

*Advocating for the rights of  
residents*

# South Dakota Long- Term Care Ombudsman Program

Federal Fiscal Year 2016 Annual Report

(October 1, 2015 – September 30, 2016)

The Office of the State Long-Term Care Ombudsman

# 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 2016 in accordance with the federal Older American's Act.

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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.

During this review period we worked to implement the Ombudsman Final Rule. The regulations which took effect July 1, 2016, were developed by the Federal Administration on Aging (AOA) at the Federal Administration for Community Living (ACL). The regulations were developed in an effort to implement consistency in quality and efficiency of service delivery throughout each state. Local/Regional Long-Term Care Ombudsmen and I have worked hard to develop and update policies, procedures, training materials, regions, and office structures to comply with the regulations outlined in the final rule. We are excited to share our story of advocacy with you.

Donna Fischer, AC (Advocacy Champion)  
South Dakota State Long Term Care Ombudsman

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## Quick Facts FFY 2016

- ✓ In South Dakota, 6,853 beds in 109 nursing facilities were licensed by the South Dakota Department of Health Office of Health Care Facilities Licensure and Certification division.
- ✓ In South Dakota, 4,622 beds in 165 assisted living facilities were licensed by the South Dakota Department of Health Office of Health Care Facilities Licensure and Certification division.
- ✓ State and Local Long Term Care Ombudsmen investigated 442 complaints made by or on behalf of residents of long term care facilities.
- ✓ State and Local Long Term Care Ombudsmen resolved or partially resolved 67% of all complaints received to the satisfaction of the resident or complainant.
- ✓ The Ombudsman program verified over 300 complaints.
- ✓ State and Local Long Term Care Ombudsmen conducted 24 in-service training sessions for long term care staff.
- ✓ State and Local Long Term Care Ombudsmen provided 179 consultations to individuals and 306 consultations to facility staff.
- ✓ State and Local Long Term Care Ombudsmen presented information on residents' rights, elder abuse, the Ombudsman program, and other topics at outreach events held in communities statewide.
- ✓ By resident request, State and Local Long Term Care Ombudsmen attended 187 resident council meetings to offer support and advocacy.
- ✓ State and Local Long Term Care Ombudsmen participated in 64 facility surveys conducted by the Department of Health Office of Health Care Facilities Licensure and Certification.
- ✓ The State Long Term Care Ombudsman is a full-time benefited state employee who is responsible to monitor the files, records and other information maintained by the Ombudsman Program. The State Long Term Care Ombudsman is also responsible for the performance of Local Long Term Care Ombudsmen who are full-time benefited state employees designated to carry out the duties of the Ombudsman Program, Division of Long Term Services and Supports within the Department of Human Services.

# The National Association of State Long Term Care Ombudsman Programs

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- ✓ 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>

## Role and Collaboration

- ✓ The State and Local Long-Term Care Ombudsmen provide services to protect the health, safety, welfare, and rights of residents of long-term care facilities. The State Ombudsman is responsible for providing leadership, planning and direction for the Ombudsman Program to include program management, development of policies and procedures and maintaining adherence to the Ombudsman Code of Ethics. The State Ombudsman screen, trains, supervises and provides direction to Local Ombudsmen. Local Ombudsmen make unannounced visits to facilities, conduct complaint investigations, support resident and family councils, participate in federal and state inspections, inform the public, and provide community education.
- ✓ Friendly 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

## 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.

## Advocacy in Action

A Local Long Term Ombudsman received a call from an Optometrist, on November 2nd, who had concerns about a patient whom she had seen a week prior. The resident lives in a nursing facility. The Optometrist reported that an unaccompanied resident came to the office last week via a transportation provider. The transportation provider dropped the resident off and left. This resident was unable to give a good medical or social history, and no medical diagnosis or history was sent with her. The only information provided was a list of her medications and a note that the patient had lost her glasses and a request to please send a progress note back. The resident was very confused and did not know why she was there. The resident needed assistance to use the bathroom several times. The Optometrist stated that the office was not equipped to help someone with toileting and believed it was a liability for them to treat this resident because, from their records, she had a brain tumor and was nearly blind. Their concern was without the patient giving feedback, it was difficult to assess and something could be missed. The Optometrist stated she had communicated with the facility in the past when similar circumstances have taken place, but she has not received a good response from the facility.

On November 3<sup>rd</sup>, the Local Ombudsman went to the nursing facility to investigate the case. The resident involved scored a “2” on her brief interview for mental status (BIMS) and is considered a non-reporter. A score, on the BIMS, of 0-7 indicates severe cognitive impairment. The Local Ombudsman met with Social Worker (SW) to address these concerns. Social Worker was unaware of any policy regarding assessing residents for their ability to attend appointments independently, so he called in the Director of Nursing (DON). The DON was unaware of any such policy, either, so the Local Ombudsman discussed the liability and possible concerns of neglect, and that the facility is responsible for residents when they go to appointments. Both the DON and SW agreed that they needed to call management together and put a policy in place. The DON stated that in the future a staff person would accompany the residents. At that point, the SW stopped her and said “they cannot commit to that.” The Ombudsman asked why and SW stated that “on paper they (the facility) can make it all look good that they have staff, but in reality it

is not that good and the workers do more tasks than what their job description says.” SW stated “all it takes is one worker to call in and they are short and that happens frequently.” Ombudsman gave the facility some time to come up with a policy.

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The Ombudsman returned to the facility on December 2<sup>nd</sup>, to discuss their policy for sending individuals, who are not cognitively competent, into the community on their own. The facility had come up with an implementation plan in which the facility will assess residents each time, before they are sent into the community, to see if they are cognitively capable of going on their own. If the resident does not pass the assessment, the facility will assign staff to go along with the resident to their appointment.



## Barriers and Recommendations

- ✓ The Long Term Care Ombudsman Program (LTCOP) has identified staff shortage as a long term care issue in South Dakota. 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 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.
- ✓ The Department of Social Services has focused on enhancing and expanding long term services and supports to adults with disabilities and elderly South Dakotans. During State Fiscal Year 2017, the provider supplemental agreement was updated to include information on how providers can compensate relatives and other caregivers for care they provide to the care recipient. At their discretion, providers may employ relatives to care for the consumer and provide oversight for the care provided. Additionally, South Dakota is conducting research to expand Home and Community-Based waiver services to include day habilitation, vehicle modifications, non-medical transportation, community transition services, training, and counseling services related to live-in caregivers. The Department of Social Services has a contractual relationship with Active Generations located in Sioux Falls to continue to implement a statewide awareness public campaign that focuses on caregiving in South Dakota. Active Generations collaborates with the SD Alzheimer's Association, SD Foundation for Medical Care and AARP.
- ✓ As a result of the Home and Community Based Services Workgroup recommendations, Adult Services and Aging (ASA) is making a concerted effort to help South Dakotans to remain living at home in their local communities. ASA will provide information to hospital and clinic staff responsible for discharge and reach out to senior centers, health fairs, provider association conferences, and support groups and will work with home health providers and targeted consumer groups to ensure smooth transitions for individuals between hospital and home by enhancing the Hospital Discharge Referral Protocols that were developed by Adult Services and Aging staff and Workgroup Partners.
- ✓ The Home and Community-Based Services Waiver Renewal was approved by CMS for October 1, 2016 through September 30, 2021. Chore services were added as an available service for Waiver consumers. Expansion of the specialized medical equipment definition to allow for a wider range of medical equipment, including assistive technology, was added to enable consumers to remain living in their home and communities.

- ✓ The Departments of Social Services and Health and Human Services have been meeting regularly to discuss options for enhancing long term services and supports. The focus of the Workgroup is to find ways to maximize the independence and well-being of South Dakotans by providing long term services and supports through a person-centered system that encourages choice and independence with an array of culturally-competent services appropriate to their needs and preference, regardless of age or disability. Goals of this Workgroup include expanding access to Home and Community Based Services, transition of current nursing home residents into the community, diversion of individuals from premature institutionalization, expanding access to self-directed services, improving supports to family caregivers, refining case management across waivers, creating and implementing a public awareness campaign, and development of a family-based residential model for an alternative option to facility placement



## Complaint Category Definitions

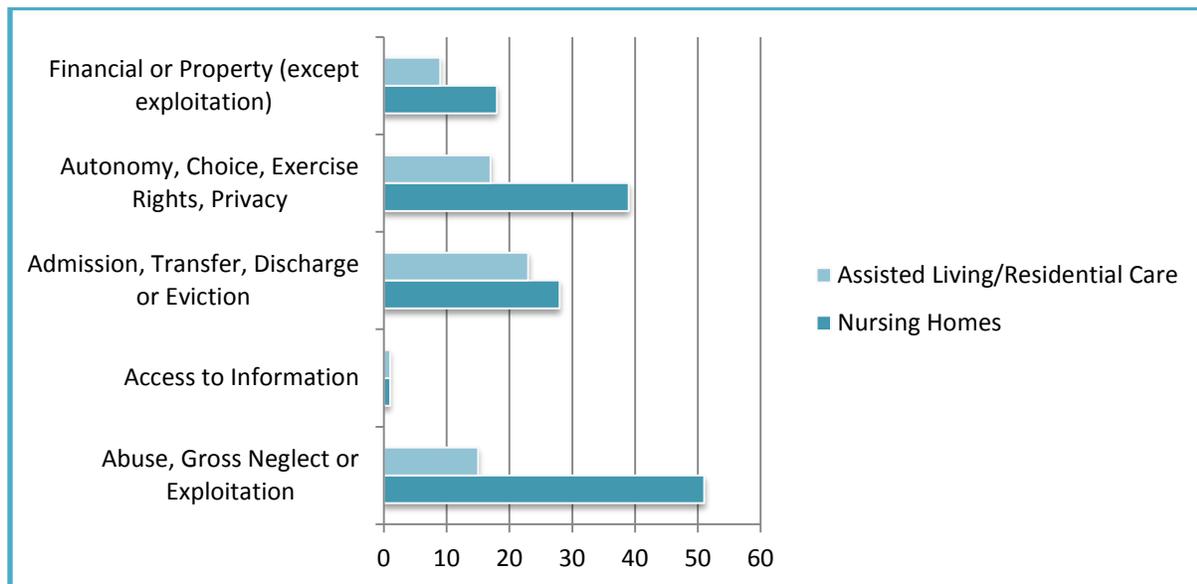
- ✓ **Abuse, Gross Neglect and Exploitation** -The term abuse means the willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain or mental anguish; or the willful deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness. Gross neglect is the deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness. The term (financial) exploitation means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit or gain.
- ✓ **Access to information** – Complaints involving access to information or assistance, including resident records, inspection reports, or information regarding outside resources.
- ✓ **Admission, Transfer, Discharge or eviction** - Complaints involving placement and proper notice for discharge, including appeal rights.
- ✓ **Autonomy, Choice, Exercise Rights, and Privacy** - Complaints involving the resident’s right to self-determination, exercising their rights, and privacy in treatment.
- ✓ **Financial or Property Rights** – Complaints involving non-criminal mismanagement or carelessness with residents’ funds and property or billing problems. This category does not include financial exploitation.
- ✓ **Care** - Complaints involving negligence, lack of attention and poor quality in the care of residents.
- ✓ **Maintenance or Rehabilitation of Function** - Complaints involving failure to provide needed rehabilitation or services necessary to maintain the expected level of function.
- ✓ **Restraints** - Complaints involving the use of physical or chemical restraint.
- ✓ **Staffing** - Complaints involving staff unavailability, training, turnover, and supervision.

- ✓ **Activities, Community Interaction, Resident Conflict, and Social Services** - Complaints involving social services for residents and social interaction of residents. Transportation is included because community interaction is sometimes dependent upon transportation. This category also includes complaints about the lack of activities appropriate for each resident and any complaint involving conflict between residents, including roommate conflict and inappropriate behaviors, that impact another resident's quality of life.
- ✓ **Food Services** - Complaints involving food and fluid intake, quality, quantity or specialized dietary needs, including assistance with eating or drinking.
- ✓ **Environment** - Complaints involving the physical environment of the facility and resident's space.
- ✓ **Administration** - Complaints under this heading are for acts of commission or omission by facility managers, operators or owners in areas other than staffing.
- ✓ **Agency Response to Complaints and Discharge Hearings** - Complaints involving decisions, policies, actions or inactions by the state agencies which license facilities and certify them for participation in Medicaid and Medicare.
- ✓ **Denial of Eligibility** - Complaints about Medicaid coverage, benefits and services, including denial of eligibility for Medicaid.
- ✓ **Conflict with Family, Physician, Legal Representative or Others** – Complaints about family conflict that interferes with resident's care; or a resident's physician or assistant who fails to provide information, services, is not available, or makes inappropriate or fraudulent charges; or complaints that involve any of the legal issues involving a guardian, power of attorney or other resident representative.

# Ombudsman Statistics FFY 2016

## Resident Rights Complaints by Category and facility type

Complaint Category	Nursing Homes	Assisted Living/Residential Care
Abuse, Gross Neglect or Exploitation	51	15
Access to Information	1	1
Admission, Transfer, Discharge or Eviction	28	23
Autonomy, Choice, Exercise Rights, Privacy	39	17
Financial or Property (except exploitation)	18	9
<b>Total</b>	<b>137</b>	<b>65</b>



# Ombudsman Statistics FFY 2016

## Resident Care Complaints by Category and facility type

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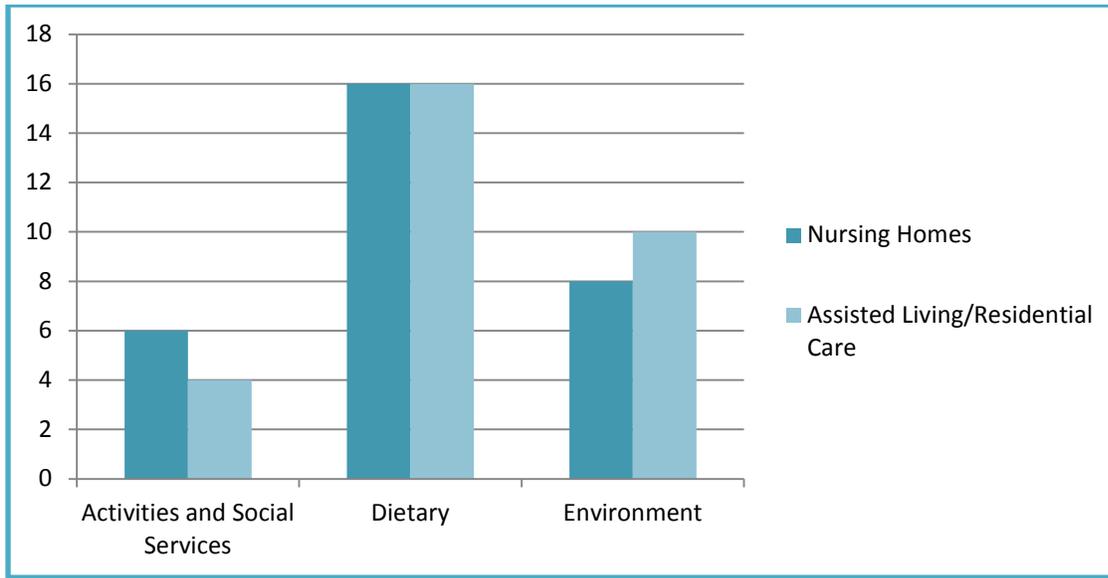
Complaint Category	Nursing Homes	Assisted Living/Residential Care
Care	78	22
Rehabilitation or Maintenance of Function	7	0
Restraints (Chemical and Physical)	1	1
Total	86	23

## Administration

Complaint Category	Nursing Homes	Assisted Living/Residential Care
Policies, Procedures, Attitudes, Resources	3	2
Staffing	22	9
Total	25	11

## Quality of Life

Complaint Category	Nursing Homes	Assisted Living/Residential Care
Activities and Social Services	6	4
Dietary	16	16
Environment	8	10
Total	30	30



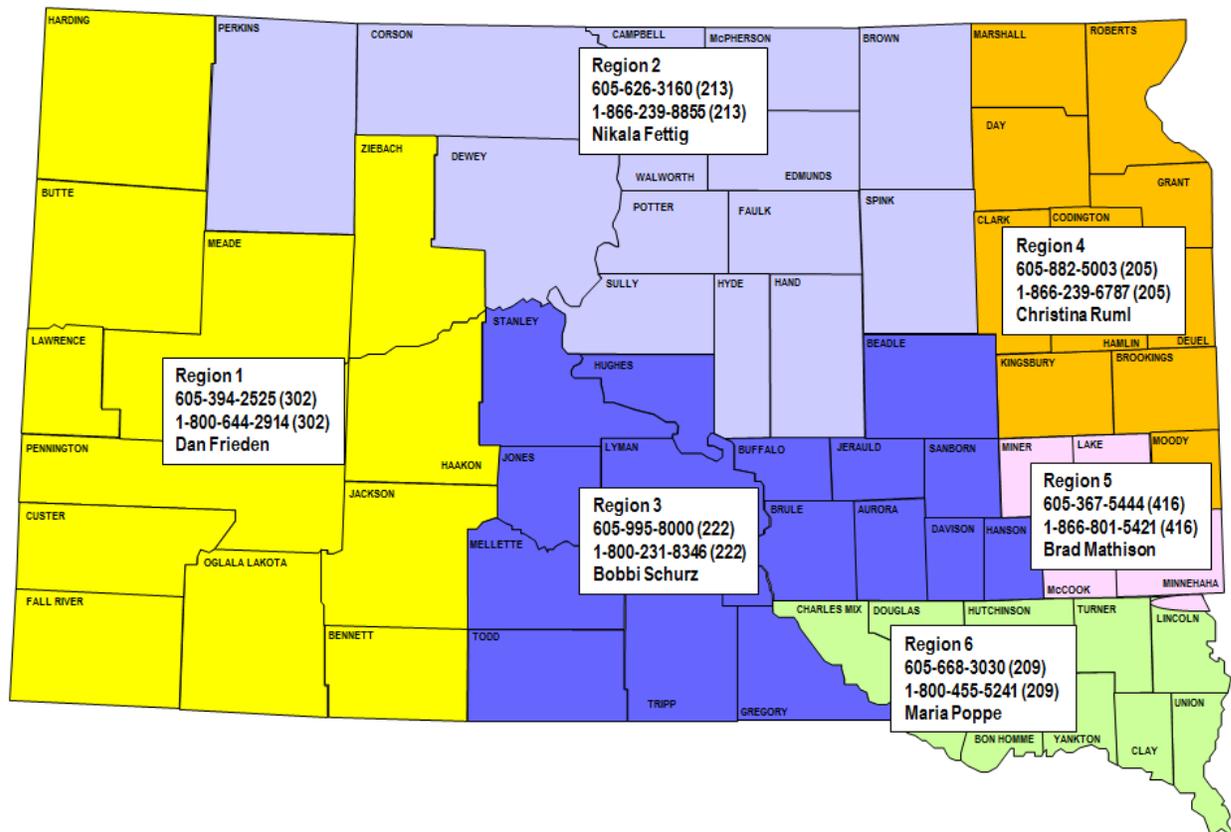
### Not Against the Facility

Complaint Category	Nursing Homes	Assisted Living/Residential Care
Certification/Licensing Agency	0	0
State Medicaid Agency	0	0
Systems/Other	10	11
Total	10	11

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

# Local Ombudsman Contact and Coverage Area

## Ombudsman Regions



### Local/Regional Ombudsmen

Region 1	Dan Frieden	605-394-2525 extension 302
Region 2	Nikala Fettig	605-626-3160 extension 213
Region 3	Bobbi Schurz	605-995-8000 extension 222
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

South Dakota Department of Human Services  
Office of the State Long Term Care Ombudsman

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