

**DEPARTMENT OF SOCIAL SERVICES
DIVISION OF ADULT SERVICES AND AGING
South Dakota Long Term Care Ombudsman Program**

The South Dakota Long Term Care Ombudsman Program is authorized under the Older Americans Act.

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 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 Long Term Care Ombudsman 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;
- provide the resident with an opportunity for participation in his/her 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;
- empower the resident with a sense of self-determination.

Definitions:

Complaint:

Any expression of dissatisfaction or concern.

Local Long Term Care Ombudsman (Local Ombudsman):

Individuals appointed by Adult Services and Aging Division management to serve in the role of Ombudsman to facilities in their region.

Ombudsman:

A person who investigates and attempts to resolve complaints and problems.

State Long Term Care Ombudsman (State Ombudsman):

Individual located in the central state office in Pierre and responsible for the overall management of the Long Term Care Ombudsman Program.

Note: Ombudsman, as used in this policy, includes both the State Long Term Care Ombudsman and the Local Long Term Care Ombudsman. When duties are specific to either one or the other, the duties will be so specified.

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WHO CAN ACCESS SERVICES?

Ombudsman Services can be accessed by individuals living within a long term care facility or by those attempting to enter 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 are:

- loss of hearing;
- loss of speech;
- loss of sight;
- loss of physical strength;
- immobility;
- mental impairment;
- effects of medications;
- depression;
- inaccessibility of staff;
- loss of family support;

Psychological/psychosocial barriers are caused by:

- fear of retaliation;
- sense of isolation;
- lethargy;
- 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;

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Individual problems which may surface in long term care facilities are:

- 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 manor
- 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.

FACILITIES SUBJECT TO OMBUDSMAN INVESTIGATION:

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

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

Intermediate Care Facilities/Mental Retardation (ICF/MR) and Community Support Providers are not included in the Ombudsman 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.

ROLES AND RESPONSIBILITIES:

State Long Term Care Ombudsman (State Ombudsman):

The State Ombudsman 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

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adherence to the Ombudsman Code of Ethics (Appendix B). The State Ombudsman provides direction and coordination to the Local Ombudsman and is primarily responsible for the following:

- Coordinating Ombudsman services with Adult Protective services, other state agencies, long term care facilities, law enforcement, advocacy programs and other appropriate agencies;
- Maintaining and managing the Ombudsman 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 local Ombudsman representatives;
- 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;
- Making regular visits to facilities to provide a presence and build relationships;
- Referring complaints to other agencies as appropriate.

Local Long Term Care Ombudsman (Local Ombudsman):

The Local 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 Ombudsman include:

- Complaint processing;
- Maintaining awareness of current issues and trends in long-term care;
- Information and assistance;
- Community outreach and education;
- In-service education to facility staff; regarding resident rights, culture change, abuse, neglect, exploitation, customer service.
- Routine visits to long-term care facilities;
- Building relationships with residents;
- Attending resident council and family council activities when invited;
- Participation in the collection of data relating to complaints and conditions in long-term care facilities, for the purpose of identifying and resolving significant problems; and
- Attend exit interviews with Department of Health survey teams whenever possible.

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Inappropriate roles for Ombudsman:

- Investigating abuse, neglect, or exploitation complaints – they should be referred to the appropriate authorities;
- Reviewing the resident's medical records;
- Issues involving guardianship problems;
- Issues involving resident medical or treatment problems;
- Facility issues such as staffing shortages, physical plant inspections, etc.;
- Participating in the direct care of resident needs – helping residents walk, pushing wheelchairs, transferring, etc.;
- Giving direction to facility staff;
- Handling resident's money or personal belongings.

CONFIDENTIALITY:

Disclosure of Ombudsman Program information and files is made only at the discretion of the State Long Term Care Ombudsman. Disclosure of the complainant's or resident's identity is strictly prohibited unless oral or written consent is obtained or disclosure is required by a court order.

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 him/her to residents of the facility and explain the purpose of the Ombudsman Program. Notify the Administrator, Director of Nursing (DON), Social Worker or Charge Nurse that they are in the facility;
 - Follow the facility sign-in procedure;
 - 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;
 - Notify staff when leaving and follow the facility sign-out procedure.
- The Ombudsman Program has established the following standards for facility visits.
 - Nursing Care Facilities will be visited at a minimum on a monthly basis;
 - Assisted Living Facilities will be visited at a minimum on a quarterly basis.

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COMPLAINT PROCESS:

The Long Term Care Ombudsman will identify, investigate, and resolve complaints made by or on behalf of residents. 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 problem. The Ombudsman will need to sort out the problems and determine which are most important. Many people will not complain until a problem 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 problem. 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.

A. WHO MAY FILE A COMPLAINT

- Complaints may be filed with the Ombudsman by residents, families, and friends of residents, long-term care facility staff, local advocacy groups, social work and human service agencies, hospital personnel and others.
- Complaints may be made anonymously to the Ombudsman. Anonymous complaints must remain anonymous if that is the reporters wish. If the Ombudsman receiving the complaint is able to communicate directly with the anonymous complainant, the Ombudsman may explain to the complainant that, in some circumstances, anonymity could limit the ability of the Ombudsman to investigate and resolve the complaint.
- Local Ombudsman will file a complaint with the State Long Term Care Ombudsman if they have 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.

B. COMPLAINT INTAKE

1. Gather information:
 - determine the type of complaint as presented by the complainant;
 - ask what outcome the complainant is seeking;
 - 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 State Ombudsman

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- Determine if the complaint needs to be referred to another Ombudsman (i.e., State Long Term Care Ombudsman) due to a conflict of interest between the Local Ombudsman and the interest of a resident or residents. NOTE: 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.
2. Information to be provided to complainant:
- alternatives for handling the complaint;
 - encouragement for the complainant to personally take appropriate action, with Ombudsman assistance if needed;
 - explain the Ombudsman's role is to act in accordance with resident wishes; and
 - the Department of Social Services confidentiality policy and the Ombudsman policy of confidentiality.

C. TIMELINESS OF RESPONSE TO COMPLAINTS

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 will provide adequate telephone coverage to receive and respond to complaints promptly and confidentially during standard business hours.
 - a. When a message is left for the Ombudsman, the Ombudsman will attempt to make contact with the complainant during the same day the contact was made whenever possible and, in all cases, within two working days.
4. The Ombudsman Program is not designed to serve as an emergency response system; emergency situations should be referred to "911" for immediate response.
5. 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 follows:

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If a complaint involves...	The standard of promptness for Ombudsman response (the action date) is...
Abuse or gross neglect, AND the Long Term Care Ombudsman has reason to believe that a resident may be at risk	Within the next working day
Abuse or gross neglect, AND the Long Term Care Ombudsman has no reason to believe that a resident is a risk	Within three days, but not to exceed three calendar days
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), or -the last day for filing an appeal for an administrative hearing
Other types of complaints	Within 7 working days

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

D. INVESTIGATION

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; and
- 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.

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3. Observation skills

- Use all senses to determine conditions;
- Sight
 - a. Are the residents clean, shaved, hair combed?
 - b. Are call lights left unanswered?
 - c. Are the staff pleasant, do they smile at residents, do they wear name tags?
- Sound
 - a. Are the call bells ringing often without being answered or turned off?
 - b. Are residents actively involved in activities which promote conversation?
 - c. Are the staff interacting with residents and answering their questions?
- Smell
 - a. Are there strong, unpleasant odors in the hall?
 - b. Do residents and rooms smell clean?
 - c. Does the food smell appetizing?

E. 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:

- 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;
- Listen with understanding; be alert, interested and encourage the speaker to elaborate;
- Be comfortable with silence; use silence to organize what you have heard and allow the speaker to fill the gap by elaborating;
- Use note-taking positively; explain that you take notes so you can remember everything that was said;
- Reduce defensive communication; ask questions in a way that supports open communication and reduces defensive responses:
 - a. Describe, don't evaluate. Avoid value judgments.
 - b. Practice problem resolution, not control. Be open and help the parties resolve the problem to their satisfaction.
 - c. 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 complaints. Over identification with either the resident or staff may result in ineffectiveness as an Ombudsman.

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F. RESIDENT CENTERED FOCUS

1. Regardless of the source of a complaint, a Long Term Care Ombudsman will personally discuss the complaint with the affected resident in order to:
 - a. Determine the resident's perception of the complaint;
 - b. Determine the resident's wishes with respect to resolution of the complaint;
 - c. Advise the resident of his or her rights.

2. 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 determine whether further efforts should be made on the complaint. In making this determination, the Ombudsman must consider the following:
 - a. The nature of the complaint - are other residents likely to be affected?
 - b. The seriousness of the complaint - does the complaint involve care issues?
 - c. The source of the complaint - is it likely to be valid?
 - d. If significant care issues are identified, the complaint may be transferred to a generalized facility concern, rather than resident specific and further investigated.

3. If a complaint is received from a resident who is unable to make decisions for himself/herself, but has not been legally declared incapacitated the complaint should still be investigated. The complaint can not be dismissed just because it comes from someone who seems confused.

4. If the resident is confused or withdrawn during the process of the investigation attempt to reschedule an interview at another time. It may be helpful to check with facility staff to see if the resident is more alert at certain times of the day. If the resident is too confused to participate in the investigation, the Ombudsman should pursue the investigation through collateral contacts.

COMPLAINT RESOLUTION:

Once a complaint has been investigated and verified, 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.

A. 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.

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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.
4. Advocate - Works on behalf of the complainant to argue his/her 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.

B. 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.

C. COMPLAINT RESOLUTION

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 can not 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.

If a complaint is related to a nursing facility regulatory violation, the Ombudsman will inform the resident and/or complainant that the State Ombudsman provides 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.

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COMPLAINT FOLLOW-UP:

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

- assure that the resident (or representative or complainant, where appropriate) continues to be satisfied with the outcome;
- determine whether further actions on behalf of the resident should be taken by the Ombudsman;
- 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.

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

CLOSING A COMPLAINT AND CASE:

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 when all of the complaints related to that case have been closed.

DOCUMENTATION

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

A. 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; and
- name of Ombudsman taking complaint.

B. Monthly Visits to Nursing Facilities

- Each monthly visit must be an Ombudsman visit only.
- Each monthly visit must be documented under Program Activity
- If a complaint is made by a resident during this visit, a Case should be opened.

C. Quarterly Visits to Assisted Living Facilities

- Each quarterly visit must be an Ombudsman visit only.
- Each visit must be documented under Program Activity.
- If a complaint is made by a resident during this visit, a Case should be opened.

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D. Description and dates of steps taken to investigate, resolve, follow-up, and close the complaint.

E. Explanation of the type of resolution code chosen.

F. Documentation requirements:

- All Ombudsman complaints are expected to be documented in Ombudsmanager within 72 hours after the complaint is referred;
- Documentation must be maintained in an organized manner which can be readily located and understood by others;
- 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 OMBUDSMAN COMPLAINT MONITORING:

The State Ombudsman 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; and - 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; and - review whether Ombudsman-generated complaints are being accurately recorded by all staff

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<p>High related to a particular facility (10% above the statewide average or 10% above the previous year's federal report)</p>	<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.
<p>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)</p>	<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:

The State Ombudsman 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.

A. REFERRALS TO SOUTH DAKOTA DEPARTMENT OF HEALTH

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

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- The State Ombudsman will submit the complaint in writing, or contact complaint intake at the Department of Health by telephone and subsequently submit a document detailing the complaint;
- The referral must be documented in the case record in Ombudsmanager;
- The Department of Health, Office of Licensure and Certification, will act on the referral by either investigating immediately (complaint survey) or during the next regularly scheduled survey visit;
- All complaints will be considered as part of a facility survey;
- Findings will be issued in a survey report;
- The State Ombudsman will receive a copy of the investigation and survey report and provide a copy to the local Ombudsman;
- Local Ombudsman receiving a call directly from the Department of Health should provide answers to any questions asked by Department of Health staff and notify the State Ombudsman of the conversation immediately.
- Local Ombudsman will consult with State Ombudsman before contacting law enforcement or any outside agency.

B. 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 Ombudsman should 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.

C. 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.

- Local Ombudsman will consult with State Ombudsman before contacting law enforcement or any outside agency.

D. REFERRALS TO MEDICAID FRAUD CONTROL UNIT

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,

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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 Social 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.

Local Ombudsman should consult with the State Ombudsman 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.

E. DETERMINING OUTCOME OF A REFERRAL

After a complaint has been referred, the State Ombudsman 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.

F. COORDINATION BETWEEN LONG TERM CARE OMBUDSMAN AND ADULT PROTECTIVE SERVICES PROGRAM

Both the Long Term Care Ombudsman Program and the Adult Protective Services (APS) Program are responsible for receiving and investigating complaints involving mistreatment, neglect, abuse and exploitation of individuals who are vulnerable. The two programs share important overall objectives and functions. Both programs seek to improve the quality of care and life of their consumers; individuals working in both programs consider themselves to be advocates for the vulnerable people they serve; both programs seek to honor and protect the individual preferences and right to self-determination of those they serve. However, there are significant differences and distinctions in their roles.

The two programs must work together to best serve their consumers. They often serve the same individuals. These individuals may need the services of either or both

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programs. By coordinating their efforts the two programs can assure that the people who turn to them receive the assistance they need.

Differences in History, Philosophy, Mandates, Authorities:

Adult Protective Services	Ombudsman
State's responsibility to protect the health and welfare of citizens; but supports philosophy of consumer autonomy as long as consumer retains decisional capacity.	Advocate for rights of individuals and supporting resident's autonomy and expressed preferences.
Serves adults 60 years and older, and 18 and older with a disability, who are vulnerable.	Serves older residents of long-term care facilities, although may respond to younger residents.
Mandated to report abuse, neglect and exploitation to other agencies or officials and/or take action under conditions set forth in South Dakota law.	Restrained by Federal law from reporting or otherwise breaching resident's confidentiality without consent of resident, except in certain circumstances.
Usually authorized to obtain access to consumers and consumer's records without their consent, if necessary, as permitted by law.	Access to resident only with resident's consent; restrained from access to resident's records without consent of resident or resident's representative.
May petition the courts for guardianship or emergency protective order and sometimes serves as temporary guardian.	It is outside of Ombudsman mandate to seek or serve as guardian or temporary guardian; such authority would present conflict of interest with mandate to serve as advocate.

Differences in roles:

Adult Protective Services	Ombudsman
Serves as agent of the State to act in best interest of consumer; staff are investigators and caseworkers.	Serves as agent of and advocate for residents.
Develops service plan and arranges for placement or other services to meet the consumer's needs.	Advocates for services to be provided; monitors availability and quality of services to residents.
Uses long-term care facilities as a resource for consumer placement, when needed.	Monitors long-term care facilities and often advocates for facilities to change their practices.
Acts as an agent of consumer protection; at the point that intervention becomes necessary, APS intervenes.	Acts as an agent of consumer protection; at the point that intervention becomes necessary, advocates for intervention and monitors the intervention.
Respects and guards consumer autonomy as long as consumer retains decisional capacity.	Empowers residents and guards their autonomy, usually in a more unrestricted way than APS.

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ADULT PROTECTIVE SERVICES and OMBUDSMAN SERVICES: 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 Ombudsman services are separate and distinct, as outlined in the preceding chart. Each role has its own inherent conflicts that arise in serving consumers/residents, working with facilities and systems, and working within legal mandates.

Conflicts between mandatory reporting and protecting resident confidentiality arise when a resident tells an Ombudsman about abuse/neglect/exploitation, refuses to report the incident to anyone but the Ombudsman, and asks the Ombudsman not to tell anyone.

- The Federal requirement regarding the Ombudsman duty to protect the identity of complainants/residents supersedes State reporting requirements. Disclosing information provided by the resident only with the resident's permission is essential to a trust relationship between an Ombudsman and a resident. It is similar to the physician or attorney privilege.
- If the Ombudsman thinks the situation should be reported because of danger to the resident and/or others, the Ombudsman should: counsel the resident about the risk of repeated abuse and abuse to other, more impaired residents; explain the reporting and investigation process and possible outcomes; and attempt to obtain consent to report. The Ombudsman should commit necessary resources to support a resident who will be reporting grave allegations of abuse to APS, law enforcement agencies and regulatory agencies.
- Even if a resident refuses to report or to give the Ombudsman permission to report, the Ombudsman should take action to support the resident and to try to safeguard other residents if they might also be at risk of being harmed by referring the situation to adult protective services.

For individuals with decision-making capacity the principle of self-determination should guide both the APS Specialist and the Ombudsman. Differences in the approach of each program may occur in responding to questions of an individual's right to assume risk versus that person's decision-making capacity, but each program should promote the empowerment of the individual in his or her decision-making.

SITUATIONS OF CONFLICT:

For both the APS Specialist and the Ombudsman 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:

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- 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.

The Specialist should contact their Supervisor, the State Long Term Care Ombudsman, or the Adult Protective Services Program Specialist for guidance as necessary.

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APPENDIX A

AUTHORITY :

The South Dakota Ombudsman Program is authorized under the Administration on Aging's Older Americans Act as Amended in 1971, 1978, 1981, 1987, 1992; Section 712 (a):

- The secretary may promulgate reasonable and necessary rules for the administration and operation of the program for adults and the elderly relating to the following areas:
 - (1) Services..... to older persons in institutional care;
 - (12) Ombudsman Services.

and by South Dakota Statutory Code SDCL 28-1-45

- 28-1-45.7. No person, facility or other entity shall discriminate or retaliate in any manner against any resident or relative or legally appointed representative, any employee of a nursing facility, assisted living center or other residential facility or any other person because of making a complaint or providing information in good faith to the Ombudsman Program. No person, facility or other entity may willfully interfere with representatives of the Ombudsman Program in the performance of any official duty. Any person, facility or other entity that violates this section is guilty of a Class 1 misdemeanor.

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APPENDIX B

OMBUDSMAN PROGRAM HISTORY:

The historical concept of Ombudsman originated in the Swedish Parliament in 1809. The office of the Ombudsman was designated to listen to grievances and complaints of the citizens concerning governmental departments and policies. It also handled disputes between different government officials that required negotiation and mediation.

The Long Term Care Ombudsman Program was initiated by former President Richard Nixon through his 1971 Eight Point Initiative to improve the quality of care in America's nursing homes and to respond to complaints submitted to the White House and the former Department of Health, Education and Welfare (HEW), now known as the Department of Health and Human Services (HHS), about abuse and neglect of nursing home residents. President Nixon directed the department "to assist the States in establishing investigative units which would respond in a responsible and constructive way to complaints made by or on behalf of individual nursing home patients."

The Ombudsman Program under the Older Americans Act:

The 1978 Amendments to the Older Americans Act, passed in October 1978, considerably strengthened the Ombudsman Program. Title III, Section 307(a) (12) required every State to have a program and specifically defined Ombudsman functions and responsibilities. The 1978 Amendment elevated the Nursing Home Ombudsman Program to a statutory level. The statute and subsequent regulations required all state agencies on aging to establish an Ombudsman Program to carry out the following activities:

- Investigate and resolve long term care facility resident's complaints;
- Promote the development of citizen's organizations and train volunteers;
- Identify significant problems by establishing a statewide reporting system for complaints, and work to resolve these problems by bringing them to the attention of appropriate public agencies;
- Monitor the development and implementation of federal, state and local long term care laws and policies;
- Gain access to long term care facilities;
- Gain access to residents' records (with their permission); and
- Protect the confidentiality of residents' records, complainants' identities, and Ombudsman files.

The 1981 reauthorization of the Older Americans Act resulted in a further expansion of Ombudsman duties. In addition to nursing homes, other facilities were included in the Ombudsman realm of responsibilities. The name was changed from Nursing Home Ombudsman to Long Term Care Ombudsman to reflect this change. Other duties remained substantially the same. No major changes were made to the Long Term Care Ombudsman duties in the 1984 reauthorization of the Older Americans Act.

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The 1987 Amendments to the Older Americans Act made substantial changes related to the Long Term Care Ombudsman Program resulting in a significant improvement in the program's ability to advocate on behalf of residents of Long Term Care facilities. The changes required states to provide for:

- Ombudsman access to residents and their records;
- Immunity to the Ombudsman for the good faith performance of their duties; and
- Prohibition against willful interference with the official duties of an Ombudsman and/or retaliation against an Ombudsman, resident, or other individual for assisting the Ombudsman Program in the performance of their duties.

In 1992, an amended Older Americans Act included the vulnerable elder rights protection activities. These activities will improve the quality and quantity of legal and advocacy assistance as a means for ensuring a comprehensive elder right's system.

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APPENDIX C

CODE OF ETHICS:

**Code of Ethics for Long Term Care Ombudsman
The National Association of State Long Term Care Ombudsman Programs**

- 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 will provide 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 shall conduct himself/herself in a manner that will strengthen the statewide and national Ombudsman network.

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APPENDIX D

RESIDENT RIGHTS:

Residents of long term care facilities have the right to a dignified existence, and to communicate with individuals and representatives of choice. The facility will protect resident rights as designated below.

Exercise of Rights:

Residents have the right and freedom to exercise their rights as a resident of the facility and as a citizen or resident of the United States without fear of discrimination, restraint, interference, coercion or reprisal.

- If a resident is unable to act in their own behalf, the person appointed under state law to act on their behalf will exercise their rights.

Notice of Rights and Services:

- Residents will be informed of their rights and of all rules and regulations governing resident conduct and responsibilities, both orally and in writing.
- Residents have the right to inspect and purchase photocopies of their records.
- Residents have the right to be fully informed of their total health status.
- Residents have the right to refuse treatment, and the right to refuse to participate in experimental research.
- Residents have the right to formulate an advance directive.
- Residents have the right to be informed of facility services and charges.
- Residents have the right to be informed of Medicare and Medicaid benefits. This information will be posted in the facility.
- Residents have the right to be informed of the facility's procedures for protecting personal funds.
- Residents have the right to file a complaint with the state survey and certification agency, the South Dakota Department of Health, Office of Licensure and Certification.
- Residents have the right to select a physician of choice, be informed of his or her specialty, and provided with methods of contacting him or her.
- Facilities must consult with Residents, and notify the resident, their physician and designated family member or friend, of any significant change in a resident's condition or treatment, or of any decision to transfer or discharge a resident.
- The facility must notify a resident and any designated family member or friend of a room or roommate change.
- A resident may have the right to refuse a room change if the move is from a Medicare bed to a non-Medicare bed, or from a Medicaid bed to a non-Medicaid bed.
- The facility is responsible to periodically update the address and telephone number of resident's legal representative and/or designated family member(s) or friend.

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- The facility must notify the resident and a designated family member(s) or friend of any change in a resident's rights as a resident.

Protection of Funds:

- Residents may manage their own financial affairs and are not required to deposit personal funds with the facility.
- The facility must manage a resident's deposited funds with the resident's best interests in mind. Resident's money will not be commingled with facility funds.
- The facility must provide residents with an individualized financial report quarterly, and upon request.
- Any remaining funds will be conveyed to the named successor should a resident die while living in the facility.
- All funds held by the facility will be protected by a security bond.

Grievances:

- Residents may voice grievances concerning care without fear of discrimination or reprisal.
- Residents may expect prompt efforts for the resolution of grievances.

Work:

- Residents may perform, or refuse to perform, services for the facility.
- All services performed must be well documented in the care plan to include nature of the work and compensation.

Privacy:

- Residents have the right to privacy concerning:
 - personal care;
 - medical treatments;
 - telephone use;
 - visits;
 - letters and correspondence; and
 - meetings of family and resident groups.
- Residents may approve or refuse the release of their records except in the event of a transfer or legal subpoena.

Examination of Survey Results:

- Residents may examine survey results and the plan of correction.
- Survey results or a notice of their location will be posted in a readily accessible place.
- Residents have to the right to contact client advocate agencies and receive information from them.

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Mail:

- Residents have the right to promptly send and receive their mail unopened and have access to writing supplies.

Personal Property:

- Residents may retain and use personal possessions as space permits.

Access and Visitation Rights:

- Residents have the right to receive or deny visitors.
- Residents have the right, and the facility must provide, access to visit with any relevant agency of the state or any entity providing health, social, legal or other services.

Self-administration of Drugs:

- Residents may self-administer drugs unless determined unsafe by the interdisciplinary team. This includes medication management and medication administration.

Admission Policy:

- The facility must not require a third party guarantee of payment, or accept any gifts, as a condition of admission or continued stay.
- The facility cannot require residents to waive their right to receive or apply for Medicare or Medicaid benefits.
- The facility may obtain legal financial access for payment without incurring your personal liability.
- The facility may charge a Medicaid-eligible resident for items and services requested (that are not covered in the daily Medicaid rate).
- The facility may only accept contributions from families and/or residents if they are not a condition of admission or continued stay.

Equal Access To Quality Care:

- The facility must use identical policies regarding transfer, discharge and services for all residents.
- The facility may determine charges for a non-Medicaid resident, as long as written notice was provided at time of admission.

Transfer and Discharge Rights:

- Residents may not be transferred or discharged unless:
 - Resident's needs cannot be met by the facility;
 - The safety of the resident or others is endangered by their presence in the facility;
 - The resident no longer meets the level of care for the facility; or
 - payment for services has not been made.

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- Notice and reason(s) for transfer or discharge must be provided to the resident and/or their legal representative in written form.
- Notice of transfer or discharge must be provided 30 days prior to the date of anticipated discharge. Exceptions may include cases which involve immediate action due to health or safety.
- A facility must provide sufficient preparation to ensure a safe transfer or discharge.
- The transfer or discharge notice must include the location to which the resident will be discharged.
- The transfer or discharge location must be consistent with the level of care of the resident.
- The transfer or discharge notice must include the contact information (name, address and telephone number) of the State and Local Ombudsman.
- The transfer or discharge notice must inform the resident of their right to appeal the decision through the Fair Hearing process.

Notice of Bed-Hold Policy and Readmission:

- Residents and/or legal representatives must receive written notice of state and facility bed-hold policies before and at the time of a transfer.
- The facility must follow a written policy regarding the facilities bed hold policy.

Abuse:

- Residents have the right to be free from verbal, sexual, physical or mental abuse, corporal punishment and involuntary seclusion.

Restraints:

- The facility may not use physical restraints or psychoactive drugs for discipline or convenience, or when they are not required to treat medical symptoms.

Staff Treatment:

- The facility must implement procedures that protect residents from abuse, neglect or mistreatment, and misappropriation of property.
- In the event of an alleged violation involving a resident's treatment, the facility is required to report it to the appropriate officials.
- All alleged violations must be thoroughly investigated and the results reported.

Dignity:

- The facility will treat residents with dignity and respect in full recognition of their individuality.

Quality of Life:

- The facility must care for residents in a manner that enhances their quality of life.

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Social Services:

- The facility will provide social services to attain or maintain a resident's highest level of well-being.

Accommodation of Needs:

- Residents have the right to receive services with reasonable accommodations to resident needs and preferences.

Self Determination:

- Resident may choose their activities, schedules and health care, and any other aspect affecting life within the facility.

Participation in Resident and Family Groups:

- Residents may organize or participate in groups of their choice.
- Families have the right to visit with other families.
- The facility must provide a private space for group meetings.
- Staff or visitors may attend meetings at the group's invitation.
- The facility will provide a staff person to assist and follow up with the group's requests.
- The facility must listen to and act upon requests or concerns of the group.

Activities:

- The facility will provide a program of activities designed to meet resident needs and interests.

Participation in Other Activities:

- Residents have the right to participate in activities of choice that do not interfere with the rights of other residents.

Environment:

- The facility must provide a safe, clean, comfortable, home-like environment, allowing residents the opportunity to use personal belongings to the extent possible.
- The facility will provide housekeeping and maintenance services.
- The facility will supply clean bath and bed linens, and that they are in good repair.
- The facility will provide private closet space, as space permits.
- The facility will provide adequate and comfortable lighting and sound levels.
- The facility will provide comfortable and safe temperature levels.

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APPENDIX E

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 Adult Services and Aging or the Ombudsman Program. Facilities may report to the Ombudsman Program as a courtesy.

- Facilities are required to keep incident reports that relate the specifics of all accidents and "unusual" incidents occurrences.
- Adult Services Specialist will watch for patterns in behavior including, falls, neglect, abuse, and exploitation.

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APPENDIX F

Administrative Hearing Request:

Requests for Fair Hearing related to a nursing home or assisted living facility resident who has been issued a 30 day Notice of discharge, must be in writing and follow established protocol.

Although the Ombudsman may provide information and assistance, the Ombudsman cannot make the request for Fair Hearing; the resident or resident's representative must make the request for Fair Hearing to Administrative Hearings.

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APPENDIX G

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.

2. 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;
- 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?

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3. 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?

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APPENDIX H

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.

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APPENDIX I

SURVEY PROCESS AND RELATIONSHIP WITH OMBUDSMAN:

A. 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 A through C.

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,

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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.

B. 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 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 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.

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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 Long Term Care Ombudsman Program 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 Ombudsman should NOT alert facilities to a scheduled survey time.

As schedules allow, the Local Ombudsman may attend the exit conference with the survey team. If the Ombudsman is available to attend, it is appropriate, and they are encouraged to attend the exit conference.

C. 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.

D. 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.

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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.

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APPENDIX J

Requests from Attorneys:

All requests for Ombudsman case information from attorneys should be referred to the State Ombudsman and/or 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 blocked out. If the attorney wants that information, he/she will need to produce a court order specifying that the name of referent be disclosed.
- No information will be disclosed whether an investigation was done or not, without a Court Order.

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APPENDIX K

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.

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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:

- 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.

EXAMPLE:

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.

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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 his/her 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.

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APPENDIX L

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 Long Term Care Ombudsman is mandated to protect the rights of resident councils in nursing homes. The Long Term Care Ombudsman 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.

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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:

1. 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 ran.
2. The council shall annually elect a chair form among its members. The chair shall call and preside at council meetings.
3. 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.
4. Each resident council shall:
 - a. Actively participate in development of choices regarding activities, food, living arrangements, personal care and other aspects of resident life; and
 - b. 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.

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APPENDIX M

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 (§ 483.12(d)(2)).
- 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.

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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.

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:

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- 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. <http://www.ssa.gov/online/ssa-11.pdf>
- 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. <http://www.ssa.gov/online/ssa-11.pdf>
- Initiate civil action for non-payment – small claims court limit is \$8,000.00.
- 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) www.sdbar.org.

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RESOURCES:

Code of Federal Regulations 42 CFR§ 483.12 Admission, Transfer, and Discharge Rights

For South Dakota Department of Health rules regarding nursing homes go to: <http://Legis.state.sd.us/rules/displayrule.aspx?rule=44:04> for Medical Facilities. Another site is WWW.hpm.umn.edu/nhregsplus/. This site contains nursing home regulations for all states.

To view a listing of available videos through Adult Services and Aging: <http://dss.sd.gov/elderlyservices/docs/videoresources.pdf>