/discharge/room change,
Behavioral Issues
Health/Safety Issues**

The ombudsman goal when providing consultations is to emphasize viewing the issue from the resident perspective. In dealing with facility staff a question ombudsmen usually ask is "what does the resident have to say about the issue?"

TRAINING AND PRESENTATIONS (to Residents, Facility Staff, and Community Groups)

These are done by ombudsmen upon request.

Training to Facility Staff. 30 sessions – Topics were Resident Rights and the Long-Term Care Ombudsman Program

6 presentations to *Resident Groups*: Topics were Resident Rights and the LTCOP Role in Advocating for Residents

Community Education on the same topics as above was done a total of **40 times**.

VOLUNTEER OMBUDSMEN

In FFY 2016 our 22 volunteer ombudsmen provided 1,307 hours of service to the residents of long-term care homes. Recruitment of additional volunteers continues. The program goal is to have at least one volunteer in all 80 nursing homes and all 14 basic care memory units. Please refer any interested individuals to us.

UPDATED FEDERAL NURSING HOME REGULATIONS (AKA Requirements of Participation for Long-Term Care Facilities)

On September 28, 2016 CMS issued updated regulations with a three phase implementation: Phase 1 - 11/28/2016, Phase 2 – 11/28/2017, Phase 3 – 11/28/2019. The updates affirm that a person centered focus is integral in the provision of long-term care. Regulations are a valuable tool used by the ombudsman program. However since the work of the ombudsman is directed by the resident, we don't advocate just for the minimum standards contained in the regulations but advocate for best practice.

One of the new regulations is that nursing homes must send a copy of the transfer/discharge notice to a representative of the Office of the State Long-Term Care Ombudsman. This went into effect on 11/28/2016. The transfer/discharge notices are a protection for residents and must include the following information.

- Reason for transfer or discharge
- Effective date of transfer or discharge
- Location to which the resident will be transferred or discharged
- Statement of the resident's right to appeal the transfer/discharge
- Contact information for the OSLTCO and disability advocates

Ombudsman speak for best practice (e.g. the best interests of the residents) – not just to meet minimum standards.

The intent of the notices is to fully inform the resident about involuntary moves with which he/she may not agree. It also notifies the resident of his/her right to appeal the move.

This regulation has been a valuable tool in monitoring that the transfers/discharges follow the regulations and has provided opportunities to advocate for residents. Also we are better able to support residents through the challenges of moving to a new home.

OMBUDSMAN FINAL RULE COMPLIANCE

February 11, 2015 a Final Rule for the Long-Term Care Ombudsman Program was issued with a date of July 1, 2016 for states to be in compliance – or to have an action plan working towards full compliance. Our regional federal authority has completed a review of the ND program. They found several areas that need additional work to be in compliance.

Intent of the Ombudsman Final Rule is to insure that all Long-Term Care Ombudsman Programs can be responsive to the needs of individual residents as well as to systems issues on a state and federal level that impact residents of long term care homes.

LEGISLATIVE SESSION

Five bills relating to long-term care introduced in the 65th Legislative Assembly were tracked by the SLTCO. SB 2113 was introduced by the Department of Human Services at the instigation of the LTCOP. The bill's intent was that **all** long term care homes (assisted living, basic care, swing bed and nursing homes) would be required to send copies of resident discharge/eviction notices to the ombudsman program. This would have been a wonderful minimum oversight tool that the notices legally required by the resident rights statute were being given to all residents of long-term care homes and

for the legally allowed reasons. Other benefits would have been for the ombudsmen to better support residents in moves, to educate facilities in the reduction of transfer trauma, and to educate resident and families on the levels of care and the appropriateness of each in meeting care needs. Unfortunately this bill was defeated in the Senate.

HB 1012 - the budget bill for the Department of Human Services was also watched closely by the long-term care world. A significant decrease in state revenue resulted in the 2015-2017 budget allotment by the Department of Human Services reducing long-term care funding effective January 1, 2017. The LTCOP was concerned of the impact this would have on the quality of care provided to residents. The long-term care industry was declaring the cuts would impact their ability to retain and recruit staff. The end of the session saw the Legislature appropriating funds for rebasing, operating margin, and incentive payments for long-term care providers effective June 1, 2017. No funds were allocated for provider inflation for Medicaid long-term care service and support provides which includes long-term care homes.

IDENTIFIED ADVOCACY ISSUES AND RECOMMENDATIONS

Systems advocacy efforts are mostly focused on the federal level at this time. Specific attention is on the repeal and replacement of the Affordable Care Act with the American Health Care Act and the Federal Budget Process. Both of these have provisions that may impact the current Medicaid structure. Below is a summary of the potential harmful impact to residents in long-term care homes.

Medicaid is the largest single payer of long-term care in our nation.

As of May 31, 2017 in North Dakota, Medicaid was the payment source for 3,299 residents of long-term care homes. This is over 50% of the current nursing home bed capacity.

Implementation of large-scale funding reductions to Medicaid (per capita caps and block grants) would harm access to long-term care and the quality of care received in nursing homes

- These changes would allow each state to design their own Medicaid programs.
- State design could eliminate current federal government coverage requirements; such as bed hold coverage and therapeutic leave
- There could also be elimination of spousal impoverishment which allows a Medicaid beneficiary's spouse to retain a home and a specified allocation of resources and income.
- There could be reduction or elimination of assistance to pay Medicare co-pays and premiums.
- Projected changes likely mean less federal dollars flowing into the state for Medicaid.
- North Dakota is currently coping with a budget crisis and thus likely could not make up the difference from the federal cuts. It is then likely eligibility

restrictions would have to be imposed resulting in fewer individuals receiving long-term care payment

- Due to reduction of funding there could be decreases in nursing home staffing as well as reduction on nursing home inspectors. Both these actions would lead to a decline in nursing home quality of care.
- The Nursing Home Reform Law (which became effective in 1990) assures enforcement of federal requirements on resident rights, quality of care and quality of life, protections against resident abuse and neglect etc. This protection for residents could be eliminated through changes in what states are required to follow.

An additional challenge is that these federal actions will also have impact on the availability of home and community based services (HCBS) to keep older and disabled individuals in their homes. These services are usually the first choice for many. When HCBS can no longer meet individual needs a move to a nursing home is considered. The average monthly cost of nursing home care in North Dakota is \$7,844.46. Few people can afford this rate for very long if at all. Currently many turn to Medicaid as a payment source. It would be unfortunate to see limits on the number of individuals who could qualify.

A state level advocacy effort is to work towards better availability of behavioral health services and supports. Behavioral health issues are often the cause of involuntary discharges or refusal for admission. Additional programming to address the issues can be costly. Residents with the behavioral health needs usually require additional monitoring by staff to redirect or to stop harmful behaviors. Long-term care homes statewide are already struggling to maintain adequate staffing and thus this adds to the challenge. Simply having staff is not an answer in and of itself. Training is a critical need as well as access to behavioral health professionals for consultations and support. It can't be assumed that even though residents are in a long-term care home the need for services and supports are eliminated.

OTHER

Every October is designated Resident Rights Month by the National Consumer Voice for Quality Long-Term Care. The theme chosen for 2017 is:

"It's All About Me – My Life My Care My Choices"

This annual report is compiled and distributed to meet the requirements of federal and state law.

Questions, comments and discussion are welcomed and can be directed to:

Karla Backman, State Long-Term Care Ombudsman

701-328-4617

kbackman@nd.gov