South Dakota Long-Term Care Ombudsman Program Federal Fiscal Year 2020 Annual Report

October 1, 2019 – September 30, 2020

The information within this report demonstrates efforts in protecting and advocating for the rights of individuals residing in long-term care communities throughout South Dakota.
Message from the State Long-Term Care Ombudsman

I am honored to present the annual report of the South Dakota Long-Term Care Ombudsman Program for federal fiscal year 2020. This report is presented to you in accordance with the federal regulations and the Older American’s Act.

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

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

The Administration for Community Living (ACL) established standards applicable to the training required for representatives of the “Office of Ombudsman” representatives in November 2019. The standards specify content and minimum hours of training. The requirement to certify an ombudsman program representative is 35 hours of initial certification training. A minimum of 18 hours annual in-service training hours is required to maintain designation. Content coverage as well percentage of various study
platforms are designated in the requirements. The South Dakota State Long-Term Care Ombudsman Program meets the standards set forth by ACL for training and education. The program utilizes the National Ombudsman Resource Center’s on-line training curriculum as a part of the ombudsman program’s developed training. The training includes but is not limited to the following areas: history and role of the long term-care ombudsman program, interviewing techniques, problem solving process, resident rights, involuntary discharge, policies, procedures, review of laws, review of Older Americans Act and the Olmstead Acts, review of other state ombudsman programs, and culture change.

The long-term care ombudsman program utilizes a person centered, person lead approach by obtaining consent from the resident or resident representative prior to starting any action on concerns. The ombudsman program also encourages self-advocacy as a first step to finding a resolution.

Donna Fischer, CDP

State Long-Term Care Ombudsman
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Ombudsman Code of Ethics as Developed by
The National Association of
State Long-Term Care Ombudsman

- The ombudsman provides services with respect for human dignity and
  the individuality of the client, unrestricted by considerations of age,
  social or economic status, personal characteristics, or lifestyle choices.

- The ombudsman respects and promotes the client’s right to self-determination.

- The ombudsman makes every reasonable effort to ascertain and act
  in accordance with the client’s wishes.

- The ombudsman acts to protect vulnerable individuals from abuse and neglect.

- The ombudsman safeguards the client’s right to privacy by
  protecting confidential information.

- The ombudsman remains knowledgeable in areas relevant to the long-term
  care system, especially regulatory and legislative information, and long-term
  care service options.

- The ombudsman acts in accordance with the standards and practices of the
  Long-Term Care Ombudsman Program and with respect for the policies of
  the sponsoring organization.

- The ombudsman will provide professional advocacy services unrestricted
  by his/her personal beliefs or opinions.

- 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 facility, 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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1Code of Ethics | NASOP  nasop.org/about/code-of-ethics/
Authority, Purpose and Philosophy

Authority

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

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

Purpose

The purpose of the South Dakota Long-Term Care Ombudsman Program is to protect and improve the quality of care and quality of life for residents of long-term care facilities through advocacy for, and on behalf of, residents. The Older Americans Act directs the ombudsman program to receive, investigate and resolve complaints made by, or on behalf of, individuals who are residents of long-term care facilities. The primary focus of the ombudsman program is the resident; therefore, the ombudsman advocates on behalf of and at the direction of the resident. Complaints may relate to the actions, inactions, or decisions of providers or their representatives, public or private agencies, guardians or others which may adversely affect or be perceived by the resident to adversely affect the health, safety, welfare, or rights of residents. The long-term care ombudsman is available to any resident of a long-term care facility in the state of South Dakota.

The Older Americans Act requires the long-term care ombudsman program to “analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, policies and actions that relate to the health, safety, welfare and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State.”

Philosophy

The long-term care ombudsman program is a person-centered advocacy program. The ombudsman advocates, mediates, investigates, and educates residents as well as others and has a responsibility to act in situations involving vulnerable individuals. The ombudsman advocates by providing information, assisting in problem solving, and by promoting individual and group self-advocacy skills.
Roles and Collaboration

The state and local long-term care ombudsmen provide services to protect the health, safety, welfare, and rights of residents of long-term care facilities. The state ombudsman is responsible for providing leadership, planning, and direction for the ombudsman program to include program management, development of policies and procedures and maintaining adherence to the Ombudsman Code of Ethics. The state ombudsman screens, trains, coaches, supervises, evaluates, and provides direction to local ombudsmen.

This year brought about some challenges with the beginning of the COVID-19 pandemic in March 2020. The pandemic had an immediate impact on the South Dakota Long-Term Care Ombudsman Program’s ability to conduct in person visits to residents and facilities. The program quickly began to implement alternative methods of reaching residents including but not limited to audio and video calls, outdoor socially distanced meetings, parade type visitation, etc. Additionally, cards were made and delivered to residents with photos of the local ombudsman and contact information for the ombudsman listed. Limited in-person visitation with residents resumed by the end of June, with ombudsman staff following protocol and utilizing recommended personal protective equipment. Visitation continued to fluctuate and look different then it had pre-pandemic; some of the variations included but were not limited to one facility being visited each day, reduction in the number of residents talked to during each visit, etc. A significant amount of the local ombudsman’s role is to conduct routine visits to facilities to meet the federal mandate of providing regular and timely access to the ombudsman program. Routine visitation to individuals residing in long-term care helps develop a working relationship of trust where individuals share their concerns and request assistance in increasing the quality of care. Advocating for the rights and interests of residents is a prominent aspect of ombudsman duties. The COVID-19 pandemic challenged the program with how to continue those important routine visits and attend resident and/or family council meetings. The second activity that utilizes a majority of the ombudsman’s time is providing consultations, technical assistance, brainstorming, and collaboration with facility staff to develop a cohesive working relationship which strengthens the ombudsman ability to best advocate for the residents. These consultations to facility staff were also impacted by the pandemic due to infection control protocols and nursing facility staffing changes made necessary by the pandemic. Many additional pressures were placed on staff in order to keep residents safe.
Typically, local ombudsmen make unannounced visits to facilities, conduct complaint investigations, make unannounced complaint visits, support resident and family councils, participate in federal and state inspection surveys, inform the public, and provide community education. These activities work in tandem to ensure the ombudsman maintain a presence in facilities and advocate for the rights and interests of residents. Additionally, regularly providing information and assistance regarding long-term care issues to the public, residents and staff of long-term care facilities, community organizations and other interested parties fall under duties to be carried out by the ombudsman program. All of the aforementioned ombudsman duties were impacted by the pandemic in various ways. The South Dakota Long-Term Care Ombudsman Program staff sought out and utilized technology whenever possible to maintain these relationships.

The South Dakota State Long-Term Care Ombudsman (SDSLTCO) serves as a member of the Medicaid Fraud Control Unit’s quarterly liaison meetings, advocating for the rights of residents. The Attorney General’s Medicaid Fraud Control Unit (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. MFCU is charged with the responsibility for the investigation and prosecution of incidents of abuse, neglect and/or exploitation of individuals receiving benefits under state and federal medical assistance programs and individuals residing in facilities that receive such funds. MFCU’s interests include the prevention, detection, investigation, and prosecution of provider fraud, abuse, neglect, financial exploitation, and improper medical practices.

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

During federal fiscal year 2020, the South Dakota State Long-Term Care Ombudsman participated in a workgroup led by the South Dakota Association of Healthcare Organizations to help draft legislation regarding video or audio monitoring of residents in assisted living centers and nursing facilities for the 2020 South Dakota legislative session. House Bill (HB) 1056 added a new section to South Dakota Codified Law SDCL 34-121-1 through 34-121-18 creating guidelines for allowable video monitoring. HB 1056 was passed by the Legislature, signed by Governor Noem on March 4, 2020, and became a part of state law effective July 1, 2020.
During the 2019 legislative session Governor Noem sponsored legislation to make five million dollars in nursing facility innovation grants available to South Dakota nursing facilities. Senate Bill 173 authorizing the nursing facility innovation grant funding was passed and the funds were made available through a grant process offered through the Department of Human Services. After a grant offering and proposal review process, contracts were entered into with awardees beginning in early 2020. The opportunity was designed to fund projects in areas crucial to the needs of South Dakota’s aging population. The proposals included direct improvements to quality of care, training, improved outcomes, direct services, continuum of care, or other projects that would improve resident outcomes, advance the care and services provided in nursing facility, and support activities that benefit residents. The South Dakota State Long-Term Care Ombudsman was a member of the review board participating in the review and selection of successful innovation grant applications. Twenty-seven (27) individual awards were made to nursing facilities for projects ranging from improved call light systems and E-care to dementia education programs for staff and an on-site dialysis unit. Performance metrics were collected and tracked by the Department of Human Services during the 2019-2020 FFY. A number of projects were delayed due to the COVID-19 pandemic; others have already shown improvement in patient experience.

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

Factual representation of one individual’s experience:

Prior to and at the beginning of the pandemic, Mary* was residing in a nursing facility, where she was having difficulties due to mental health challenges, negative behaviors, poor overall physical health, and past life trials. Mary wanted to attend a Native American healing ceremony. The ceremony was anticipated to last one to five days and nights, it would all depend on the healing process. Mary, her family, and the nursing facility staff were all in agreement with getting Mary the healing she was requesting if they could develop a safe plan. The nursing facility contacted the local ombudsman for assistance in brainstorming on how to best accommodate Mary while following COVID-19 guidelines. Mary had medical treatments that needed to occur several of the days she would be out of the nursing facility. The local and state ombudsman discussed the residents right to religious and medical choice and brainstormed some additional possibilities on how to get her to the healing ceremony. Local and state ombudsman had a discussion with the Department of Health’s Office of Licensure and Certification and came up with some guidance on how they could all proceed to facilitate attending the healing ceremony. Some points of further discussion were that Mary could arrange for the medical treatments to be performed closer to the town where the healing ceremony would take place; Mary could talk with her doctor about any alternative treatment options for the duration of her absence from the nursing facility; Mary could discuss with her doctor the implications of not completing the treatments while away. Two local ombudsman, the state ombudsman, nursing facility staff, resident and resident’s family were on a care conference call to discuss all options. A plan was put into place, which allowed Mary the opportunity to go to the healing ceremony. The healing ceremony was completed much faster than anyone had originally anticipated, and she returned to the nursing facility within a day’s time. Since the healing ceremony, it was reported that she had been much calmer and more at peace within herself. She no longer had negative behavioral issues and passed peacefully away within six months of the healing ceremony from natural causes.

Factual representation of one individual’s experience:

Amber* was living in a nursing facility when the pandemic started; she was visiting with the local ombudsman and told her she was very sad that not only could she not see her husband of over 40+ years, but she also could not see her dog, Bella*, whom she considered a therapy dog. The local ombudsman gained approval to discuss the issue with the nursing facility staff. The staff were having a difficult time with the idea of allowing Bella into the building. The local ombudsman persisted in coming up with different suggestions and solutions while working with nursing facility staff who were still not on board with the idea of allowing Bella into the building. Additionally, Amber’s friend started calling the local ombudsman on a regular basis to try to get her help advocating for Bella to be able to come into the building. Amber was a strong advocate for herself and others even writing letters to government officials about all residents losing their rights as citizens. This advocacy continued over the course of two months, a complicating factor was the news sources had originally believed dogs
could transmit or carry COVID-19. Once there were some news stories stating the opposite, that dogs couldn’t transmit COVID-19 to humans, the local ombudsman jumped at the chance for stronger advocacy. The local and state ombudsman discussed options on how Bella could safely visit, they discussed the options with the Department of Health’s Office of Licensure and Certification and came up with a workable solution which was then discussed with nursing facility staff. The nursing facility staff also felt it was a workable solution. The developed plan called for the spouse to bring Bella to the nursing facility, staff would meet them at the front entrance, let Bella in and make sure Bella got to the right place. The visitation was able to happen almost daily, for right around seven months when unfortunately, the individual passed away. She was extremely grateful that she was able to have Bella visiting and expressed her gratefulness to the local ombudsman. Her improved quality of life was evident with Bella being able to visit.

Factual representation of one individual’s experience:

Donna*, the daughter to Don* who was a resident at an assisted living center contacted the state ombudsman, she was very upset and felt staff were not providing appropriate discharge planning, providing adequate care, or respecting her dad’s heritage, diagnosis, or choices. A point of disagreement was that Donna believed a higher level of care was needed for Don and the nursing facility staff believed a lower level of care was needed for Don. The ombudsman program received approval from Don to work on the case and contacted a third-party entity to review the level of care. Unfortunately, due to the pandemic, the review would occur only via a record review and no in person review would take place. After a review of the documentation provided, the resident was assigned a lower level of care. A residential housing arrangement consistent with a lower level of care was located, and Don moved to a registered residential living facility. Shortly after moving in, Don eloped from the registered residential facility, put himself in danger, and ended up in the emergency department of a local hospital. The state ombudsman worked with Donna, the hospital social worker, and an independent reviewer to reassess level of care and locate appropriate placement options. After a review of additional information, it became apparent that the original documents provided didn’t fully reflect Don’s needs and a nursing facility level of care was then assigned. A list of nursing facilities that work well with individuals in similar situations was provided to Donna. A nursing facility was located, and Don was admitted for care. Follow up conducted a month after the move indicated Don had transitioned well to the new facility and his needs were being adequately met.

*Names have been changed to protect the confidentiality of the individuals.
Building Relationships

The South Dakota State Long-Term Care Ombudsman Program has worked diligently to build relationships with individuals in long-term care placement. This relationship building helps to encourage residents to bring issues directly to the ombudsman program. In 2015 ACL published the 2015 Long-Term Care Ombudsman Final Rule with a July 1, 2016 implementation date. In response to the final rule the South Dakota State Long-Term Care Ombudsman Program certified and designated 6 local long-term care ombudsmen which has helped to foster trusted relationships between the ombudsmen and individuals residing in long-term care. The images below demonstrate who the ombudsman program received complaints from, in federal fiscal year 2013, 2016, 2017 and 2020. Comparison of the data from 2013 to 2016 and 2017 shows an increase in the number of complaints directly from residents and family and a comparative decrease in complaints from facility staff and other. It is important to highlight the COVID-19 pandemic began in March 2020 and did impact relationship building with residents and family members, as well as influenced who was contacting the ombudsman program. The number of complaints from facility and staff increased to levels near the FFY2013 level.

FFY 2013 data shows the trend prior to the Long-Term Care Ombudsman changes following the 2015 Ombudsman Final Rule.

FFY 2016

FFY 2017

FFY 2020
Complaint Category Definitions as Determined by The Administration for Community Living

The following terms as defined by the Administration for Community Living (ACL) specifically for Ombudsman Reporting to ACL.

**Abuse, Gross Neglect and Exploitation** – The term abuse means the willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or the willful deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness. Gross neglect is the deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness. The term (financial) exploitation means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain.

**Access to Information** – Complaints involving access to information or assistance, including resident records, inspection reports, or information regarding outside resources.

**Admission, Transfer, Discharge, or Eviction** - Complaints involving placement and proper notice for discharge, including appeal rights.

**Autonomy, Choice, Exercise Rights, and Privacy** - Complaints involving the resident’s right to self-determination, exercising their rights, and privacy in treatment.

**Financial or Property Rights** – Complaints involving non-criminal mismanagement or carelessness with residents’ funds and property or billing problems. This category does not include financial exploitation.

**Care** - Complaints involving negligence, lack of attention and poor quality in the care of residents.

**Maintenance or Rehabilitation of Function** - Complaints involving failure to provide needed rehabilitation or services necessary to maintain the expected level of function.

**Restraints** - Complaints involving the use of physical or chemical restraint.

**Staffing** - Complaints involving staff unavailability, training, turnover, and supervision.

**Activities, Community Interaction, Resident Conflict, and Social Services** - Complaints involving social services for residents and social interaction of residents. Transportation is included because community interaction is sometimes dependent upon transportation. This category also includes complaints about the lack of activities appropriate for each resident and any complaint involving conflict between residents, including roommate conflict and inappropriate behaviors, that impact another resident’s quality of life.
Complaint Category Definitions Continued ….

**Food Services** - Complaints involving food and fluid intake, quality, quantity, or specialized dietary needs, including assistance with eating or drinking.

**Environment** - Complaints involving the physical environment of the facility and resident’s space.

**Administration** - Complaints under this heading are for acts of commission or omission by facility managers, operators, or owners in areas other than staffing.

**Agency Response to Complaints and Discharge Hearings** - Complaints involving decisions, policies, actions, or inactions by the state agencies which license facilities and certify them for participation in Medicaid and Medicare.

**Denial of Eligibility** - Complaints about Medicaid coverage, benefits, and services, including denial of eligibility for Medicaid.

**Conflict with Family, Physician, Legal Representative or Others** – Complaints about family conflict that interferes with resident’s care; or a resident’s physician or assistant who fails to provide information, services, is not available, or makes inappropriate or fraudulent charges; or complaints that involve any of the legal issues involving a guardian, power of attorney or another resident representative.

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Top Five Complaints
As Reported to the South Dakota Ombudsman Program

Nursing Facility

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<tr>
<th>FFY 2020</th>
<th>FFY 2019</th>
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<tr>
<td>Care</td>
<td>Abuse, Gross Neglect, Exploitation</td>
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<td>Abuse, Gross Neglect, Exploitation</td>
<td>Care</td>
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<td>Autonomy, Choice, Rights</td>
<td>Admission, Transfer, Discharge, Eviction</td>
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<td>Admission, Transfer, Discharge, Eviction</td>
<td>Autonomy, Choice, Rights</td>
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<tr>
<td>Financial, Property</td>
<td>Facility Policies, Procedures, and Practices</td>
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Care Communities

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<th>FFY 2020</th>
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<td>Autonomy, Choice, Rights</td>
<td>Care</td>
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<tr>
<td>Admission, Transfer, Discharge, Eviction</td>
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</tr>
<tr>
<td>Environment</td>
<td>Facility Policies, Procedures, and Practices</td>
</tr>
</tbody>
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When Should I Contact the Long-Term Care Ombudsman Program?

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

- **Barrier:**
  Residents have been challenged with realizing autonomy, choice and exercising of their rights. The COVID-19 pandemic limited the residents’ ability to maintain visitation at their preferred frequency which subsequently resulted in residents suffering from the effects of isolation.

- **Recommendation:**
  Ensure there is always a mechanism for the resident to maintain connections and choose their level of risk when it comes to visitation by family/friends.

- **Barrier:**
  As with the rest of the country the shortage in workforce to provide care in long-term care communities is noticed in South Dakota.

- **Recommendation:**
  Participate in activities within the scope of the ombudsman program, follow efforts to expand the long-term care workforce, and initiate brainstorming conversations with leadership.

- **Barrier:**
  Lack of understanding of the dementia disease diagnosis continues to be a barrier to these individuals receiving informed person-centered care.

- **Recommendation:**
  Continue the following activities and look for additional ways to improve dementia care.

  The SD LTCOP representatives are all certified as Dementia Practitioners by the National Council of Certified Dementia Practitioners.

  The LTCOP was awarded a Civil Money Penalty (CMP) grant to provide dementia education and culture change series throughout the state for two years beginning in 2022.

  A phase one CMP grant to provide Music and Memory to 55 nursing facilities were awarded for federal fiscal year 2019 – 2020. Phase II will begin in 2022.

  The innovation grants made possible by Governor Noem provided six grants centered around dementia care education.
Department of Human Services
Long-Term Care Ombudsman Program

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