

# 2020 Annual Report of the ND Long-Term Care Ombudsman Program

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 do not necessarily represent the view, positions, or policy of the ND Department of Human Services [45 CFR part 1324.11(e)(8)].

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

Please direct any questions, comments, or discussion about the contents of the report or issues affecting the residents of long-term care homes to the State Long-Term Care Ombudsman.

**Prepared by:**  
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701-328-4617 or [kbackman@nd.gov](mailto:kbackman@nd.gov)

**Statistics used are from FFY 2019 certified NORS report  
(October 1, 2018 – September 30, 2019)**

Dear Residents and Stakeholders of Long-Term Care,

It has been a challenge constructing the annual report this year. Typically, it is a review of the data from the past federal fiscal year while including advocacy efforts and the overall outcomes of the Long-Term Care Ombudsman Program.

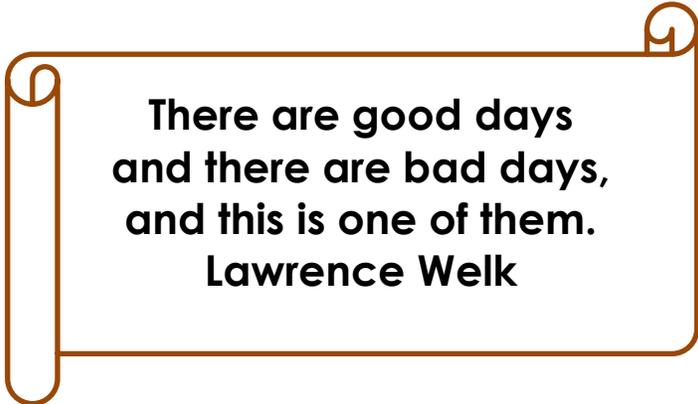
However, as we are all very much aware, COVID-19 hijacked the typical in 2020. It brought rapid change to our daily routines, and family and work lives intertwined with panic, chaos, and uncertainty.

For the residents of long-term care homes, their reality shifted to a lockdown mode and the waiving of some of their resident rights. The new reality was isolation in their rooms due to the suspension of communal dining and group activities, and full restriction of visitors inside the facilities. The social model largely disappeared as the medical model of protection was given precedence. Managing the spread of the virus became the priority.

The work of the long-term care ombudsmen shifted from doing in-person visits with residents at the facilities to phone calls as possible. Most of the staff ombudsmen transitioned to working from home.

Therefore, this annual report will have data from Federal Fiscal Year 2019, but will also be used as a platform to advocate on behalf of the residents of long-term care homes during this pandemic. It is a challenge, as residents are not a homogenous group with everyone having the same opinion. However, I believe there continues to be full support for quality of care, quality of life and the resident right of choice.

Karla Backman, LBSW  
State Long-Term Care Ombudsman



**There are good days  
and there are bad days,  
and this is one of them.  
Lawrence Welk**

# Systems Advocacy

## **Authorized Electronic Monitoring Administrative Rules**

Last summer, a workgroup of stakeholders was organized through the Long-Term Care Ombudsman Program for development of administrative rules to add clarity and detail to the new sections of NDCC 50-10.2 on Authorized Electronic Monitoring. There were approximately 20 regular attendees of the meetings. The final draft was sent forward through the administrative rule making process.

**CHAPTER 75-03-42** went into effect as of April 1, 2020.

<https://www.legis.nd.gov/information/acdata/pdf/75-03-42.pdf>

## **Response to the COVID-19 Pandemic**

A COVID-19 issue that presented needing advocacy was to educate that the protections ordered for nursing homes and basic care facilities had the potential to create hardship for assisted living residents because of the structure of that level of care and staffing. This led to the following e-mail being sent.

**From:** Backman, Karla R.  
**Sent:** Wednesday, March 18, 2020 9:00 AM  
**To:** Thomasson, Jessica A. <jthomasson@nd.gov>  
**Cc:** Nikolas-Maier, Nancy E. <nmaier@nd.gov>  
**Subject:** COVID-19 and assisted living

Hello Jessica,

As the program administrator of the Long-Term Care Ombudsman Program, I have been made aware by family members and assisted living staff of the challenges presented by the recommendations released by the State Health officials and Governor Burgum.

**Assisted living is included as long-term care facilities however, it is a different model.** Essentially assisted living is based on a landlord – tenant model with services. The tenant/resident rents the apartment space and then purchases a service package based on need. Individuals who live in assisted living have the freedom to come and go as they would from any apartment or home. Each assisted living may have different service packages and each resident may pay for a different level of service package. The service package may be as basic as an hour of housekeeping and one meal a day. Some tenants/residents have outside support persons who come in to help with additional services that are necessary to maintain independent living. These may be family or friends. Concerns have been shared with me are that if the family or friends who are providing these supportive services are restricted from visiting there may be harmful consequences for the tenant/resident.

Also, assisted living staffing is typically minimal and they are often on-site for only a few hours a day. Many do not have any after-hours or overnight staff on duty. Thus, the assisted living may not be able to step in and substitute as they don't have the staff capacity if all outside visitors are limited. There is limited staff availability and they are not typically onsite 24/7 so the restriction of visitors is a challenge as is screening those visitors.

The goal of the Long-Term Care Ombudsman Program is to ensure resident health, safety, welfare and rights are respected within the context of COVID-19. I support reducing risk for the older adults and ask there be thoughtful consideration of the structure of assisted living and thus the challenges inherent to implement the current recommendations released by in North Dakota through the ND DoH. I believe those recommendations may need to be reworked to meet needs for assisted living. I hope this information can bring a better understanding of assisted living and how it is structured in North Dakota.

Jessica, I ask that you take this forward through the chain of command. Please contact me with any comments or questions.

[Karla Backman](#), LBSW  
*State Long Term Care Ombudsman*

Throughout the COVID-19 pandemic the ombudsmen have continued to respond to calls. Initially the focus was to help residents and their families understand the waiving of their visitation rights, rights to communal dining and rights to participate in group and community activities. The message given by the ombudsmen was the virus was an unfamiliar threat and the restrictions were actions taken in the spirit of protection while more was learned about COVID-19.

As the days of restrictions and loss of rights added up, the calls shifted to families sharing their concerns that their loved ones were not doing well with the ongoing isolation. Families were noticing physical and cognitive declines – essentially ‘failure to thrive’ situations. These calls also included requests for the reasonable and consistent application of compassionate care visits. The call to advocacy was that the toll on the emotional and mental health of the residents had to be balanced against the physical threat of COVID-19. Social isolation, depression, and failure to thrive become topics on a national level in relation to residents in long-term care and the imposed restrictions. The ask was when residents could have visitors in the facility once again.

On May 13<sup>th</sup>, an invitation was extended to the State Long-Term Care Ombudsman to join the ‘Reuniting Families Task Force.’ The task force is chaired by Chris Larson, a resident at the Luther Memorial Home in Mayville, ND. The purpose of the group is to develop protocol so visitation could resume in long-term care facilities. The task force worked with the Vulnerable Population Protection Plan (VP3) staff based in the ND Department of Human Services to develop Reopening Guidance for Long-Term Care Facilities.

**<http://www.nd.gov/dhs/info/covid-19/docs/reopening-guidance-long-term-care-facilities.pdf>**

### **Looking Ahead**

Flu season is looming as well as the onset of winter weather. As the pandemic continues there must be reasonable and creative planning to avoid the residents of long-term care having to revert to full lockdown. The challenge is to balance the mitigation of the risks from COVID-19 with the risks from the significant physical and psychosocial declines arising from the isolation. There is a critical need for residents of long-term care facilities to have social connections and support from their family and friends. Below is a proposal submitted to the VP3 staff and Chris Jones for consideration. There is a national movement to have an “essential support person” identified for each resident and this is a plan that can succeed in North Dakota. There is also a second option presented in the link below. The goal is to allow for connections to be in place moving forward, mitigating the risk of COVID, and allowing the residents/resident representatives to have choice.

Mid-March 2020 marked the intrusion of the COVID-19 pandemic into our state. The response to the pandemic on both a federal and state level was to impose restrictions on visitation, communal meals, and group activities for residents of long-term care facilities. However, as time progressed this isolation for the purpose of protection had the unintended consequences for residents of social isolation, loneliness, depression, and failure to thrive. Essentially there was noticeable physical decline and negative psychological impact attributed to residents not having the physical in-person visits with family and friends and the social interaction with their fellow residents at meals and group activities.

North Dakota has been fortunate to have not experienced the COVID-19 related high counts of hospitalizations and deaths experienced elsewhere in the nation. The state team is commended for quickly implementing testing for all staff and residents in long-term care facilities. It also was proactive in launching a reopening plan for long-term care facilities so residents could regain their rights to have congregate meals, group activities, and in-person visits with individuals of their choosing.

Looking ahead there are factors that could impact the current reopening plan. These include:

- A significant resurgence of COVID-19 within the state communities combined with the onset of flu season this fall.
- The arrival of winter which will impede outdoor visitation as well as window visitation.
- Additional COVID-19 testing methods to include point of care tests which would allow rapid on the spot testing

There is no certainty of when the pandemic will 'be over.' It could be a matter of months if an effective vaccine becomes available. Unfortunately, it could be much longer. I ask, based on the factors listed above and the lessons learned through this pandemic experience, to avoid reverting to a complete lockdown.

**I propose instead** that each resident be allowed to identify at least one visitor that would be allowed access regardless of the COVID-19 status in the facility and in the community. This visitor would be required to be screened and tested regularly – according to the same requirements asked of staff. Perhaps a risk assessment could be used to determine if the use of masks could be waived. That visitor could also practice physical distancing and take precautions in activities away from the facility much as staff do.

Another idea that could be a stand-alone or combined with the above proposal is mentioned in paragraph 5 of the following article.

[https://www.mcknights.com/blogs/delaying-death-not-enough-for-nursing-home-residents/?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=MLT\\_DailyUp](https://www.mcknights.com/blogs/delaying-death-not-enough-for-nursing-home-residents/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUp)  
[https://www.mcknights.com/blogs/delaying-death-not-enough-for-nursing-home-residents/?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=MLT\\_DailyUpdate\\_20200709&hmSubId=&hmEmail=&email\\_hash=933bf99e3ed4dbf9bde27f1e6adc4010&mpweb=1326-10232-3404](https://www.mcknights.com/blogs/delaying-death-not-enough-for-nursing-home-residents/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200709&hmSubId=&hmEmail=&email_hash=933bf99e3ed4dbf9bde27f1e6adc4010&mpweb=1326-10232-3404)

This could be successfully implemented as many facilities have already set up a dedicated space in the facility for cohorting and managing care for residents with COVID-19.

As the State Long-Term Care Ombudsman, I have the responsibility to advocate for the health, safety, welfare, or rights of residents of long-term care facilities. I believe the responsibility of government and long-term care facilities is to mitigate risk to the extent possible, while not imposing on a resident's right to choose. Another relevant truth is that the exercise of rights by one resident should not encroach on or take away another resident's rights. As true as I believe these statements to be, I understand that their implementation is extremely challenging.

In closing I want to share a statement made by Jill Vitale-Aussem, President and CEO of The Eden Alternative. "Life is more than just 'not getting sick'."

# Access to Residents

The Long-Term Care Ombudsman Final Rule requires that ombudsmen be accessible to residents and provide prompt response to complaints which prioritize abuse, neglect, exploitation and time-sensitive complaints. To meet the requirements of providing access to residents the ombudsmen visit residents at each long-term care facility at least quarterly and more often as needed for complaint investigation and resolution. With the intrusion of COVID-19 and visitation restrictions the ombudsmen asked facilities to provide phone contact numbers for residents or their resident representatives and shifted to phone calls rather than in-person visits. No virtual visits were done.

The ombudsmen can also be accessed by:

- **Phone:** 701-328-4617 or 1-855-462-5465 option 3
- **E-mail:** dhsagingombud@nd.gov
- **Fax:** 701-328-0389
- **Online complaint form:** [SFN 1829](#)

With the publication in North Dakota of the Reopening Guidance for Long-Term Care Facilities the Long-Term Care Ombudsman Program also developed a plan to resume in-person visits with the residents. Thus, in July ombudsmen once again started in-person visits with residents in facilities that had moved into Phase 2 of the Reopening Plan.

As always, the ombudsmen need to provide privacy in their visits with residents.

- **Long-Term Care Ombudsman Final Rule**  
**45 CFR §1324.19 Duties of the representatives of the Office.**  
(b)(2)(i) The Ombudsman or representative of Office shall offer privacy to the resident for the purpose of confidentially providing information and hearing, investigating and resolving complaints.
- **ND Century Code 50-10.1-04. Access to facilities and records.**  
To carry out the powers and duties of this chapter, the state long-term care ombudsman and the ombudsman's authorized agents shall:
  1. Have access to all long-term care facilities within the state and shall have private access to any resident within any long-term care facility within the state.

There is also the directive that all conversations with or related to residents are confidential. The Older Americans Act prohibits the disclosure of the identity of any complainant or resident unless the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given; or the disclosure is required by court order.

**Nevertheless,  
the ombudsman persisted.**

# Data Report

## Complaint Processing

### Ombudsman Definition of Complaint

An expression of dissatisfaction or concern brought to, or initiated by, the Ombudsman program which requires Ombudsman program investigation and resolution on behalf of one or more residents of a long-term care facility.

The Ombudsman shall, personally or through representatives of the Office

1. Identify, investigate, and resolve complaints that
  - i. Are made by, or on behalf, of residents; and
  - ii. Relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of residents

**321 TOTAL CASES INVESTIGATED AND CLOSED FOR FFY 2019**  
**446 separate complaints investigated within those cases.**

## FFY 2019 Complaints

The long-term care ombudsman federal data report defines two levels of care. These are:

- **Nursing Facilities** (for ND includes nursing homes and swing beds)
- **Board and Care Facilities** (for ND includes basic care and assisted living)

This table shows the number of complaints per major complaint category (categories established by the LTCOP federal authority for reporting purposes) received for cases closed in FFY 2019.

Major Complaint Category	Number of Complaints		Minor Complaint Categories
	Nursing Facilities	Board & Care Facilities	
<b>Residents' Rights</b>			
Abuse, Gross Neglect, Exploitation	17	7	Abuse, physical ( including corporal punishment)
			Abuse, sexual
			Abuse, verbal/psychological (including punishment, seclusion)
			Financial exploitation
			Gross Neglect
			Resident-to-resident physical or sexual abuse
Access to Information by Resident or Resident's Representative	10	5	Access to own records
			Access to or by ombudsman/vistors
			Information regarding medical condition, treatment and any changes
			Information regarding rights, benefits, services, the resident's right to complain
Admission, Transfer, Discharge, Eviction	25	15	Bedhold - written notice, refusal to admit
			Discharge/eviction - planning, notice, procedure, implementation, including abandonment
			Room assignment/room change/intrafacility transfer
Autonomy, Choice, Preference, Exercise of Rights, Privacy	79	17	Confinement in facility against will (illegally)
			Dignity, respect - staff attitudes
			Exercise preference/choiceand/or civil/religious rights, individual's right to smoke
			Exercise right to refuse care/treatment
			Participate in care planning by resident and/or designated surrogate
			Privacy - telephone,visitors, couples, mail
			Privacy in treatment, confidentiality
			Response to complaints
Reprisal, retaliation			
Financial, Property (except for financial exploitation)	10	12	Billing/charges - notice, approval,questionable, accounting wrong or denied (includes overcharge of private pay residents)
			Personal funds - mismanaged, access/information denied, deposits and other money not returned
			Personal property lost, stolen, used by others, destroyed, withheld from resident

Major Complaint Category	Number of Complaints		Minor Complaint Categories
	Nursing Facilities	Board & Care Facilities	
<b>Resident Care</b>			
Care	79	9	handling
			Failure to respond to requests for assistance
			Care plan/resident assessment - inadequate, failure to follow plan or physician orders
			Medications - administration, organization
			Personal hygiene (includes nail care & oral hygiene) and adequacy of dressing & grooming
			Physician services, including podiatrist
			Pressure sores, not turned
			Symptoms unattended, including pain, pain not managed, no notice to others of changes in condition
			Toileting, incontinent care
			Tubes - neglect of catheter, gastric, NG tube
			Wandering, failure to accommodate/monitor exit seeking
Rehabilitation or Maintenance of Function	17	3	Assistive device or equipment
			Dental Services
			Range of motion/ambulation
			Therapies - physical, occupational, speech
			Vision and hearing
Restraints - Chemical and Physical	4	0	Physical restraint - assessment, use, monitoring
			Psychoactive drugs - assessment, use, monitoring
<b>Quality of Life</b>			
Activities and Social Service	5	4	Activities - choice or appropriateness
			Community interaction, transportation
			Resident conflict, including roommates
			Social services - availability/appropriateness
Dietary	27	7	Assistance in eating or assistive devices
			fluid availability/hydration
			Food service - quantity, quality, variation, choice, condiments, utensils, menu
			Snacks, time span between meals, late/missed meals
Environment	16	11	Air/environment;temperature and quality (heating,cooling, ventilation, water),noise
			Cleanliness, pests, general housekeeping
			Equipment/Building - disrepair, hazard, poor lighting, fire safety, not secure
			Infection Control
			Laundry, lost, condition
			Odors
			Supplies and linens

Major Complaint Category	Number of Complaints		Minor Complaint Categories
	Nursing Facilities	Board & Care Facilities	
<b>Administration</b>			
Policies, Procedures, Attitudes, Resources	5	9	Administrator unresponsive, unavailable
			Grievance procedure
			Inappropriate or illegal policies, practices, record-keeping
			Offering inappropriate level of care (for B&C)
			Resident or family council/committee interfered with, not supported
Staffing	14	3	Communication, language barrier
			Shortage of staff
			Staff training
			Staff unresponsive, unavailable
			Supervision
			Eating Assistants
<b>Not Against Facility</b>			
Certification/Licensing Agency	0	1	Complaint, response to
State Medicaid Agency	2	1	Access to information, application
			Non-Covered services
System/Others	28	4	Abuse/neglect/abandonment by family member/friend/guardian or, while on visit out of facility, any other person
			Family conflict
			Legal - guardianship, conservatorship, power of attorney, Medicare
			SSA, SSI, VA, Other Benefits/Agencies
			Request for less restrictive placement
<b>TOTALS</b>	<b>338</b>	<b>108</b>	

## Consultations/Information & Referral

### Consultations to Facility Staff (either in person, by phone, or by e-mail)

**691** consultations with an average of 28 minutes per consultation. This is time ombudsmen spent with facility staff to problem solve, discuss applicable regulations, and to encourage and support resident-centered thinking,

#### Most Frequently Requested Topics

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

### Information and Consultation to Individuals (resident, family member, community person, etc.)

**513** done with an average of 33 minutes per consultation. This is time the ombudsmen spent listening to the individuals, educating, and planning action to resolve concerns.

#### Most Frequently Discussed Topics

1. Quality of Care Issues
2. Transfer/Discharge
3. Resident Rights

## The Ombudsman Staff

(representatives of the Office)

The Long-Term Care Ombudsman Program in North Dakota is fortunate to have the following staff:

- Sandra Brandvold – local ombudsman based in Devils Lake
- Laura Fischer – local ombudsman based in Fargo
- Mark Jesser – local ombudsman based in Fargo
- Shannon Nieuwsma – local ombudsman based in Bismarck
- Peggy Kelly – local ombudsman based in Dickinson (.75 FTE)
- Debbie Kraft – local ombudsman based in Minot
- Karla Backman - State Long Term Care Ombudsman (statewide program administrator)

Currently there are also 10 volunteer ombudsmen.

These representatives of the office have a dedication to be voices for the health, welfare, safety, and rights of the residents living in long-term care homes in North Dakota. They are passionate resident-directed advocates.

# Family Council Start Ups

There were two new family councils established this past year. Family members began discussions with the local ombudsman, Shannon Nieuwsma, and took the lead in reaching out to families in their facility to begin meetings. The local ombudsman provided support and technical assistance as required in the ombudsman federal law. The Mandan Miller Pointe nursing home family council began meeting in April 2019. The Bismarck Missouri Slope nursing home family council started meeting in May 2019.



A **family council** is an organized, independent, and self-led group of family and friends of persons living in a long-term care facility.

Family councils can play a key role in:

- Voicing concerns;
- Supporting the long-term care facility with needed culture change;
- Involving the community in the life of the facility;
- Serving as a support network for family and friends;
- Showing appreciation for facility staff and volunteers; and
- Addressing systemic issues regarding changes in laws, regulations and policies that affect residents in long-term care facilities across the state.

Both the federal nursing home regulations and North Dakota Law give the right for family councils to meet.

**NDCC 50-10.2-02(s)** gives the right to residents and their families to organize, maintain, and participate in resident advisory and family councils.

**CFR 42 483.10(f)**

(5) The resident has a right to organize and participate in resident groups in the facility.

(i) The facility must provide a resident or family group, if one exists, with private space; and take reasonable steps, with the approval of the group, to make residents and family members aware of upcoming meetings in a timely manner.

(ii) Staff, visitors, or other guests may attend resident group or family group meetings only at the respective group's invitation.

(iii) The facility must provide a designated staff person who is approved by the resident or family group and the facility and who is responsible for providing assistance and responding to written requests that result from group meetings.

(iv) The facility must consider the views of a resident or family group and act promptly upon the grievances and recommendations of such groups concerning issues of resident care and life in the facility.

(A) The facility must be able to demonstrate their response and rationale for such response.

(B) This should not be construed to mean that the facility must implement as recommended every request of the resident or family group.

(6) The resident has a right to participate in family groups.

(7) The resident has a right to have family member(s) or other resident representative(s) meet in the facility with the families or resident representative(s) of other residents in the facility.

## **RESIDENT CENTERED, THOUGHTFUL, REASONABLE, AND CREATIVE ADVOCACY**

Again, please direct any questions, comments, or discussion about the contents of the report or issues affecting the residents of long-term care homes to the State Long-Term Care Ombudsman.

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