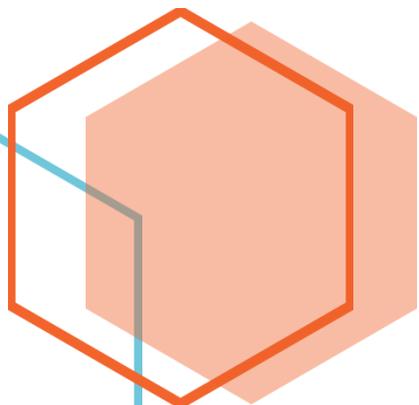




South Dakota Long-Term Care Ombudsman Program Federal Fiscal Year 2017 Annual Report

October 1, 2016 – September 30, 2017

The information within this report demonstrates our efforts to protect the rights of individuals who reside in long-term care communities throughout South Dakota.





Message from the State Long-Term Care Ombudsman

I am pleased to present the annual report of the Office of the State Long-Term Care Ombudsman for fiscal year 2017 in accordance with the federal Older American's Act. I welcome any questions, comments, or discussion about the contents of the report or issues affecting the residents of long term care.

Ombudsmen are mandated to advocate for the rights of individuals residing in long-term care facilities. The care settings covered by the South Dakota program are: assisted living centers, transitional care units, nursing homes, skilled nursing homes, registered residential centers, board and care homes, adult care centers and long-term geriatric psychiatric care centers.

A dedicated and passionate staff of seven promotes a person-centered approach to advocacy. Our ombudsmen work for resolutions that preserve the dignity and safety of this vulnerable population of South Dakotans. We believe that person-centered care leads to better outcomes for residents as well as contributes to higher staff satisfaction and retention. Our ombudsmen work hard to protect the health, safety, welfare, and rights of residents by investigating and seeking resolutions to complaints and issues. Our ombudsmen provide advocacy to enhance the quality of life and quality of care for South Dakotans who reside in a long term care type setting. Long term care ombudsmen obtain consent from a resident or resident representative prior to starting any action on the concern to keep within the person-centered practice.

Donna Fischer
State Long-Term Care Ombudsman



Advocating for the Rights of Residents

Ombudsman –
A Swedish word meaning
“representative of the people”

Office of the State Long-Term Care
Ombudsman
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Pierre, SD 57501-5070

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1-866-854-4565

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The National Association of State Long Term Care Ombudsman Programs Ethics:

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

Sources include the National Association of State Long-Term Care Ombudsman Programs <http://nasop.org/ethics.htm>

Quick Facts FFY 2017

- 6,725 beds in 108 nursing homes
- 5,827 beds in 216 assisted living/board and care homes
- 254 Complaint related visits
- 371 complaints were verified (68%)
- 2,222 Routine visits to facilities were completed
- 21 in-services training sessions for long term care staff were conducted
- 233 consultations to individuals were provided
- 552 consultations to facility staff were provided
- 79 resident council meetings were attended
- 61 facility surveys were participated in
- 6 Local LTC and 1 SLTC Ombudsman cover the entire state of South Dakota



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.

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

Purpose

The purpose of the Long-Term Care Ombudsman Program is to protect and improve the quality of care and quality of life for residents of long term care facilities through advocacy for, and on behalf of, residents. The Older Americans Act directs the Ombudsman Program to receive, investigate and resolve complaints made by, or on behalf of, individuals who are residents of long term care facilities. The primary focus of the Ombudsman Program is the resident; therefore, the Ombudsman advocates on behalf of and at the direction of the resident. Complaints may relate to the actions, inactions, or decisions of providers or their representatives, public or private agencies, guardians or others which may adversely affect 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, by 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 screen, trains, supervises and provides direction to Local Ombudsmen.

Local Ombudsmen make unannounced routine visits to a facility to maintain a presence and advocate for the rights and interests of residents are a routine part of ombudsman duties. All covered nursing home and assisted living centers are visited on a routine basis. Ombudsmen promote and provide technical support for the development of, and provide ongoing support for, family councils as requested by a resident or residents

Ombudsmen regularly provide 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.

The State Long Term Care Ombudsman serves as a member of the Medicaid Fraud Control Unit's quarterly liaison meetings, advocating for the rights of residents. The Attorney General's Office' Medicaid Fraud Control Unit is charged pursuant to its federal certification with the responsibility of detection, investigation and prosecution of fraud and abuse by providers of medical services to recipients of Medicaid. The Unit is charged with the responsibility for the investigation and prosecution of incidents of abuse, neglect and exploitation of individuals receiving benefits under State and Federal Medical Assistance Programs and individuals residing in facilities that receive such funds. The Unit's interests include the prevention, detection, investigation, and prosecution of provider fraud, abuse, neglect, financial exploitation, and improper medical practices.

The formal mechanism to exchange case data, information, and reports between the Department of Health, Department of Social 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 as well as address concerns and problems between agencies.

Additionally, the State Long Term Care Ombudsman participates as a board member of the Money Follows the Person Program, is a member of the Dementia Coalition, The South Dakota Coalition for Culture Change, The Long Term Care Collaboration Workgroup, The National Association of State Long Term Care Ombudsman Programs and National Consumer Voice.



Advocacy in Action

The Local Long-Term Care Ombudsman (LLTCO), during a routine visit to a nursing home, visited with George*, a resident in the facility.

George talked about being discharged from therapy on this date as he had met his therapy goals. George commented that he had also talked to his doctor the same day and the doctor recommended that George stay in the facility to gain more strength. George expressed that he was upset and confused that therapy was discharging him, but yet his doctor was recommending he stay in the facility to gain more strength. He talked about being in “prison” without having the ability to make his own decisions. LLTCO educated George about his rights and although the doctor made the recommendations, George was ultimately able to make decisions regarding discharge and determine goals for himself as he is competent and able to do so.

George stated he would like to be discharged “tomorrow,” LLTCO obtained verbal permission to visit with the nursing home Social Services staff, Jane*. After the LLTCO visited with Jane she talked with George and informed him she would make all of the necessary phone calls for him to return home the following day.

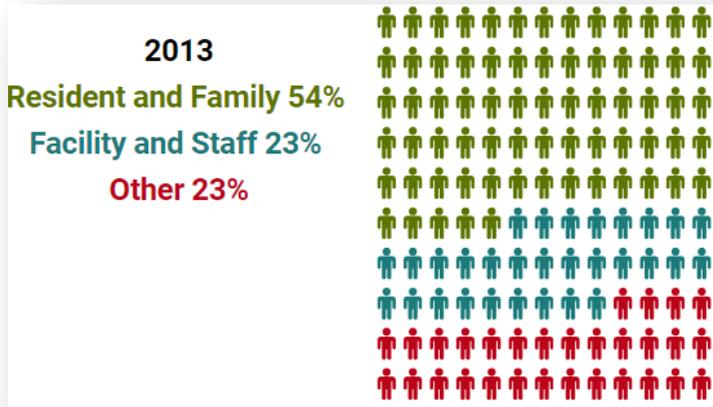
Prior to his nursing home stay George had in-home services which were reinstated and increased upon his discharge. George also already had an emergency response pendent as well as meals on wheels. Meals on wheels were reinstated and set to start upon his discharge.

While George was not able to discharge the very next day, he did return home within days of stating his request to the LLTCO.

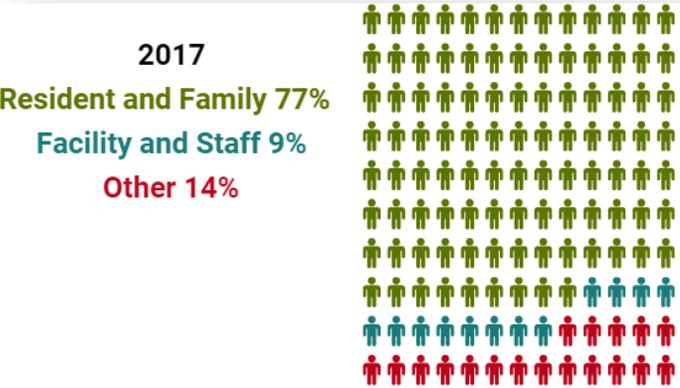
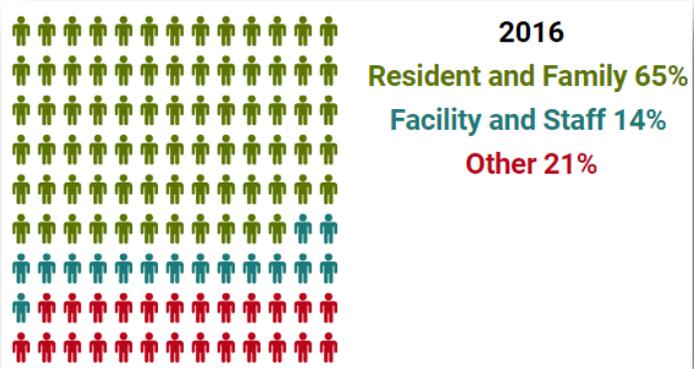
*Names have been changed to protect the confidentiality of the individuals.

Building Relationships

The 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 Ombudsman Program designated and certified 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 complaints were submitted by in federal fiscal year 2013, 2016, and 2017.



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





Complaint Category Definitions

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 other resident representative.



*Additional sources include Federal and State Law and the National Ombudsman reporting system.



Statistics

There were 362 cases opened and 545 complaints resolved during the reporting period. There are times when several complaints are addressed within one case thus accounting for the variance in cases versus complaints.

Complaints by Category and facility type

<i>Complaint Category Breakout</i>	<i>Nursing Home</i>	<i>B&C, ALF, RCF, etc.</i>
Physical Abuse	10	0
Sexual Abuse	2	0
Verbal/Psychological Abuse	10	5
Financial Exploitation	2	2
Gross Neglect	13	1
Resident to resident physical or sexual abuse	3	2
Policies, Procedures, Attitudes, Resources of the facility	6	2
Staffing	38	8
Care	99	16
Rehabilitation or Maintenance of Function	5	2
Restraints	4	0
Dietary	27	20
Environment	26	11
Activities and Social Services	7	7
Restraints	4	0
Dietary	27	20
Environment	26	11
Activities and Social Services	7	7
Access to Information	3	4
Admission, Transfer, Discharge or Eviction	35	28
Autonomy, Choice, Exercise Rights, Privacy	60	15
Financial or Property (except exploitation)	37	14



Barriers and Recommendations

- ❖ The Long Term Care Ombudsman Program (LTCOP) has identified there is a difference between the needs of residents and availability of nursing/care staff in long-term care communities. Long term care communities in South Dakota often cite that the standard they are held to is “staffing adequate to meet the needs of the residents” which is in federal regulation; however, this ambiguous interpretation of “the needs of the residents” creates a discrepancy in staffing levels that we believe affects quality long-term care operations. An enhanced definition of “staffing adequate to meet the care needs” would aid facilities in providing adequate staffing, perhaps even assist the facility budgeting and forecasting decisions. Some factors that have been identified as barriers to resolution of the staff shortage are low numbers of applicants, low wage for workers, and in-adequate training.

Possible solutions to resolve these barriers include, but are not limited to, fostering a societal attitude that values individuals who choose caregiving as a field of employment. This attitude needs to be developed early by implementing CNA (Health care) campaigns in high schools to place value and emphasis on these careers. High schools could offer a work readiness/career exploration class where interested students could job shadow a CNA or work in a nursing facility for a few hours a week to gain a better understanding of what the career includes. Higher education opportunities and funding should be available for these high demand occupations, through both employer support and state labor agencies. Staff with higher education levels would also increase starting wages for these positions.

- ❖ Behavioral health is a continued concern for older South Dakotans residing in long-term care communities. Some communities are unable to manage disruptive behaviors that are directly related to a mental health or dementia diagnosis. This skillset requires further development of educational tools. The lack of educational opportunities is currently not being addressed adequately by a systematic approach in long-term communities or their parent organizations.

The LTCO will work to become Dementia Care Certified in an effort to provide a more cohesive approach to problem solving and to effectively provide consultation assistance to staff. The implementation of Person Centered Care specifically addresses short comings in the broader sense of resident rights; however, further development of educational tools addressing where behavioral health, dementia care, mental health, and long-term care intersect is needed. Sufficient adequately trained staff plays a large role in solving these concerns.

- ❖ Resident bullying (i.e. physical and verbal altercations) are state/nationwide concerns. The skillset to work with individuals exhibiting these adverse behaviors requires further development and availability of educational resources.

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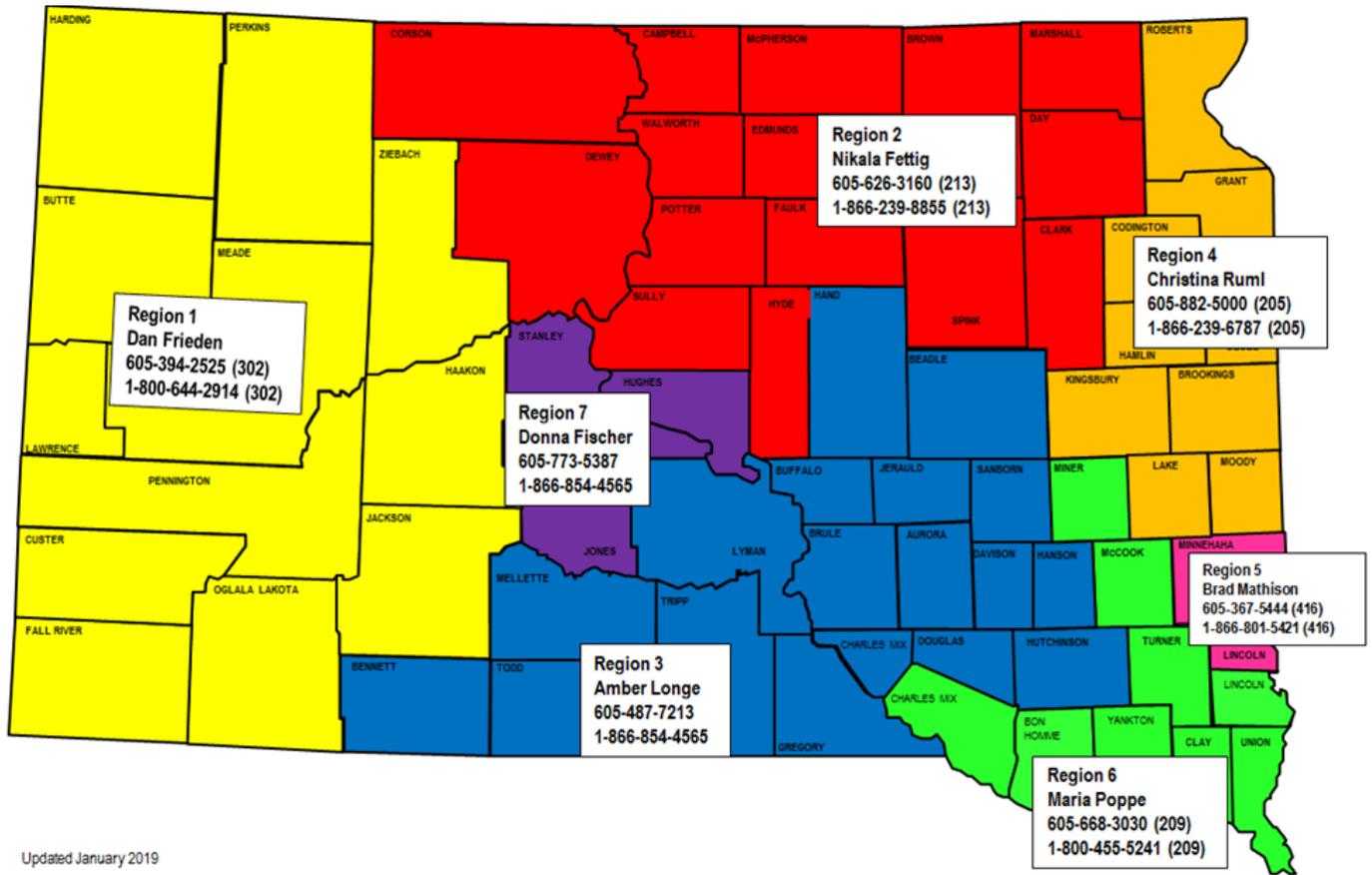
- ❖ The LTCOP has worked in conjunction with the State Unit on Aging to identify and interview residents at risk for unnecessary premature institutionalization. The main barrier identified for our state in these terms is the lack of alternatives to long term care. Due in part to the rural nature of our state, smaller rural communities often times have limited alternative options.

The HOPE Waiver in South Dakota is exploring alternatives to long-term care such as community living homes and structured family care giving homes. These additional residential options may be the solution to some of the afore-mentioned concerns. By their nature, these alternative residential options would be smaller settings and lend themselves to individualized attention and care. We are excited to see how these changes in service delivery and options will increase the quality of life for individuals residing in these settings.

- ❖ Lastly, our State Unit on Aging is working to rebrand the Aging and Disability Resource Connections call line. This rebranding will specifically address the target demographic of South Dakotans and provide information on alternatives to long-term care in our state.



Local Ombudsman Contact and Coverage Area



Ombudsmen

Region 1	Dan Frieden	605-394-2525 extension 302
Region 2	Nikala Fettig	605-626-3160 extension 213
Region 3	Amber Longe	605-487-7213
Region 4	Christina Ruml	605-882-5003 extension 205
Region 5	Brad Mathison	605-367-5444 extension 416
Region 6	Maria Poppe	605-668-3030 extension 209
Region 7	Donna Fischer	605-773-5387