

**ND Office of the State Long Term Care Ombudsman (OSLTCO)
AKA Long Term Care Ombudsman Program (LTCOP)
Annual report FFY 2015 (October 1, 2014 – September 30, 2015)**

This annual report is compiled and distributed to meet the requirements of federal and state law.

Any questions and comments can be directed to:

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PROGRAM PURPOSE

The ND Office of the State Long Term Care Ombudsman is responsible, as per federal and state law, to advocate for the rights of residents of long term care homes. ***This includes all assisted livings homes, basic care homes, transitional care units, swing beds located in critical care access hospitals, and nursing homes/skilled nursing homes.*** The priority is the resolution of complaints that impact the health, safety, welfare and rights of residents. The resident and/or their decision maker direct the work of the ombudsman. The goal is the utmost quality of care and quality of life as directed by the resident.

STUCTURE AND STAFFING

The Office of the State Long Term Care Ombudsman (OSLTCO) consists of

- The State Long Term Care Ombudsman
- Local staff ombudsman based throughout the state
- Volunteer ombudsman located throughout the state

Summary of ombudsman responsibilities:

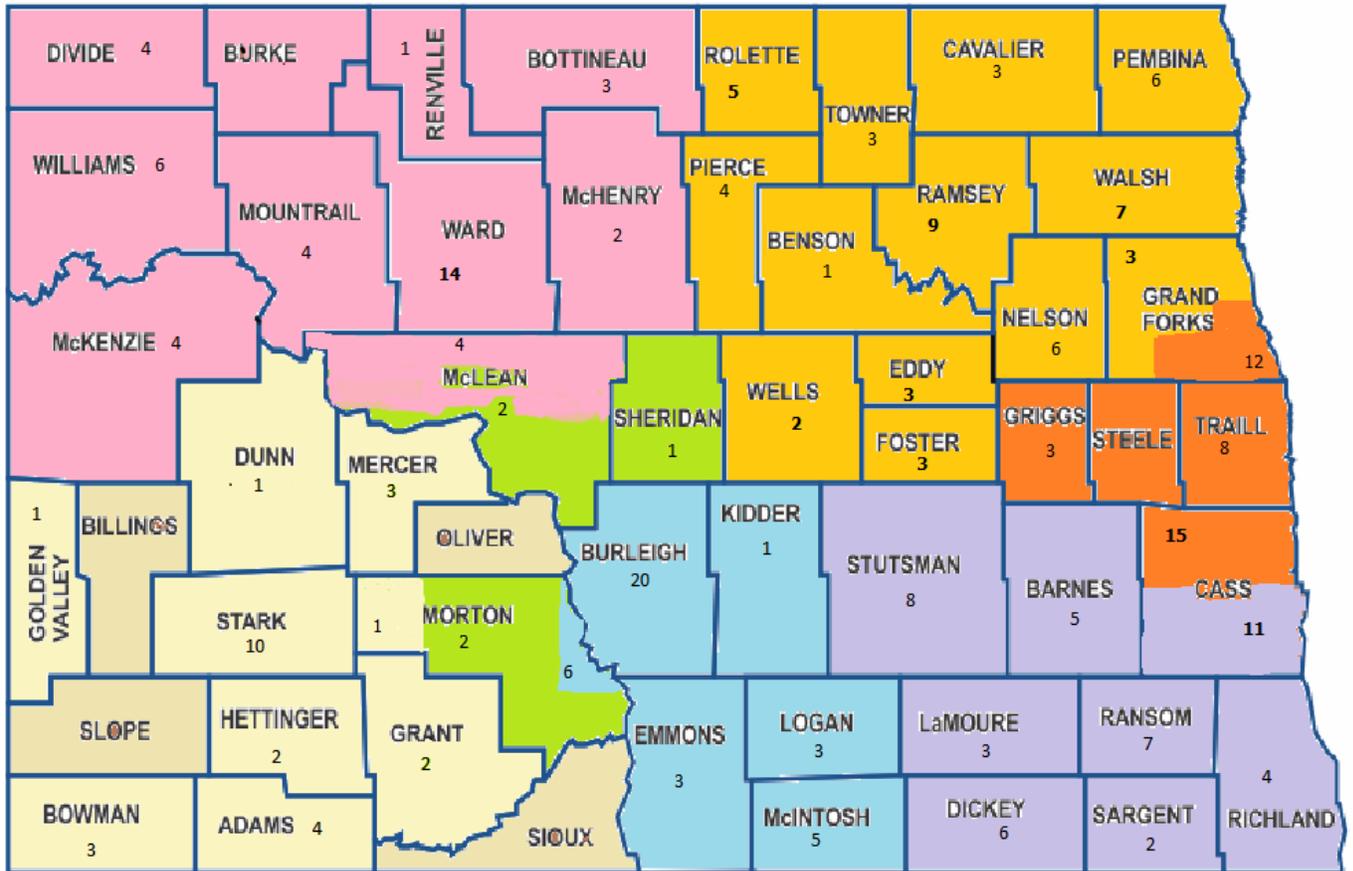
- Complaint resolution is the priority activity of the ombudsman. Includes identification, investigation, and resolution of the concerns made by, or on behalf, of residents measured by their level of satisfaction.
- Resident rights, resident directed advocacy i.e. standing with the resident and adding the ombudsman voice. The role is not regulatory. Education on the myriad of rules and regulations that impact residents of the long term care facilities is a foundation block as well as assisting in navigating the system.
- Ensuring residents have regular and timely access to the services of the LTCOP and receive timely responses for information and complaint resolution.
- Quarterly visits to all long term care facilities.
- Resident directed referrals to licensing/enforcement agencies and support services.

- Representing the interests of LTC residents before governmental agencies as well as analyzing, commenting on and monitoring the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, which pertain to the health, safety, welfare and rights of LTC residents. Also recommending changes as appropriate.
- Providing leadership to statewide systems advocacy effort on behalf of residents of LTC homes.
- Educating consumers, the public, and other agencies about issues related to long term care in North Dakota.

5.5 FTE local ombudsmen on staff

As seen on the map (Ombudsman Zones) the LTCOP doesn't follow the NDDHS human service center boundaries. Rather the local ombudsmen are assigned geographic zones based on the number of facilities and number of beds. The half-time ombudsman is based in Dickinson – Zone G.

OMBUDSMAN ZONES



A	Debbie Kraft	701-857-8582; cell 701-720-8115
B	Sandra Brandvold	701-665-2256; cell 701-351-6954
C	Laura Fischer	701-298-4480; cell 701-793-7104
D	Mark Jesser	701-298-4413; cell 701-793-1375
E	Shannon Nieuwsma	701-328-8972; cell 701-391-0563
F	Karla Backman - SLTCO	701-328-4617; cell 701-391-8181
G	Jessica Stockert	701-227-7570; Cell 701-590-0139

FFY 2015 was a year of transition for staff. As the new SLTCO I stepped into the duties of the position two weeks prior to the start of the FFY. On 11/01/2014 there was a realignment of staff within the Aging Services Division. This resulted in all ombudsmen becoming dedicated to just the LTCOP with no duties to other services. As a result of this staffing went from 4.65 FTE to 5.5. These staff now focus 100% of their time on the ombudsman program as resident advocates. Prior to this some ombudsman staff were also providing Vulnerable Adult Protective Services, Family Caregiver Services etc.

The realignment created a vacancy in the Dickinson ombudsman position from 11/01/2014 to 02/23/2015 when a new hire started as a .50 FTE. Then a local ombudsman based in Fargo resigned/retired with the last day in the office being 12/31/2014. That position was vacant until 03/16/2015. 07/11/2015 the local ombudsman based at the Lake Region HSC resigned with that position vacant until 09/21/2015. During the vacancy times other local ombudsmen were assigned to the facilities in those zones for coverage but due to time and travel constraints were only responsible to handle complaint calls and consultations.

Training requirements were established for new local staff ombudsmen. This is a required step towards a new ombudsman being certified by the SLTCO to carry out the full duties on behalf of the LTCOP. There is also a period of time spent by new staff establishing trust with the residents and professional relationships with facility administrators and staff for full effectiveness.

VOLUNTEER OMBUDSMEN – (formerly known as community ombudsman)

The number of volunteer ombudsmen decreased this past year due to then having medical issues and some no longer being able to drive to their assigned facility. The LTCOP is working on a targeted recruitment plan to include young professionals, and students of nursing, social work, and physician programs. Hopefully a side benefit will be to spark interest in the field of aging/gerontology.

The volunteer ombudsman training materials have been updated with clarifications of the expectations of the volunteer responsibilities.

The goal is to have at least one volunteer ombudsman in every skilled nursing facility/nursing facility and basic care memory care unit. Volunteers enhance the presence of the LTCOP as they visit the residents of their assigned facility more frequently than the quarterly visits of local ombudsman. Volunteers typically are in their assigned facility weekly and no less than monthly.

FFY 2015 ended with 33 volunteers who provided 1,932 hours of service. Using the national volunteerism hourly rate of \$23.07 this equates to a contribution of \$44,571.00.

AUTHORITY

The Long Term Care Ombudsman Program is directed by the federal Older Americans Act and NDCC 50-10.1.

The Office of the State Long Term Care Ombudsman is a programmatically independent advocacy service located within the North Dakota Department of Human Services, Aging Services Division. Points of view, opinions or positions of the Ombudsman Program do not necessarily represent the view, position, or policy of the ND Department of Human Services. [as per 45 CFR Part 1327.11 (e) (8)]

FACILITY NUMBERS

As of 09/30/2015

Long Term Care facilities – 225

Licensed beds – 10,714

PROGRAM UPDATES/CHANGES

On February 11, 2015 the 'Final Rule' – 45 CFR Parts 1321 and 1327 - was published. It provided clarification to Section 712 of the Older Americans Act which directs the work of the Office of the State Long Term Care Ombudsman. Organization and individual conflicts of interest, resident directedness of consent and disclosure, independence of the Office, and prohibiting elder abuse mandatory reporting requirements were a few of the areas addressed. States have until July 1, 2016 to be in full compliance with the Final Rule – or to have an action plan working towards full compliance.

In working towards compliance with the Final Rule the Ombudsman Policy and Procedure Manual was updated in February 2016.

LEGISLATION – 2015 session

Two bills were drafted by the LTCOP for the 2015-2016 Legislative Assembly and both were passed by the House and the Senate and signed into law by the governor.

- Amendments to NDCC 50-10.1 Long-Term Care Ombudsmen
Changes to match with actual practice for hiring of SLTCO
Changes to access to facilities and resident records

Changes to what had to be posted about the LTCOP
Changes to wording to match with actual practice

- Amendments to NDCC 50-10.2 – Rights of Health Care Facility Residents
Changes to format of a sentence to match with rest of code
Changes to wording of transfer/discharge section
Removal of open meeting requirement

PROGRAM DATA AND ANALYSIS

The Long Term Care Ombudsmen are mandated to identify, investigate and resolve complaints made by or on behalf of residents or tenants of long term care facilities that adversely affect their health, safety, welfare or rights.

Complaint: a concern brought to, or initiated by, the Long Term Care Ombudsman for investigation and action on behalf of one or more residents relating to the health, safety, welfare or rights of a resident.

Case: one or more complaints. It includes ombudsman investigation, strategy to resolve and follow-up.

FFY 2015

- 416 complaints
- 316 cases

There was a significant decrease in the number of cases and complaints this fiscal year. This is likely the result of three factors. The first factor is the turnover of local staff ombudsman positions as mentioned in the staffing section. There were several months in those geographic zones when the coverage was only for complaints called in. There were no regular visits in the facilities which likely would have generated more complaints due to the additional observation and the presence of the ombudsman.

A second factor is that in the northwest part of the state family and/or residents have reduced complaint reporting due to the realization it will not produce the needed change. This is believed to reference the systemic issue of oil field territory facilities having the challenge of staffing for the past few years. Survey reports show deficiencies on the rise in that area and many of the deficiencies can be attributed to inadequate number of staff, the use of contracted temporary staff, minimum time available to spend on training as direct care time is critical, all leading to staff having less personal knowledge of the residents and the facility. Even with these major concerns the residents and family want to retain the placement in the facilities to have proximity for visits and community. The mindset seems to be 'the facility is doing the best they can with their resources so why complain when there aren't answers'.

The third factor may be the Final Rule clarification on the necessity of resident consent before pursuing a client specific complaint.

Most frequent complaints categories

- Discharge/eviction – planning, notice, procedure, implementation, including abandonment
- Medications – administration, organization
- Care plan/resident assessment – inadequate, failure to follow plan or physician orders
- Failure to respond to requests for assistance
- Exercise preference/choice and/or civil/religious rights, individual's right to smoke
- Personal property lost, stolen, used by others, destroyed, withheld from resident

Resolution of complaints

The standard used by the ombudsman program is the satisfaction of the resident. The purpose of an investigation is not to determine if there has been a violation of law/regulation.

- 112 of the complaints were **partially resolved** but some problem remained
- 115 complaints were **resolved to the satisfaction of the resident or complainant**

In FFY 2015 ombudsmen provided **consultations** to **644 facilities or providers** and **323 individuals**. A consultation does not involve investigating or working to resolve a complaint.

For facilities the **top three topics** were:
Transfer/Discharge/Room Change;
Ombudsman Program;
Health/Safety Issues.

The **top three topics** with individuals were:
Transfer/discharge/room change;
Care/Quality of Life Issues;
Admission Issues

Another resource provided to facility staff are trainings and there were 25 completed this past year.

Survey Participation

The Department of Health is the regulatory entity for nursing homes and the basic care homes. Thus they are responsible to do the survey and compliance pieces for both. They contact the long term care ombudsmen to provide comment on concerns noted within a facility. The ombudsmen will also participate in the exit survey if time and travel allow. This past year the ombudsmen were a part of **104 surveys**.

Resident and Family Council Technical Assistance

A **Resident Council** is an independent, organized group of individuals who live in a long term care facility. The council meets regularly to discuss concerns, develop suggestions to improve their living environment or resolve differences. Staff or visitors may attend meetings at the group's invitation. The facility must listen to the views and act upon the grievances and recommendations of residents concerning proposed policy and operational decisions affecting resident care and life in the facility. Ombudsmen are responsible to provide technical assistance to the councils upon request. They attended **33 resident council meetings** for this fiscal year.

In ND the resident councils are commonly run by facility staff. A goal is to have the councils transform back into being led by the residents to allow an unimpeded forum to voice their concerns. It is suspected that residents have defaulted to a staff member leading the group due to reluctance of the residents to take that leadership role. The ombudsman will educate and empower the residents.

A **Family Council** is an independent, organized group of family members of residents in a long term care facility. The group joins together to communicate concerns to facilities and work for resolution to concerns and overall improvements. There are few family councils in ND. A goal is the formation of more family councils especially in basic care memory care and SNF's. Ombudsmen will educate and empower family members towards this goal.

Community Education

25 presentations were done to educate the community on resident rights and the role of the long term care ombudsman. This forum is also used for recruitment of volunteer ombudsmen.

ADVOCACY

To serve as a visible advocate the SLTCO has involvement in the following groups.

- Long Term Care Advisory Group – Quarterly meeting facilitated by ND Department of Health involving LTC stakeholders

- Long Term Care Collaborative Workgroup – This is a short term group formed in March 2015 as a result of identified concerns related to the increased number of G-Level deficiencies cited in North Dakota during the CMS Fiscal Year 2014. The purpose was to identify the top concerns relating to the survey and compliance of LTC facilities and to discuss ways to collaboratively work together on those concerns.
- Basic Care and End of Life Workgroup – Facilitated by the Department of Health with goal of amending administrative code to allow hospice care at the basic care homes.
- ND Partnership to Improve Dementia Care – Cohosted by Quality Health Associates of ND and ND Department of Health with the goal of reducing the use of antipsychotic drugs with nursing home residents.
- ND Culture Change Coalition & Steering Committee
 "Culture change" is the common name given to the national movement for the transformation of older adult services, based on person-directed values and practices where the voices of elders and those working with them are considered and respected. Core person-directed values are choice, dignity, respect, self-determination and purposeful living. Deep culture change is an important component of the right of residents to "care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being;" as promised in the 1987 Nursing Home Reform Law. This ties in well with the role of the Ombudsman to advocate for residents and their right to make choices to direct their care and life in long-term care facilities.
- Money Follows the Person (MFP) Stakeholder Meetings

IDENTIFIED ADVOCACY ISSUES AND RECOMMENDATIONS

- Staffing shortage that impacts quality of care of LTC residents. Workforce shortages have been more intense in the western part of the state but are a known issue across the state. The LTCOP has observed decreased quality of care e.g. delayed response times to call buttons. Many of the deficiencies noted by survey teams can also be attributed to workforce issues. One remedy has been more use of temporary contract staff which carries the challenge of training time versus direct care time for residents. Furthermore the staff are unfamiliar with the residents and facility overall. There were several actions in the 2015-2016 legislative session that attempted to provide partial resolution. These included day care grants, grants for LTC facilities in oil producing counties, allowance of rate increases, affordable housing, education assistance for nursing facility staff, money from the ND Department of Commerce to assist in recruitment, quality, and efficiency for health services staff. Workforce recruitment is a focus also of the MFP program. The LTC stakeholders are highly aware of this issue and working together to ongoing and long term remedies.

- Transfer/Discharge/Eviction is the number one issue dealt with by the LTCOP in both the category of complaints and consultations. The ombudsman monitors for compliance with applicable law, educates on the process, and advocates for the resident if so directed. Legislation will be proposed in the 2017-2018 legislative session that a copy of all transfer/discharge eviction notices must be sent to the Office of SLTCO so advocacy can be offered if appropriate and residents can be supported through the transitions.
- Behavior health needs of residents lead to challenging behaviors. The root cause may be mental health, substance abuse and /or dementia related behaviors that are 'typical' for the diagnosis and 'to be expected' in relation to cognitive issues. It is anticipated the number of residents exhibiting these behaviors will continue to increase. This ties into the workforce issues i.e. frequent changes of the temporary staff who don't have training needed to work with the behaviors and also don't have the familiarity with the residents. This also impacts transfer/discharge/eviction as facilities acknowledge their staff don't have the knowledge and skills necessary and become overwhelmed by the extra demands.

“Our nation has been conducting investigations, passing new laws and issuing new regulations relative to nursing homes... If the laws and regulations are not being applied [to the individual], they might just as well not have been passed or issued.”

U.S. Commissioner on Aging
Arthur S. Flemming, 1976
(considered by many as the
founding father of the LTC
Ombudsman Program)

Refusals by facilities to take residents back after a transfer to a hospital increase and they are willing to take a deficiency rather than accept the resident back. Training of staff is a recommendation though many challenges are inherent. The limited workforce is needed for direct care and extra training time is difficult to accommodate. Also with the temporary contract staff rotating through it is difficult to educate them and have them become familiar on specific residents when they are there for a short time. Also a part of the challenge is the state wide shortage of psych providers and resources for consultation.

- A resident's right to make choices and even choose to accept risk versus the facility's responsibility to ensure safety presented as an issue. The LTCOP

perspective is that a resident does not surrender the right to choose and surround self with the community, family, friends and activities. We advocate and support resident directed care planning that allows risk while addressing it through a safety plan. Education of LTC facility staff is ongoing.

