



SOUTH DAKOTA STATE LONG-TERM CARE OMBUDSMAN PROGRAM

Your Life. Your Rights. Your Voice.

You have a voice!



Division of Long Term Services & Supports



Department of Human Services

Hillsview Plaza. E. Hwy 34

c/o 500 East Capitol

Pierre, SD 57501-5070

Telephone: 1-833-663-9673

<http://dhs.sd.gov/ltss/ombudsman.aspx>

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Division of Long Term Services & Supports

Our mission is "To provide opportunities to enable older South Dakotans and adults who are disabled to live independent, meaningful, and dignified lives while maintaining close family and community ties by promoting long term services and supports to prevent or delay premature or inappropriate institutionalization."



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Introduction

South Dakota nursing facilities have a requirement to abide by all residents' rights, and to communicate these rights to residents and their designated representatives in plain language that resident's and their representatives can understand. They must protect and promote the rights of each individual living in the facility and also explain the resident's responsibilities.

Nursing home residents keep all their human and civil rights, which are guaranteed under Federal and State Law. These rights belong to each individual resident, regardless of the type of disability involved. A court finding of incompetence may result in a resident's loss of certain rights; all of the rights below are either retained by a resident who has been declared incompetent or may be exercised by their legal representative.

Title 42 of the Code of Federal Regulations section §483.10 , §483.12, and §483.15 specify your resident rights under Federal law. This document includes a brief overview of your rights, for a full listing of Residents' Rights please see 42 CFR §483.10, §483.12, and §483.24.

The long term care Ombudsman is designated by federal law to assist residents in exercising their rights. The facility's basic principle for operation must be resident rights, and all staff members must take an active role in respecting, protecting and promoting the rights of all residents.

The resident has the right to be free from interference, coercion, discrimination, and reprisal when exercising their rights as a resident of the facility and as a citizen of the United States.

If you have any questions or concerns about these rights or our responsibilities, please let us know so that we can further assist your understanding.



Long Term Care Facility Compliance Requirements

Long term care facilities must establish policies consistent with the regulations to protect and promote the rights of each resident. Nothing in their policies can be in direct conflict with the federal regulations.

Your rights to information and available services

Long term care facilities are required to provide a written statement of your rights, the responsibilities of both you and the facility, and the rules governing your conduct, at the time you are admitted. Information must be provided in a format and language you understand. Within thirty (30) days after your admission, the statement must be orally explained to you and if you are unable to understand, it should be explained to your immediate family member or representative and annually thereafter as long as you live in the facility. Proof that the information was given to you and any changes must be acknowledged in writing. The information must contain the following:

1. You have all the rights give to you as a resident of the Long Term Care facility and as a citizen of the United States.
2. You have the right to be free of interference, coercion, discrimination, and reprisal from the facility when exercising your rights.
3. You have the right to have a person appointed to act on your behalf. The facility must have the appointed persons address and phone number.
4. You have the right to access your records. You may purchase photocopies of your records, and the cost cannot exceed the standards for photocopying. The facility must provide the photocopies within two working days after your request.
5. You have the right to be fully informed of your health status and medical care. Additionally, changes to your plan of care, type of care to be provided, risks and benefits of your proposed treatments.

6. You have the right to refuse treatment or participation in experimental research. If you refuse treatment, you must be informed of the results plus any available alternatives.
7. You have the right to formulate a durable power of attorney for health care as provided in SDCL chapter [59-7-2.1](#) and a living will declaration as provided in SDCL chapter [34-12D-2](#).
8. You have the right to receive visitors. Visiting hours and policies must permit and encourage visits from your friends and relatives.
9. A list of services available and charges for the services.
10. A description of how a resident can protect personal funds, including the right to apply for Medicaid.
11. A list of client advocate names, addresses, and telephone numbers. Client advocates are agencies responsible for the protection and advocacy of patients and residents. These advocates include, but are not limited to, the Long-Term Care Ombudsman Program and Disability Rights South Dakota.
12. A description of how to file a complaint with the State Survey agency. State survey reports and plans of action.
13. A description of how you can contact your physician, including the physician's name and specialty
14. A description of how you can apply for and use Medicare and Medicaid benefits, plus the addresses and phone numbers of the nearest Department of Social Services and Social Security offices.



15. Services available in the facility and charges for those services, including any charges for services not covered under Medicare or by the facilities per diem rate.
16. A description of the bed-hold policy which indicates the length of time your bed will be held, policies regarding the held bed and your readmission rights.
17. An acute hospital admission does not eliminate your right to receive a thirty (30) day notice regarding transfer or discharge.
18. If after a period of inability to understand your rights you regain the ability to understand, the facility is then responsible to again inform you of your rights and responsibilities.
19. Facility staff are fully responsible to assist you in exercising your rights.

A signed and dated admissions agreement between you or your representative and the long term care facility must include the following:

- The agreement must be completed before or at the time of admission and before you have made a commitment for payment.
- The agreement may not include unclear or misleading information and may not be in conflict of Federal or State Law.
- The agreement must be printed so you can read it.
- If the agreement exceeds three pages, it must contain a table of contents or an index of sections.
- You must be provided with any changes in writing.



Resident Condition Changes

A long term care facility must notify you when your condition changes.

A facility must inform you, consult with your physician and, if known, notify your representative or interested family member when any of the following occurs:

1. You were injured in an accident and may potentially require a physician.
2. Your physical, mental or psychosocial status changes significantly.
3. Your treatment needs altered significantly.
4. The facility decides to transfer or discharge you.

Change in room assignment or rights

A long term care facility must notify you about changes in your room assignment or right. A facility must promptly notify you and, if known, your representative or interested family member when there has been a change in your room or roommate assignment or your rights.

Financial Affairs

You have the right to manage your personal affairs. A facility may not require residents to deposit their personal funds with the facility. If you choose to deposit funds with the facility and give written authorization, the facility must hold the funds in accordance with SDCL34-12-15.1 to 34-12-15.10, inclusive.

Personal funds of more than \$100 (\$50 for residents whose care is funded by Medicaid) deposited by the facility in a separate interest-bearing account, and financial statements quarterly or upon request.

CHOICE IN CARE PLANNING

You can participate in developing and implementing a person-centered plan of care that incorporates personal and cultural preference. Your plan should include reasonable accommodations of your needs and preferences.

The plan should include your choice over activities, schedules, health care, and providers including personal attending physician (they must meet state and federal requirements).

You also have the right to be informed in advance about care and treatment and of any changes that may affect your well-being, and unless you are incompetent or otherwise found to be in incapacitated under state law; you may participate in planning care and treatment, or changes in care or treatment.

You have choice in designating a representative to exercise your rights; to organize and participate in resident and family groups; request, refuse, and/or discontinue treatment.

PRIVACY AND CONFIDENTIALITY

You have the right to privacy and confidentiality regarding personal, financial, and medical affairs. Facilities are not required to provide a private room for each resident.

A facility must permit you to:

1. Send and receive mail and purchase stationery, postage and writing instruments.
2. Use a telephone without being overheard.
3. Visit your spouse, if you are married. If you and your

spouse live in the same facility, you have a right to share the same room, if both of you agree to it.

4. Close your door and require others to knock before entering, except in an emergency.
5. Have only authorized staff present during treatment or activities of personal hygiene.
6. Retire and rise when you wish.
7. Meet with people in a private setting within the facility.
8. Participate in social, religious and community activities that do not interfere with the rights of other residents.
9. Approve or refuse the release of your personal and medical records to anyone outside the facility, except when you are transferred or when the release of your records are required by law. With your permission, the state ombudsman or a representative of the ombudsman are allowed access to your medical records.
10. The facility must allow representatives of the Office of the Long Term Care Ombudsman program the ability to examine a resident's medical, social, and administrative records.



Dignity & Quality of life

Each resident must receive – and the facility must provide – the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with the residents' person-centered plan of care. You are entitled to reasonable quality of life including:

1. A safe, clean, comfortable, and home-like environment with the use of personal items including furnishings and clothing, as space permits, unless to do so would infringe upon the rights, health, or safety of other residents. Security of possessions.
2. To be treated with consideration, respect, and dignity. Recognition of your, and every resident's, individuality.
3. Maintenance or enhancement of your ability to preserve individuality, exercise self-determination and control every day physical needs.
4. Freedom from abuse, neglect, exploitation, and misappropriation of property.
5. Freedom from physical or chemical restraints.
6. Freedom from theft of personal property.
7. Freedom from verbal, sexual, physical, or mental abuse; and involuntary seclusion, neglect or exploitation imposed by anyone.
8. Quality of life is maintained or improved, with equal access to quality care
9. Access to individuals, services, community members, and activities inside and outside the facility; visitors of his or her choosing, at any time, and the right to refuse visitors; personal and medical; your personal physician and representatives from the state survey agency and long-term care ombudsman program; assistance if sensory impairments exist; participate in social, religious, and community activities.



Grievances

You may voice grievance without discrimination or reprisal. Your grievance may be in writing or oral and may relate to treatment, behavior of other residents, or infringement of your rights.

Access to Long Term Care Facility Inspection Reports

You may examine the Department of Health's most recent survey inspection report from your facility, referred to a Statement of Deficiencies (Form 2567) and any Plan of Correction in effect to address those deficiencies.

A facility must make this information available to residents you may also request this information from client advocates and be allowed to contact these agencies. South Dakota Nursing Facility Survey Reports are also available online at: <http://doh.sd.gov/providers/licensure/survey.aspx>

Right to refuse to perform services

You may refuse to perform services, unless you agreed to otherwise in your plan of care. You may perform services for the facility when the following conditions are met:

1. The plan of care includes documentation of the need or desire for work.
2. The nature of the services performed is specified, including whether the services are voluntary or paid.
3. Compensation for paid services is at or above prevailing rates.
4. You agree to the work arrangement.

Self-administration of medications

The right to self-administer medications if the interdisciplinary team, as defined by Federal Law §483.21(b)(2)(ii), has determined the practice to be clinically appropriate.

Admission, transfer and discharge policies

A long term care facility must establish and maintain policies and practices for admission, discharge and transfer of residents which prohibit discrimination based upon payment source and which are made known to residents at or before the time of admission. The policies and practices must include:

1. The right to review the facility's admissions agreement/contract, rules and policies prior to admission.
2. The facility cannot discriminate against you in the admission process based upon your source of payment (private, LTC insurance, Medicare, Medicaid, etc.).
3. The facility must not request or require resident or potential residents to waive their rights.
4. The facility must provide you notice of special features or service limitations of the facility prior to time of admission.
5. The facility must not request or require resident or potential residents to waive potential facility liability for losses of personal property.
6. The facility must not request or require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.
7. The facility must not request a third-party guarantee of payment to the facility as a condition of admission or expedited admission or continued stay in the facility.
8. The facility may request and require a resident representative who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide the facility payment from the resident's income and resources.
9. The facility must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State Plan, any gift, money, donation, or other consideration as a precondition to admission, expedited admission or continued stay in the facility in the case of a person that is eligible for Medicaid.
 - a. A nursing facility may charge a resident who is eligible for

Medicaid for items and services that the resident has requested and received, and that are not specified in the State Plan as included in the term “nursing facility service” as long as the facility provides proper notice of availability and cost.

10. You may remain in the facility and not be transferred or discharged unless: your needs and welfare cannot be met by the facility, you no longer need these services, you endanger the safety or health of others, you have failed to pay for allowable billed services as agreed to, or the facility ceases to operate.
 - a. The facility cannot ask you to leave if you have submitted all of the necessary paperwork to a potential payment source (Medical Assistance, Medicare, LTC Insurance, etc....) and you are awaiting payment. Nonpayment has only occurred if that payment source has DENIED your claim and you refuse to pay. If an appeal of the payments source’s decision is pending nonpayment has not yet occurred.
11. The long term care facility must notify you and a family member or client advocate in writing at least thirty (30) days before the transfer or discharge. The notice must specify the reason for and effective date of the transfer or discharge and your new location. The facility must also provide conditions under which you may request or refuse transfer within the facility and a description of how you may appeal a decision by the facility to transfer or discharge you.
 - a. The facility must assist in preparation and orientation to your new home to ensure a safe and orderly transfer/discharge.
 - b. The facility may not transfer or discharge you while the appeal is pending unless failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility.
 - c. Before you are transferred to a hospital or go on therapeutic leave, the facility must provide written information to you and a family member or legal representative that specifies; the duration of the bed-hold policy, facility policies regarding bed-hold periods, the right to return to the facility after hospitalization or therapeutic leave if the resident:

- i. Requires the services provided by the facility
- ii. Is eligible for Medicaid nursing facility services

Right to Appeal

In South Dakota, a resident or legal representative may appeal a facility's decision to transfer the resident by contacting:

Office of Administrative Hearings

700 Governors Drive

Pierre, SD 57501

(605)773-6851

<https://dss.sd.gov/adminhearings/index.asp>

A resident or legal representative may also receive assistance from the Ombudsman Program by contacting:

Long Term Care Ombudsman Program

Division of Long Term Services and Supports

3800 E Highway 34 – Hillsvie Plaza c/o 500 E Capitol

Pierre, SD 5701

(605) 773-3656 or 1-833-663-9673

<https://dhs.sd.gov/ltss/ombudsman.aspx>



Resources and Links

South Dakota State Law

Right to choose your own physician unimpaired by public health programs - [SDCL 34-1-20](#).

Rights of authorized person as incapacitated person- [SDCL 34-12C-6](#).

Liability of health care provider - Liability of authorized decision maker - [SDCL 34-12C-7](#).

The right to self-administer medications

U.S. Federal Law

Requirements for Long Term Care Facilities – Title 42 of the Code of Federal Regulations section [§483.10](#)

Interdisciplinary Team definition—[§483.21\(b\) \(2\) \(ii\)](#).

Reports

South Dakota Nursing Facility Survey Reports—<http://doh.sd.gov/providers/licensure/Survey.aspx>

[South Dakota Office of Health Care Facilities Licensure and Certification](#)

(605)773-3356

[South Dakota Nursing Facility Bed Availability Report](#)



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Contact an Ombudsman

1-866-854-5465

1-833-663-9673

LTCO@state.sd.us

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