

2018 Annual Report of the ND Office of the State Long-Term Care Ombudsman AKA Long-Term Care Ombudsman Program (LTCOP)

Role of the Long-Term Care Ombudsman

Our Responsibilities

Federal and state law set forth the responsibilities of the Office of the State Long-Term Care Ombudsman (OSLTCO) and the local ombudsmen and volunteers. These responsibilities include the following.

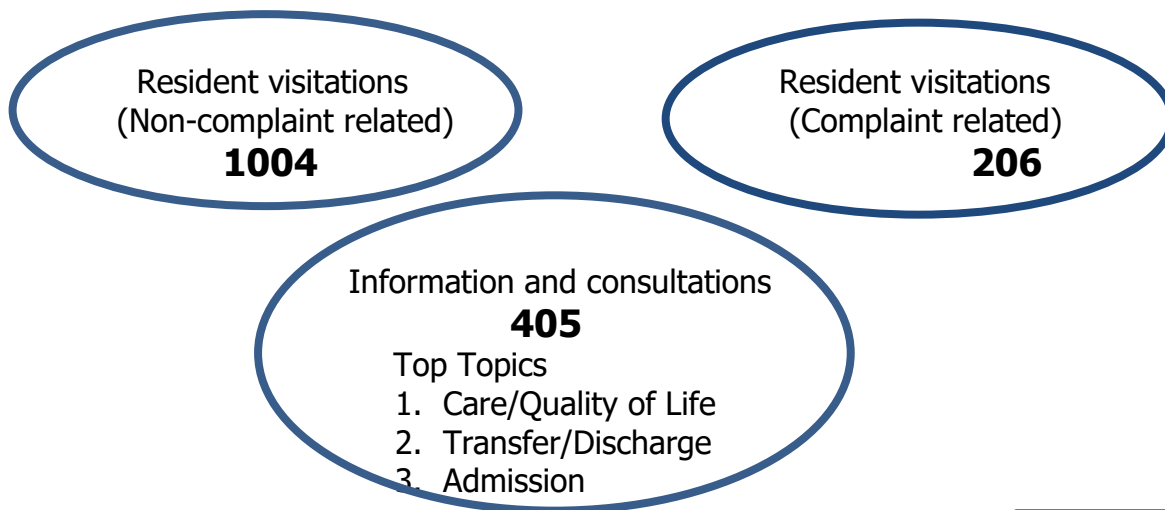
- Identify, investigate and resolve complaints made by, or on behalf, of individuals receiving long-term care in a facility that may adversely affect the ***health, safety, welfare or rights of the residents.***
- Provide services to individuals receiving long-term care to assist in protecting the ***health, safety, welfare*** and ***rights of those individuals.***
- Ensure that residents have ***regular and timely access*** to the services provided through the Ombudsman Program and that residents and complainants receive timely responses
- Represent the interests of individuals before governmental agencies and seek administrative, legal remedies and other remedies to protect the ***health, safety, welfare*** and ***rights of those individuals.***
- Provide information to the public regarding problems and concerns of individuals receiving long-term care, including recommendations related to such problems and concerns.
- Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations or policies pertaining to the ***health, safety, welfare*** and ***rights of individuals receiving long-term care services.***
- Provide information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.

Our Services to Long-Term Care Residents

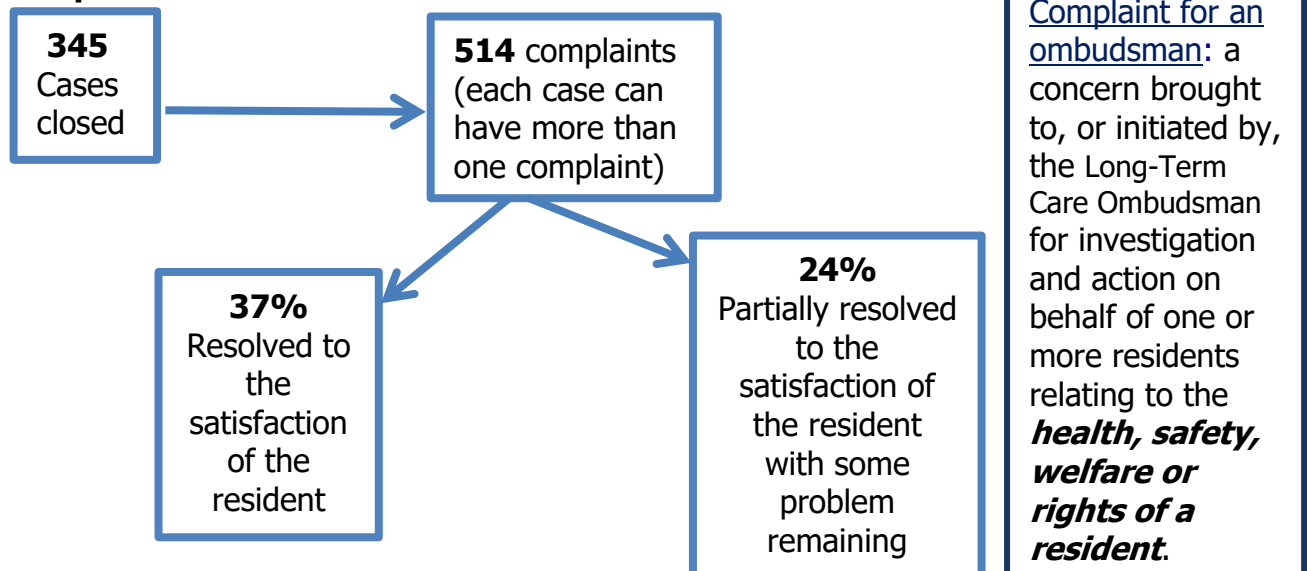
To provide residents regular access to the services provided, the ombudsmen are required to make quarterly visits to the residents of every long-term care home in the state. Complaints can be voiced during these visits. For timely access complaints can also be called in, e-mailed or reported through the online complaint form. The ombudsmen also follow up on Vulnerable Adult Protective Services (VAPS) reports that are referred. The resident (or resident representative) is asked what level of involvement and support is wanted from the ombudsman regarding the VAPS report.

When a complaint has been received it is often necessary for the ombudsman to visit residents in their long-term care home to work towards resolution with the facility staff.

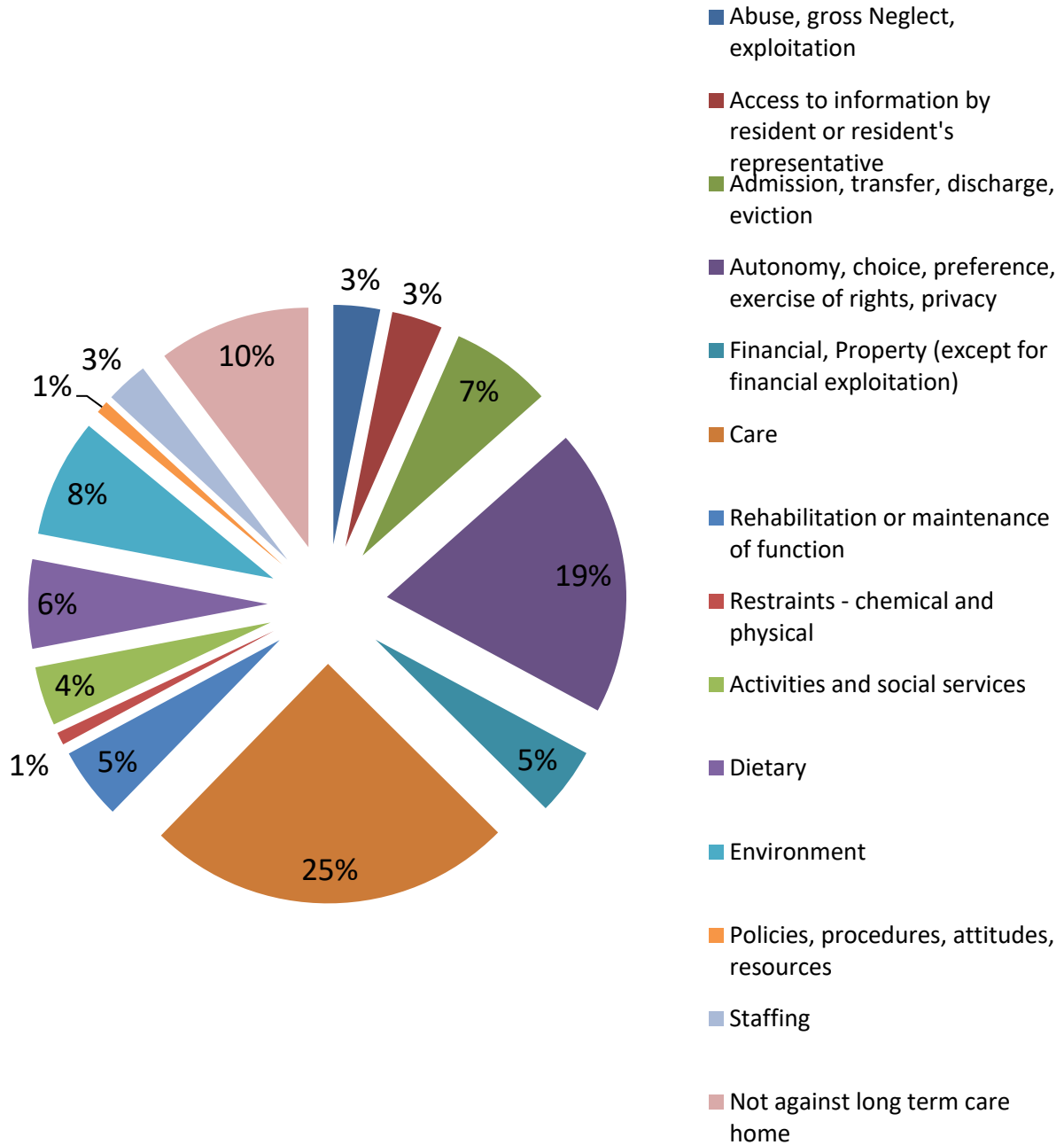
Residents, as well as family and community members, also contact the ombudsmen for information and consultation. Ombudsmen provide guidance and information to support self-advocacy.



Complaint Data FFY 2017

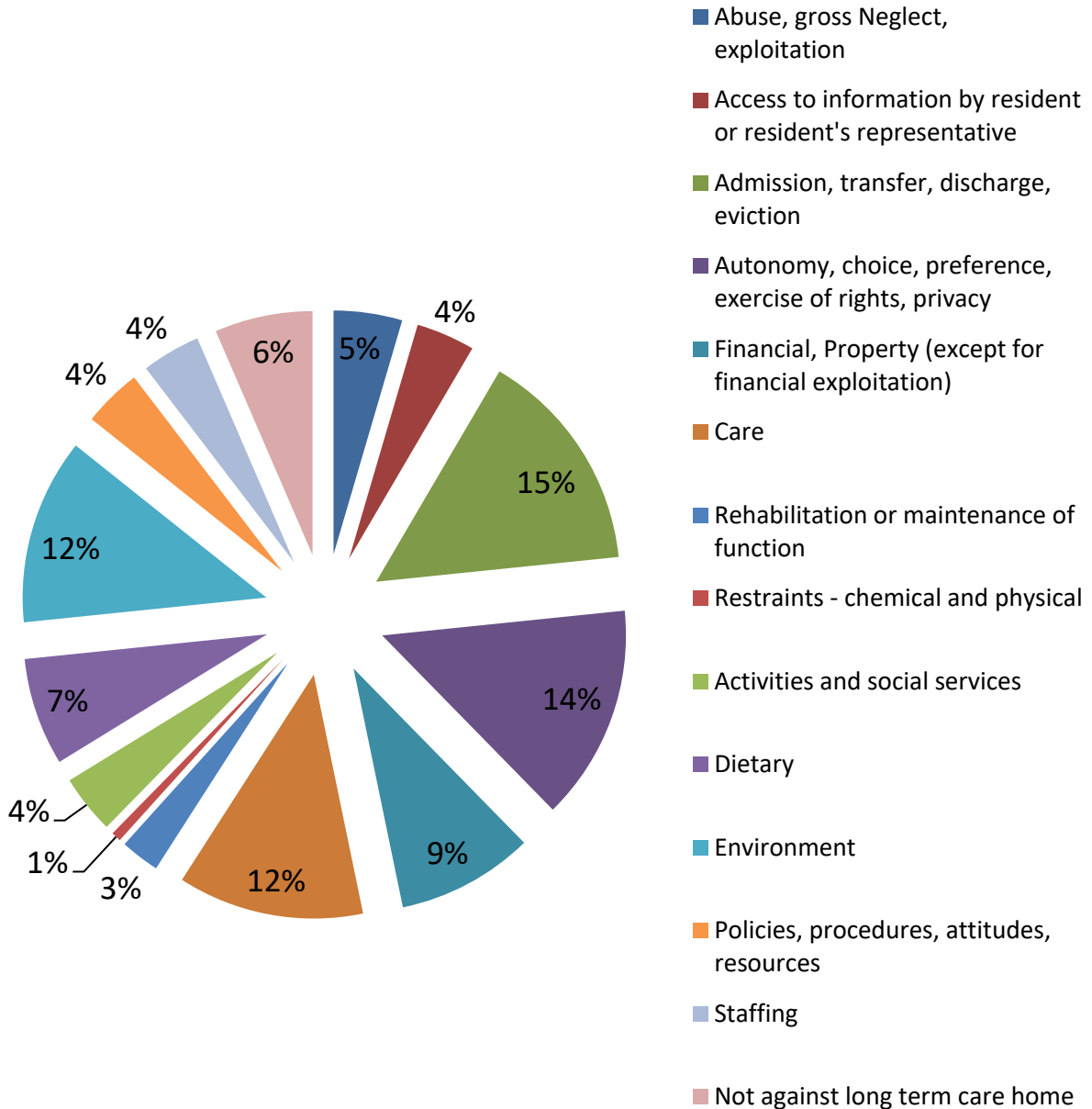


Complaint Categories Nursing Homes



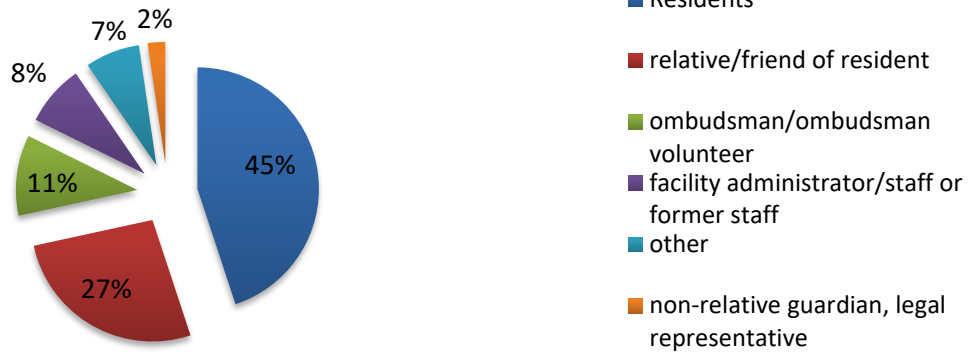
Residents have Rights
To be given information about care and to be active participants in care planning
To be told of risks and benefits of care and treatment options. This includes refusing or discontinuing treatment
To choose doctor

Complaint Categories Basic Care & Assisted Living



**Residents have Rights
DIGNITY & RESPECT
To be treated kindly at all times
To have persons knock on door and wait to be invited in before entering
To voice a concern or dislike and have action taken towards resolution
without fear of retaliation**

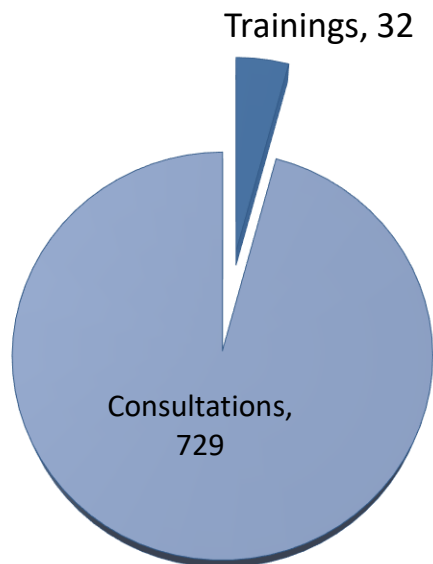
Complainants



45% of the complaints came from residents. Our mission is to be resident directed advocates and the statistics reflect that residents are bringing their concerns to the ombudsmen.

Our Services for Providers on Behalf of Residents

Consultations are an opportunity for ombudsmen to provide a resident perspective in response to requests from facility staff, family members, and individuals in the community.



Top topics:

Consultations

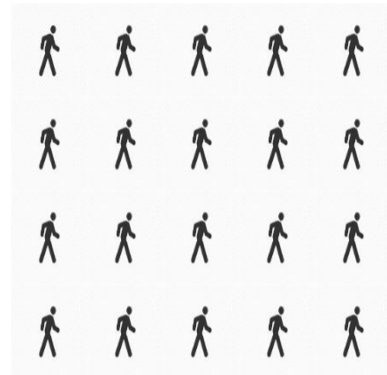
1. Transfer/Discharge
2. Health/Safety Issues
3. Behavioral Issues

Trainings

1. Resident Rights
2. Long Term Care Ombudsman Program

VOLUNTEER OMBUDSMEN

Our volunteers commit to a regular visit to the residents of their assigned LTC home. They listen to the concerns of the residents and advocate for resolution of the issue. They are supported by the local ombudsmen for technical assistance and training.



20 volunteers

1,266 hours of service

**\$24.14 value assigned to a
_____ volunteer hour in 2017**

**\$30.561 contributed by the
volunteer ombudsmen**



Skills Needed:

- **A passion for aging individuals**
- **Friendly and outgoing**
- **Creative problem solver**
- **Ability to be observant and non-judgmental**
- **A good listener and communicator**

Recruitment of additional volunteers continues. If you know of someone with the skills needed, let them know about this volunteer opportunity.

Residents have Rights
To retain all rights as a citizen even as resident of LTC home
To have a resident representative only take the authority that is delegated to him/her either by the resident or the court
To have a resident representative consider the resident's wishes and preferences when making decisions

Systems Advocacy Issues and Actions

The following actions were taken on statewide issues affecting residents of LTC homes.

- Opinion Memo sent to all LTC homes asserting that a POA doesn't have the authority to restrict who resident wants as visitors
- Resident rights fact sheet sent to corporate guardians
- Memo sent to nursing homes as reminder to consider the residents' right to have visitors in setting infection control/flu restrictions
- Updated nursing home resident rights booklet to reflect changes in federal regulations
- Participation in a workgroup facilitated by Department of Health to rework the NDAC for basic care memory care to be in compliance with the HCBS final rule
- Submitted comments to CMS on the proposed changes to current NH regulations
- Spoke with offices of Senator John Hoeven and Senator Heidi Heitkamp about concerns to residents of long term care if Medicaid is changed to per capita or block grant. Asked them to vote no on the Better Care Reconciliation Act due to its potential to be harmful for residents of long term care due to cuts to Medicaid, etc.

National Systems Advocacy Focus

The top focus for nursing home residents at this time are:

- Reminding CMS that their priorities need to be on protecting residents.
- Closely monitoring proposed changes to the nursing home regulations.

Since January 2017 lobbyists for nursing homes have urged the Centers for Medicare & Medicaid Services (CMS) to eliminate or delay regulations and dramatically reduce enforcement of violations.

- The updated regulations have more focus on resident-centered care, safety and emergency planning and overall what has been found to be best practices. Regulations are a tool often used by our ombudsmen when advocating for residents.

Beginning in 2016, to better protect residents from improper evictions, the Centers for Medicare & Medicaid Services (CMS) has required nursing homes to notify ombudsman programs whenever a nursing home moves to evict/discharge a resident. This notification allows ombudsmen to counsel the resident on his or her options and

advocate if the discharge doesn't follow regulations. The current administration, however has suggested eliminating or limiting the notice-to-ombudsman requirement.

- This notification has allowed our ombudsmen to provide resident directed advocacy which in some instances has resulted in the resident remaining at the nursing home.
- There was an average of 300+ transfer/discharge notices received and processed by the ND Long-Term Care Ombudsman Program monthly for the 2017 FFY.

In 2016, under the previous presidential administration, the Centers for Medicare & Medicaid Services (CMS) released regulations that prevented a nursing home from obtaining arbitration agreements from residents at the time of admission. CMS noted that arbitration is generally not a good option for residents, and that residents and their families cannot make reasoned decisions about arbitration in the chaos that often accompanies a resident's admission to a nursing home. Also, residents during admission do not know what type of dispute may arise in the future. Disputes can be extremely serious and include lawsuits against abuse and neglect.

In a nursing home arbitration agreement, a resident waives the right to sue the nursing home in court, and instead agrees to have any future disputes handled by a private arbitrator. The resident generally has no appeal rights, even if the arbitrator's decision is clearly wrong.

Shortly after publication of the final rule in October 2016, the American Health Care Association and affiliated nursing homes filed a lawsuit against CMS seeking an order stopping enforcement of the provision. The district court concluded that the rule was likely in conflict with the Federal Arbitration Act and ordered the preliminary injunction. Under the current administration, CMS has proposed new regulations that would reverse the ban on arbitration agreements. Further, the proposed regulation would, for the first time, authorize a nursing home to require arbitration as a condition of admitting a person. Up until now, mandatory arbitration agreements have generally been considered improper under state consumer protection laws.

- The ND LTCOP agrees that arbitration agreements should not be mandated for admission to a nursing home. The 2016 regulations that allowed only for post dispute arbitration agreements is seen to be a best practice for residents. If the agreement is done post-dispute the resident is then fully informed on the issues that would be addressed.

"We are responsible for the world in which we find ourselves, if only because we are the only sentient force which can change it."

James Baldwin, American writer

The Ombudsmen

The Long Term Care Ombudsman Program in ND has the following staff:

Karla Backman - State Long Term Care Ombudsman (statewide program administrator)
Sandra Brandvold – local ombudsman
Laura Fischer – local ombudsman
Mark Jesser – local ombudsman
Katelyn Maher – local ombudsman
Shannon Nieuwsma – local ombudsman
Debbie Kraft – local ombudsman

Years of ombudsman experience as a group: over **45** years
Plus all ombudsmen have **additional years of experience with aging and disabled individuals**

All have bachelor degrees.

- 5 – Social Work degrees
- 1 – Criminal Justice degree
- 1 – Business Management degree with a Paralegal associates degree

Each ombudsman provides services for the residents in their assigned long-term care homes.

OTHER

Every October is designated Resident Rights Month by the National Consumer Voice for Quality Long-Term Care. The theme chosen for 2018 is:

"Speak Up: Know Your Rights and How to Use Them."

***The rights of
every person
are diminished
when the rights
of one person
are threatened.***
John F. Kennedy

This annual report is compiled and distributed to meet federal and state law requirements. As the State Long-Term Care Ombudsman I welcome any questions, comments, or discussion about the contents of the report or issues affecting the residents of long-term care homes.

Karla Backman
701-328-4617
or

kbackman@nd.gov

Statistics used are from FFY 2017 (October 1, 2016 – September 30, 2017)