



2022 ANNUAL REPORT

ND LONG-TERM CARE OMBUDSMAN PROGRAM

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The Office of the State Long-Term Care Ombudsman is a programmatically independent, resident-directed advocacy service located within the North Dakota Department of Human Services, Aging Services Division. Points of view, opinions or positions of the office do not necessarily represent the views, positions, or policies of the North Dakota Department of Human Services [See 45 CFR part 1324.11(e)(8)].

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

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Data used is from the Federal Fiscal Year (FFY) 2021 National Ombudsman Reporting System report (*October 1, 2020 – September 30, 2021*)

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LETTER TO RESIDENTS AND STAKEHOLDERS

Quality of care has emerged as a top concern both in the data and anecdotally in these pandemic recovery times. Some of the situations could also be categorized as neglect and/or abuse. Residents seem to be resigned to slower response times and care that does not account for residents' preferences and care needs. Residents do best when they have input into their daily lives and their care, and when the direct care staff are familiar with their likes and dislikes, their routines, as well as their quirks and personalities. This facilitates the provision of training needed, so staff are prepared to deal with communication/behavioral issues that often escalate into safety concerns.

The staffing shortage in long-term care homes is a national issue that is also pervasive in North Dakota. Many factors have contributed to the shortage, and the response likely needs to be multi-pronged. However, as a resident-directed advocacy service, our message is that **despite** the challenges the long-term care industry is experiencing, residents should still have the highest quality of care and quality of life.

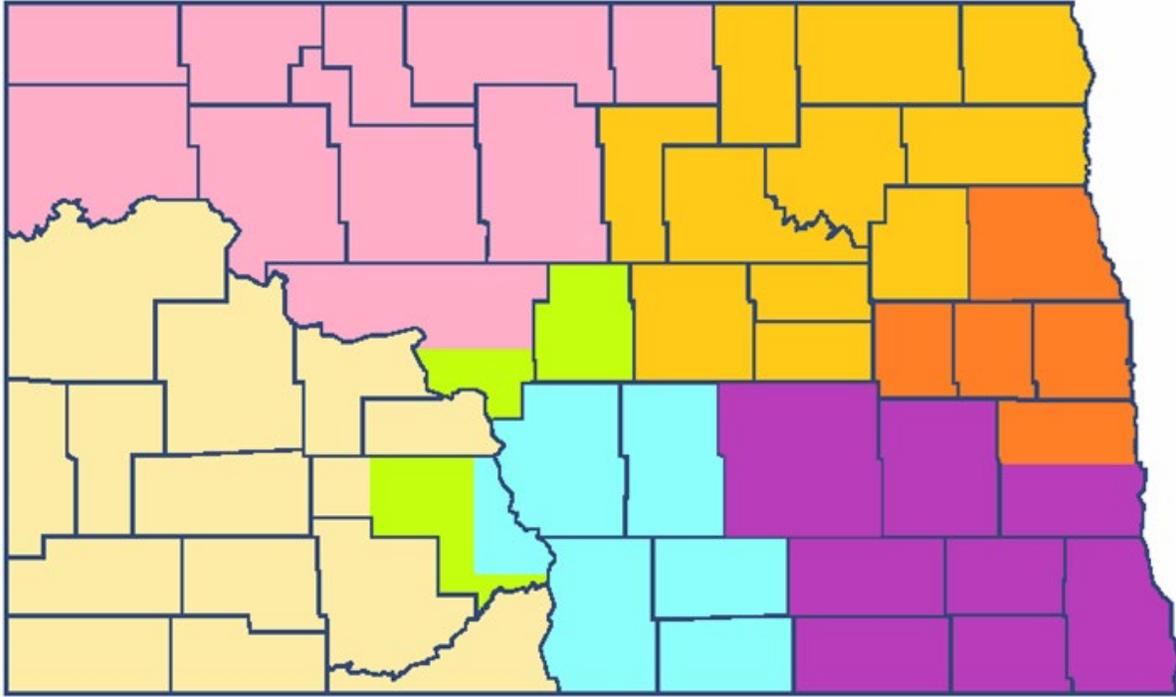
Resident rights is the second top concern in the data and anecdotally. Violations of residents' rights could also be categorized as psychosocial harm. It has been a challenge this past year to validate with residents that they do have rights as residents, after so many of them were waived in an instant during the pandemic. The ombudsmen have been empowering residents to speak up and to expect their rights to be respected.

The North Dakota Department of Health serves as the regulatory agency for both basic care and skilled nursing facilities. They provide the oversight and the accountability to regulations with the authority to require change. However, they are overwhelmed. The Centers for Medicare and Medicaid Services (CMS) requirements for the nursing homes leave very little staff time to do surveys of basic cares for adherence to regulation, and to respond to complaints. There is a need to invest in this area to ensure oversight for the quality of care for basic care residents.

It is difficult to advocate for the tenants/residents of assisted living 'level of care' facilities. There is licensing law and administrative rule, but no true regulatory role for quality of care is granted to the licensing authority. It is often believed by the consumer to be a level of care equivalent to skilled nursing care, which it is not. Often tenants/residents of assisted living and their families ask the ombudsmen, "Can they (the facility) do this?". It is interesting navigating this system as an advocate.



Karla Backman, LBSW
State Long-Term Care Ombudsman



LOCAL OMBUDSMAN SUMMARIES

Each local ombudsman was asked to provide a summary of their observations and experiences within their assigned areas.

SANDRA BRANDVOLD – BASED IN DEVILS LAKE (*Golden Yellow Zone*)

Residents voice concerns regarding the long call light wait times but are more tolerant when staff explain the reason as “working short.” However, residents are less tolerant when staff answer the call light, say they will be right back, and the wait is another 10 or 15 minutes. Residents are having to adapt to changes in their pre-pandemic routines including missed bath days, late meals, less personal care, and less activities. Despite residents being informed of their rights, they often excuse staff, and put them before themselves.

From June to Nov. 11, 2021, I asked two residents from each of the skilled nursing facilities in my zone to participate in a questionnaire about what makes their life meaningful. One question was to identify what leisure activities they like to do because it’s fun, it’s play, it’s pleasurable and jumps their energy level. Another question was to identify what restorative activities they do because it recharges their batteries – how do they get themselves charged up? They couldn’t use sleep as an answer. What residents found meaningful were not necessarily activities on the daily calendar. Those residents

who had in-room meaningful interests/hobbies prior to the pandemic, continued them throughout.

Of course, Bingo is the most popular activity, but group exercise has become a hit as well. Whether it is residents forming a circle and bopping a large balloon around, modified team bowling, or the newest team competition of corn hole, residents are having fun!

I saw less initiation of interaction from traveling staff to residents. Overall, residents reported less interaction with staff during cares because staff are rushed. Residents want conversation with staff. Residents have become accustomed to staying in their rooms. I'm not seeing near the number of residents out and about as prior to the pandemic.

Resident councils continue with generally less participants. I'm hearing this comment more: "Nothing gets done anyway." I inform residents that when they bring up concerns/suggestions at resident council, it is recorded, and the facility is to try to reasonably accommodate the concern, get back to the council in a timely manner, and if they can't accommodate, explain why not. Much like filing a grievance. Again, residents are "resigned" to the new normal.

There is ongoing turnover among administrators, nurses, and social workers. Residents really like the summer months as high school students join the workforce. Residents enjoy their enthusiasm and dedication.

DEBBIE KRAFT – BASED IN MINOT (*Pink Zone*)

Staffing has been the main topic in my zone over the past year. Residents have expressed both frustration and understanding regarding staff shortages.

I was invited to attend a resident council meeting at a skilled nursing home facility. Staffing was addressed and many residents expressed frustration with call lights not being answered for upwards of an hour, meals being served late and cold, housekeeping unable to clean their rooms as often as needed, and medications not being dispersed on time. The residents were very open and stated they understand staff shortages are the reason for the above issues. Even though residents are frustrated, they were equally compassionate toward the overworked staff who show up every day. The residents are aware there's a workforce shortage across the country, and the consensus is this is how it will be until this issue is resolved.

One skilled nursing home resident stated staff shortage has directly impacted his bathing schedule. The resident stated he is scheduled to receive baths on Mondays, Wednesdays, and Fridays. However, the facility is often short staffed, and he'll miss one of his bath days. Another resident shared she experiences long waits for toileting assistance, whether they're late to transfer her to the toilet, or they leave/forget her on the toilet.

Twice, a rural facility has had to transfer all their residents to another facility 55 miles away because they are unable to recruit and retain nurses. The facility did hire appropriate staff, and the residents were transferred back each time. Recently, I spoke with residents at the facility, and each expressed concern that they will need to be moved again, and that the facility will close. These residents are genuinely concerned the facility will close, and they'll be moved away from their family and friends.

Facilities are seeing staff turnover from the top down. Administrators, directors of nursing, social workers and so on have been leaving facilities at an alarming rate. In addition to professional staff leaving, facilities have commented on the difficulty in finding kitchen, laundry, and maintenance staff.

Admission referrals have become more complex. They include younger residents with addiction and mental health needs, bariatric individuals, and older individuals with advanced behavioral needs. These individuals require more staff to meet their complex needs, such as three-person assists or one-on-one care.

Residents are concerned their facility will have to close.

LAURA FISCHER – BASED IN FARGO *(Orange Zone)*

This past year has seen a shift in visitation since the pandemic began. Reentry into the facilities was at times slow and varied from one facility to the next. The ombudsman program often became a stopping point for families trying to decipher "guidelines" set forth by CMS and what the facility ultimately decided was in the best interest of the residents.

Many residents displayed a general resignation to fewer activities, fewer visitors, and a change in the care they receive from staff. Across my territory, many facilities faced the challenge of finding the needed staff to meet the needs of the residents. According to family members and residents, staff were pulled from different areas in the facilities and residents were faced with the uncomfortable truth that their caregivers were no longer familiar with them and their preferences/needs. According to multiple residents, wait

times increased and staff often expressed they were overwhelmed, causing many residents to withhold voicing complaints because they didn't want to increase the burden the staff felt.

Most of my quarterly visits with residents have revolved around reeducating residents and, in some cases, introducing them to the Ombudsman Program and informing them that they do, in fact, have rights.

Even as most facilities attempting to increase activities and restart communal dining, I have witnessed a decline in residents' participation. Staff have also reported an increase in residents' self-isolation. Some staff have reported concerns that residents appear conditioned to staying in their rooms. This could be attributed to a fear of another outbreak, unwillingness to mask and in some cases, lack of staff to bring residents to activities. I have witnessed more doors closed than ever before. I am hopeful when I witness residents sitting in a communal area and staff attempting to prompt conversation among residents. We have come a long way since March 2020, but we have a long way to go.

MARK JESSER – BASED IN FARGO *(Purple Zone)*

I find that the vast majority of residents are so very gracious and understanding that they are willing to accept a lower standard of care. Staffing shortages and the resulting use of more agency staff have resulted in slower response times to call lights, long waits for assistance in cares, reduced availability of activities, delayed maintenance, and violations of resident rights and freedoms (for the conveniences of staff). There are some residents who are willing to assert their voice and make complaints, but most have accepted their current quality of care as a result of the pandemic and as the new norm. Many can cite specific instances of poor care yet are unwilling to report them to staff or request advocacy from the ombudsman. The carousel of staff (resignations, retirements, terminations, etc.) from administrators, to nurses, to support services staff has been dizzying. The lack of consistency and stability in these key positions is also contributing to a lower standard of care.

Resident council meetings have been inconsistent and slow to return to regular meetings.

The number of skilled nursing care beds appears to be on the decline, as facilities struggle to fill vacancies. This has been a benefit for the residents. I'm seeing more shared rooms being turned into singles. Significantly fewer residents have roommates, and residents are enjoying the benefits and privacy in having their own room (no

competing TV, no sharing a bathroom, more space for lifts, etc.). More assisted living facilities and some skilled facilities are exploring transitioning apartments and rooms to basic care services.

During this year, the two remaining volunteers in my zone resigned. They had both been with the Ombudsman program for 15 or more years.

SHANNON NIEUWSMA – BASED IN BISMARCK (*Blue Zone*)

The onset of COVID-19 brought significant changes to everyone's lives, but possibly none more than people living in long-term care settings. Residents were "locked" into their buildings and often into their rooms. For a time, they were cut off from in-person contact with their family and friends, spiritual providers, other residents, community providers, etc. Residents reported feeling isolated and depressed, sometimes even expressing wanting to die, due to the inability to see one's spouse, children, siblings. Not being able to take part in weddings, birthdays and other family events, not being able to meet and hold new grandchildren and great-grandchildren or to say "good-bye" to loved ones who passed away was described as unbearable and inhumane. While some residents were accepting of the lock-down due to their own compromised medical conditions, advanced age and frailty, etc., most expressed great despair and sadness and couldn't understand why they weren't able to make their own choices and decisions about the level of risk they were willing to take to live their lives the way they wanted.

With the re-opening of facilities, many residents are sharing stories of what they missed and lost both physically and emotionally. And while re-opening has occurred, it still fluctuates depending upon facility and community circumstances, and varies from one facility to the next. While some facilities are allowing communal dining and activities and are engaging in resident council meetings in some fashion or another, some are still not, and residents are reporting frustration and even anger. Residents question why their friend or family member who lives in another facility can do things they cannot.

Many residents report the wearing of masks has made it difficult for them to communicate their needs and wants effectively, and it is also difficult for them to hear and understand their caregivers. In addition to the increased difficulty in communication, residents also report increased staff turnover and reliance on traveling staff have negatively affected their care. Some residents have reported becoming resigned to and accepting of the fact that they will not know who their caregiver is from day-to-day, and that they will have to re-educate staff on their needs and preferences on a regular basis.

Residents have voiced concerns about services such as bathing, vital checks and restorative therapy not being provided as frequently as needed and at times that their care plans are not being followed or their wishes and preferences are not being honored. Residents have shared waiting up to and more than an hour at times for call lights to be answered causing residents to feeling powerless. Other residents have expressed feelings that their facility is understaffed and thus not wanting to be a burden to staff, they avoid using their call lights except under the most extreme cases. And while many residents respond that they are "okay," when visited they express concerns for their fellow residents.

There are many residents who express receiving good care and having a connection with staff. And in conducting facility visits I am seeing more residents out of their rooms and engaging in activities and socializing. I hope that trend continues, and we can see a day when there are no modifications placed on how visits are conducted, residents are never forced to eat in their rooms or abstain from engaging in activities, and they never have to miss out on any event important to them and their quality of life.

PEGGY KELLY – BASED IN DICKINSON *(Tan Zone)*

As the ombudsman for the southwestern corner of North Dakota, I cover a rural 13+ county area. Most of the facilities are small. This area has seen a decrease in the residents in facilities. Some of these facilities previously had waiting lists.

This area has seen an increase in residents and facility staff requesting assistance regarding the resident's right to choose to not wear PPE or to be moved to a COVID-19 unit. There have been more requests for information regarding video monitoring. Residents have long reported their concerns about call light response times. Now, due the influx of new staff and contract staff, residents report even longer call light response times coupled with a fear of reporting staff and shorting the facility even more.

This ombudsman has provided consultations regarding intimate relationships, moving residents between rooms, and where the resident chooses to eat. This area has seen an increase in calls from case managers and hospital social workers who have patients who are being declined admission to nursing homes based on vaccination status, smoking, and mental health diagnosis. This has led to residents being displaced from their home communities resulting in fewer to no in-person family visits and a lower quality of life for the residents. There have been more reports of AMA discharges. Facilities state they are short staffed, and most facilities have a much lower census then in previous years. While this area has not had the loss of management that other zones have had, there

have been changes in leadership and reorganization of leadership when replacements cannot be found.

VISITS WITH RESIDENTS

The ombudsmen are glad to be back in the long-term care homes to have direct face-to-face contact with residents. Our protocol continues to require the basic infection control practices of masking, hand sanitizer, and 6 feet distance. Hopefully by the end of summer, these can be eliminated in the visit protocol.

Using the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act of 2021 grant monies, which were given “to Enhance Capacity of Long-Term Care Ombudsman Programs to Respond to Complaints of Abuse and Neglect of Residents in Long-Term Care Facilities During the COVID-19 Public Health Emergency,” voice amplifiers were purchased for each ombudsman, so residents have a better chance of hearing them. Masks and pre-existing auditory issues made communication a challenge.

Below is a chart showing the number of visits to residents in facilities throughout Federal Fiscal Year 2021. The long-term care ombudsman federal data report defines two levels of care.

- **Nursing Facilities** - Includes nursing homes and swing bed facilities in N.D.
- **Residential Care Communities** - Includes basic care and assisted living in N.D.

VISITS TO RESIDENTS IN FACILITIES - FFY 2021

	Nursing Facilities	Residential Care Community
Number of facilities that received one or more visits	108	134
Number of visits for all facilities	314	354
Number of facilities that received routine access* visits	24	15

*Routine access means the residents in a facility have been visited at least once per quarter.

North Dakota has:

- 79 Nursing Facilities
- 34 swing beds,
- 64 basic care facilities, and
- 75 assisted living facilities

GOAL: Total of 252 routine access visits

This goal was **not achieved** in FFY 2021 due to ongoing visit restrictions for part of the year due to the pandemic.



SYSTEMS ADVOCACY

This past year, systems advocacy was done on a smaller scale. The ombudsmen worked on systems issues with individual facilities on topics of health, safety, welfare and rights.

DATA REPORT

DATA IS FROM THE FFY 2021 FEDERAL NORS REPORT

Definition of Complaint as per Administration for Community Living/Administration on Aging – Office of Long-Term Care Ombudsman Programs

“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.”

FFY 2021 COMPLAINT DATA

- **274 total cases investigated and closed** in FFY 2021
- **397 separate complaints investigated within these cases.**



INCREASE of 62 cases and 96 complaints from FFY 2020

**This is likely reflective of the visible face-to-face presence back in the long-term care homes.*



FFY 2021 COMPLAINT DATA

The tables on the next pages show the **top three** complaints per major complaint category received for cases closed in FFY 2021. *(Categories are established by the Administration for Community Living/Administration on Aging – Office of Long-Term Care Ombudsman Programs.)*

TOP THREE COMPLAINTS PER MAJOR COMPLAINT CATEGORY

Major Complaint Category	Number of Complaints		Top Minor Complaint Categories
	FFY 2020	FFY 2021	FFY 2021
Care Definition: “Any complaint involving facility staff failing to provide care including, poor quality care, planning and delivery.”	86	76	Symptoms unattended
			Definition: “Failure to accommodate, identify or provide services related to a change in a resident’s condition.” Use if symptoms are not addressed and care is not provided.
Autonomy, Choice, Rights	62	97	Visitors – 26 complaints
			Definition: “Restrictions on a resident’s ability to choose who to associate with and when to visit, either in the facility or in the community.”
Admission, Transfer, Discharge, Eviction	26	33	Discharge or Eviction - 27 complaints
			Definition: “Resident received a discharge notice and does not want to leave. Resident was transferred or discharged without notice or due process; resident was transferred to the hospital and not advised of bed hold policy or was not readmitted post hospitalization and similar problems.”

FFY 2021 COMPLAINT DATA

- **45%** of the complainants (individuals reporting a complaint) were residents, and 31% were resident representatives, friends, or family.
- Only **32%** of the 397 complaints were not verified.
- Also **68%** of the complaints were partially or fully resolved to the satisfaction of the resident, resident representative or complainant as shown on the chart below. This resolution rate reflects the passionate and persistent advocacy done by the ombudsmen. We start with empowering individuals to be their own advocate. If he/she asks for support, the ombudsmen will either join their voice with that of the resident or become the voice of the resident.

Disposition Status	Nursing Facilities	Residential Care Community	Other	TOTAL
Partially or fully resolved to the satisfaction of the resident, resident representative, or complainant	176	95	0	271
Withdrawn or no action needed by the resident, resident representative, or complainant	28	18	0	46
Not resolved to the satisfaction of the resident, resident representative, or complainant	52	28	0	80

CONSULTATIONS/INFORMATION & REFERRAL

CONSULTATIONS TO FACILITY STAFF (in person, by phone, or by e-mail)

A total of **494 consultations were documented.**

Most Frequent Topics

1. Transfer/Discharge
2. Resident Rights
3. Health/Safety Issues

INFORMATION & CONSULTATION TO INDIVIDUALS (residents, family members, community persons, etc.)

There were **755 consultations with individuals.**

Most Frequently Discussed Topics

1. Resident Rights
2. Transfer/discharge
3. Abuse/Neglect/Exploitation



OMBUDSMEN: RESIDENT DIRECTED ADVOCATES

(AKA representatives of the Office)

These are the staff of the Long-Term Care Ombudsman Program in North Dakota.

- 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 is one (1) volunteer ombudsman.

OUTREACH

Using the American Rescue Plan (ARP) monies granted to the Ombudsman Program, a marketing campaign for volunteer ombudsmen was developed. A video was created and posted on Facebook with other social media also utilized.

Additionally, a print ad was placed in ND Living

magazine. There have been multiple inquiries, and additional information and applications have been sent. Some potential volunteers are in the application process and then will enter the initial training phase. Being a volunteer ombudsman is a big ask, as one of the responsibilities is to assist residents with complaint resolution. It is not the typical feel-good volunteer work people are seeking.



OMBUDSMAN:

merriam-webster.com/dictionary

ad·vo·cate | \ 'ad-və-kət , - , kāt \

Definition of advocate

(Entry 1 of 2)

1. one who defends or maintains a cause or proposal
2. one who supports or promotes the interests of a cause or group
3. one who pleads the cause of another *specifically*: one who pleads the cause of another before a tribunal or judicial court

advocate

verb

ad·vo·cate | \ 'ad-və- , kāt \

advocated; advocating

Definition of advocate

(Entry 2 of 2)

transitive verb

: to support or argue for (a cause, policy, etc.) : to plead in favor of

: to act as advocate for someone or something

Synonyms & Antonyms for advocate

Synonyms: Noun

- advocator,
- apostle,
- backer,
- booster,
- champion,

- espouser,
- exponent,
- expounder,
- friend,
- gospeler
- (or gopeller),
- herald,
- hierophant,
- high priest,
- paladin,
- promoter,
- proponent,
- protagonist,
- supporter,
- true believer,
- tub-thumper,
- white knight

Synonyms: Verb

- back,
- champion,
- endorse
- (also indorse),
- patronize,
- plump (for),
- plunk (for)
- or plonk (for),
- support

Antonyms: Noun

- adversary,
- antagonist,
- opponent

EVAN'S SHULMAN'S RESPONSE TO SOMEONE WHO RAISED A DISAGREEMENT WITH AN OMBUDSMAN PROGRAM. MR. SHULMAN IS THE DIRECTOR OF THE DIVISION OF NURSING HOMES AT THE CENTER FOR MEDICARE AND MEDICAID SERVICES.

"While we don't oversee the program, I do feel compelled to leave you with some parting words based on my experience with the program. The Ombudsmen that serve our nursing home residents are invaluable. They are the voices and advocates for those that can't advocate for themselves. Without their work there is a giant gap that will go unfilled and leave residents alone and unprotected (this includes the Ombudsmen who are volunteers). As a result, there would undoubtedly be serious and irreparable harm to residents. I'm not suggesting the program is perfect (as no program is). But I am saying that this group of advocates who are fighting for residents' well-being provide an irreplaceable and critical service."

CONTACT THE OMBUDSMEN:

- **Phone:** 701-328-4617 or toll-free 1-855-462-5465, **option 3**, or 711 (TTY)
- **Email:** dhsagingombud@nd.gov
- **Fax:** 701-328-0389
- **Submit:** Online complaint form [SFN 1829](#)

If you have questions, comments, or want to discuss the contents of this report, please contact me. Please also send referrals for individual advocacy on issues affecting the residents of long-term care homes.

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