



# 2024 ANNUAL REPORT

## ND LONG-TERM CARE OMBUDSMAN PROGRAM



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

This annual report is compiled and distributed in compliance with federal and state law.

**Prepared by:**

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**As the State Long-Term Care Ombudsman, I would love to discuss your comments or questions about this report, and the issues impacting the health, welfare, safety, and rights of individuals living in long-term care homes. Please contact me at [kbackman@nd.gov](mailto:kbackman@nd.gov) or 701-328-4617.**

Data used is from the **Federal Fiscal Year (FFY) 2023** (October 1, 2022 – September 30, 2023) National Ombudsman Reporting System report as well as the data from FFY 2022 and FFY 2021 for comparison.

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Please note that in this report the word “facilities” is often replaced with the word “communities” to attempt to change institutional language.

## Remarks by the State Long-Term Care Ombudsman

Ombudsmen enter long-term care communities with the goal of building rapport with the individuals living there. We listen to grumbles and concerns and work to resolve them as directed by the residents. We educate to create awareness of the rights of residents in long-term care and the standards they should expect. The reality is that while doing all of that we hear accounts of poor-quality care, e.g., not getting showers for weeks, lack of response to call lights to use the bathroom, individuals being dropped during transfers, being charged extra for services that aren't actually provided, etc. Review the "Stories Told by the Data" section to learn the top concerns reported in North Dakota.

At the federal level a hot topic is that on Monday, April 22, 2024, the Centers for Medicare & Medicaid Services (CMS) released the long-awaited final rule implementing a minimum staffing standard in nursing homes. Click on the link below for a summary of this rule published by The National Consumer Voice for Quality Long-Term Care.

[https://theconsumervoice.org/uploads/files/issues/Final\\_Rule\\_Summary.pdf](https://theconsumervoice.org/uploads/files/issues/Final_Rule_Summary.pdf)

A state level issue is the ND mental health system needing to provide a temporary treatment place for individuals from long-term care communities who are considered a safety threat to themselves, and possibly other residents and staff. A place is needed where they can deescalate from a crisis and regain stability. The best practice would be to have a safe place to learn what non-pharmacological methods work to defuse triggers to reach the goal of stabilization. This safe place also would provide time to determine what medications – if needed - and dosages are therapeutically appropriate. Reports are that it doesn't work for them to go to the hospital ER or the hospital in-patient psychiatric ward. The State Hospital says it isn't the appropriate placement either, and geropsychiatric facilities are for stable individuals – not those in crisis. These types of situations usually involve two different populations – those with mental health issues and those with cognitive issues i.e., dementia and/or traumatic brain injury. A round peg won't fit in a triangle shaped hole and trying to force it doesn't help. There needs to be creative thinking linked with funding - perhaps the development of pilot projects to learn what does, or doesn't, work. The ombudsman program is typically involved in these situations when it becomes a discharge issue or a notification from a hospital entity saying the long-term care facility is refusing to allow a resident to return.

This report reviews the data and the issues seen in long-term care communities in North Dakota.



Karla Backman, LBSW  
State Long-Term Care Ombudsman

## What the Data Tells Us

Data used is from the past three FFY Federal NORS Reports – 2021, 2022 and 2023

	FFY 2021	FFY 2022	FFY 2023
<b>total cases investigated and closed</b>	274	276	<b>308</b>
<b>individual complaints within these cases</b>	397	371	<b>445</b>

Complaint Definition in the LTC ombudsman world

“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 chart above shows an increase in cases and individual complaints in FFY 2023. Direct correlation can't be proved however the increase may be due to having an additional ombudsman during that fiscal year, a position funded by federal grant dollars. This improved identification and response to concerns could be continued with additional staff ombudsmen.

The next table shows a three – FFY comparison of the top three **major complaint categories** for cases closed. (Categories are established by the Administration for Community Living/Administration on Aging – Office of Long-Term Care Ombudsman Programs.)

### Top Three Complaint Categories for Closed Cases

FFY 2021	FFY 2022	FFY 2023
Autonomy, Choice, Rights	Care	Care
Care	Autonomy, Choice, Rights	Autonomy, Choice, Rights
Admission, Transfer, Discharge, Eviction	Admission, Transfer, Discharge, Eviction	Admission, Transfer, Discharge, Eviction

Note the reported complaint areas stay constant over the three-year period. It is unsettling that care is number one for the past two years and it is also concerning that autonomy, choice, rights rank second in that same period. Those categories represent foundational human rights that every individual resident in long-term care communities should expect as a matter of course.

It is heartening that the data below shows that residents are the highest category of complainants reporting concerns because they are the individuals directly impacted. It is best practice that long-term care communities are person-centered which should translate to the residents being the ones who direct their lives, their care, and their environment. It is notable that in FFY 2021 residents were only 5% of the complainants. This is likely attributable to the shutdown of the long-term care communities to visitors in response to the pandemic. It is a natural conclusion that the face-to-face presence of the ombudsmen in the communities results in more sharing of concerns.

The verification numbers, reported in the second row of the table below, reflect a high percentage of the concerns reported are found likely to be true. This shows complainants are acting in good faith in sharing forward their issues.

It is discouraging the resolution of being partially or fully satisfied has dropped the last two years. This is likely attributable to the complex care needs and multiple challenges in situations where the options are less than perfect.

	FFY 2021	FFY 2022	FFY 2023
<b>Complainants</b>	<b>5%</b> residents <b>31%</b> resident representatives, friends or family	<b>49%</b> residents <b>25%</b> resident representatives, friends or family	<b>49%</b> residents <b>22%</b> resident representatives, friends or family
<b>Verification Status</b>	<b>68%</b> of the 397 complaints verified	<b>68%</b> of the 371 complaints verified	<b>67%</b> of the 445 complaints verified
<b>Disposition Status</b>	<b>68%</b> Complaints partially or fully resolved to the satisfaction of the resident, resident representative, or complainant	<b>61%</b> Complaints partially or fully resolved to the satisfaction of the resident, resident representative, or complainant	<b>60%</b> Complaints partially or fully resolved to the satisfaction of the resident, resident representative, or complainant



In addition to working to resolve complaints the ombudsmen also provide education on regulations, rights, long-term care terminology and systems, and make referrals to other programs such as Medicaid, Medicare, Aging & Disability Link, Legal Services of ND, ND Courts, APS etc. The two tables below show the top topics discussed, or for which referrals were made. Please note the top topics have been consistent over the past three years. It is worrying that for individuals, quality of care issues followed by abuse, neglect and exploitation have moved into the top three.

**Facility Staff Information & Assistance - Top Topics**

<b>FFY 2021</b>	<b>FFY 2022</b>	<b>FFY 2023</b>
494	607	537
Transfer/Discharge	Transfer/Discharge	Transfer/Discharge
Resident Rights	Resident Rights	Resident Rights
Health/Safety Issues	Behavioral Issues	Health/Safety Issues

## Individual Information & Assistance – Top Topics

FFY 2021	FFY 2022	FFY 2023
755	857	783
Resident Rights	Resident Rights	Resident Rights & Transfer/Discharge (tied for #1)
Transfer/Discharge	Transfer/Discharge	Quality of Care Issues
Abuse/Neglect/Exploitation	Quality of Care Issues	Abuse/Neglect/Exploitation
	Abuse/Neglect/Exploitation	

Definition of Individual: residents, family members, community persons, etc

Below is a chart showing the number of visits ombudsman have made to long-term care communities. They don't 'visit the building' but rather talk with the individuals who live there and visiting families. This is often when they hear of concerns, empower self-advocacy, educate on regulations, empower resident councils, etc. It also provides time for the ombudsmen to develop working relationships with the facility staff and to educate them on the Long-Term Care Ombudsman Program.

The National Ombudsman Reporting System (NORS) defines two levels of care – nursing facilities and residential care communities.

### North Dakota Long-Term Care Facilities (Communities)

**As of the end of FFY 2023 – September 31, 2023**

- 76 Nursing facilities
- 34 Swing bed facilities

Total: **110 Nursing Facilities**

- 65 Basic care facilities, and
- 75 Assisted living facilities

Total: **140 Residential Care Communities**



## Visits to Long-Term Care Communities

	Nursing Facilities			Residential Care Community		
	FFY 2021	FFY 2022	FFY 2023	FFY 2021	FFY 2022	FFY 2023
Number of facilities that received one or more visits	108	110	112	134	140	140
Number of visits for all facilities	314	459	511	354	545	548
Number of facilities that received routine access* visits	24	89	91	15	114	107

\*ROUTINE ACCESS means the facility has been visited at least once per quarter during the FFY.



Below is a level of care document developed by ombudsmen to help educate individuals and families on the current levels of care in North Dakota.

	<b>ASSISTED LIVING</b> (most independent)	<b>BASIC CARE</b> (needing more assistance)	<b>SKILLED NURSING HOME</b> (needing skilled nursing care)
<b>Definition</b>	An apartment setting that provides housing and individualized support services (see Features) can be added at a fee to meet the resident's needs and abilities to maintain as much independence as possible.	A residence that provides room and board to people who because of impaired ability for independent living, require health, social, or personal care services. Basic Care residents do not require regular 24-hour medical or nursing services. Staff are available to respond at all times to meet the 24-hour per day scheduled and unscheduled needs of a resident. <u>Some</u> Basic Care facilities are Alzheimer's, dementia, or secure memory care units.	A facility that provides room and board AND 24-hour care/supervision to its residents. This facility is under the supervision of a licensed health care practitioner and has 24-hour nursing care.
<b>Features</b>	Services (commonly referred to as Service Plan/Contract/Level/Package) are purchased at costs above rental fees according to the resident's needs. Services MAY include meals, housekeeping, laundry, activities, 24-hour supervision, personal care, medication reminders, and varying levels of health care services. This setting is NOT appropriate for memory-impaired (advanced stage) residents. Residents may choose additional in-home care agencies to supplement services.	Provides room and board as well as health and social services. Assistance with Activities of Daily Living (ADLs) is provided 24-hours per day. Also includes recreational and therapeutic activities, dietary consultation, and medication administration.	Provides room and board and ALSO nursing, medical, rehabilitative care, recreational activities, social services, assistance with Activities of Daily Living (ADLs), and protective supervision 24-hours a day.
<b>License</b>	Licensed by ND DHHS Health Facilities	Licensed by ND DHHS Health Facilities	Licensed by ND DHHS Health Facilities
<b>Regulation/ Oversight</b>	Licensing authority only. Landlord Tenant Law and ND Contract Law apply. Resident responsible to manage their contract/lease and costs of services.	ND DHHS Health Facilities receives complaints and has regulatory authority.	Surveyed annually by ND DHHS Health Facilities through contract with the Centers of Medicare and Medicaid Services (CMS) to monitor compliance with federal regulations.
<b>Payment</b>	Housing is a landlord/tenant rental agreement, so billed separately from Services. Usually private pay (resident's own income sources/assets) or may be covered partially through Long Term Care insurance.	One rate but there may be separate payments for room and board and personal cares. Payment source is private pay (resident's own income sources/assets), or may be paid through the state's Basic Care Assistant Program (BCAP).	Individual rates include: room and board, personal cares, nursing and ADLs assistance. Payment source may be private pay (resident's own income sources/assets), Long-Term Care insurance, the state Medicaid Program, or Medicare (short-term only). There may be limits on the types of services paid for or the length of time benefits can be utilized.
<b>Nursing Staff Availability</b>	NO set requirement or regulation. May not have any after-hours or overnight staff on duty. May be different for each assisted living.	RESPONSE staff are available at all times to meet the 24-hour per day scheduled and unscheduled needs to residents.	Sufficient qualified nursing personnel on duty at all times to meet the nursing care needs of the residents. Required staff are at least 1 registered nurse on duty 8 consecutive hrs. per day, 7 days a week, AND at least 1 licensed nurse on duty and designated to work charge 24-hours a day, 7 days a week.
<b>Additional Facts</b>	Lease agreement or tenancy agreement need to be resolved between tenant and facility due to NO oversight by a state entity. Residence in an ALF with an attached Basic Care or SNF facility does not guarantee you placement in that level of care should you require it - placement depends upon availability and facility admission protocol. There may be additional costs associated with assisted living.	Not required to have regular 24-hour medical or nursing services; only RESPONSE staff.	Not staffed by a physician; a medical director is available for consultation at all times. There may be specialized services offered by a SNF (e.g. IV therapy, wound care, dialysis. etc.) Nursing homes should disclose to residents/potential residents its special characteristics or service limitations. There is no mandated staff to resident ratio - facilities are required to be staffed to adequately meet the needs of the total number of residents.

The Long Term Care Ombudsman Program is available to assist residents, families, friends or other persons with complaint resolution or advocacy needs. Resident Rights apply to all residents of these long term care homes and include limitations on the reasons a resident can be transferred or discharged from a long term care home. To contact the Long Term Care Ombudsman Program call: 1-855-462-5465 (option 3), or 701-328-4617, TDD: 711, FAX 701-328-0389, or submit a complaint on-line at: <https://apps.nd.gov/itd/recmgmt/rm/stFrm/eforms/Doc/sfn01829.pdf>.

**Activities of Daily Living (ADLs):** Eating, Bathing, Dressing, Toileting, Transferring (walking) and Continence.

## Systems Advocacy

The Long-Term Care Ombudsman Program must incorporate systems advocacy into its work according to the following section of the Long-Term Care Ombudsman Final Rule.

### §1324.11 (e) (5) Establishment of the Office of the State Long-Term Care Ombudsman

Policies and procedures related to systems advocacy must assure that the Office is required and has sufficient authority to carry out its responsibility to analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services and to the health, safety, welfare, and rights of residents, and to recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate.

Upon reviewing the complaints received and the conversations held regarding health, welfare, safety, and rights of the residents of long-term care communities over the past year, adjustments to NDCC 50-10.2 Rights of Health Care Facility Residents were seen as a way to address some system issues from the past year. As the State LTC Ombudsman I began work on changes. A draft was written and then meetings were held with provider stakeholders to gain their feedback. The next steps will be to meet with resident and family stakeholders. For the ombudsman program, residents are our true stakeholders as we are charged to be resident directed in our work.



A systems issue that has heightened since the pandemic is the need for additional staff resources in Health Facilities so **regular compliance surveys and complaint surveys for basic care facilities can occur**. It is critical for the quality of care for all individuals

who live in a basic care community that regular and timely survey facility visits and oversight take place. Prior to March 2020, the protocol was that each basic care facility was surveyed once every three years for compliance with licensing standards and quality of care, with complaint surveys taking place as needed. Currently surveys are typically done only in response to complaints with no regularly scheduled surveys occurring which are to ensure that facilities are following regulation.

Another systems issue is the need for at least two additional LTC ombudsmen, The federal Long-Term Care Ombudsman Program final rule directs that each LTC Ombudsman program must:

“Ensure that residents have regular and timely access to the services provided through the Ombudsman program, and that residents and complainants receive timely responses from representatives of the Office to requests for information and complaints;”

With the current staff, ombudsmen are only able to visit the individuals living in all long-term care communities **typically only once per quarter** and only able to make in-person visits **to respond to complaints in-person as necessary**. The current six local ombudsmen are at capacity. The goal would be to add two staff and change policy to require visits to each long-term care community at least every two months. This would:

- Increase the timeliness of the ombudsman learning about and advocating on reported concerns.
- Increase the amount of face-to-face time with residents in every long-term care community and possibly prevent crisis situations.
- Decrease follow up time on verification of resolution of concerns.
- Increase the visibility of the ombudsmen and ultimately the residents trust in them.

The data shows an increase in the cases handled this past year. I believe it was due to having a .75 temporary, grant- funded local ombudsman for 14 months. That additional staff person meant more face-to-face time in the communities to hear the resident issues.

## **Ombudsmen: Advocates who assist individuals living in long-term care communities in having their voices heard**

**(AKA representatives of the Office)**

There are seven staff ombudsmen - only seven. Six of those have assigned zones throughout the state with the responsibility of visiting the residents in the long-term care communities within their zones. I, as the State Long-Term Care Ombudsman (aka as the program administrator), am the slacker, who is assigned only a few facilities.

The ombudsmen visit every assisted living community, every basic care community, every nursing home community, and every swing bed community in the state. They manage a wide range of issues and questions and must have the knowledge base to go with that.

From November 28, 2022, through February 13, 2024 the LTCOP was blessed to have an additional ombudsman. He was temporarily hired with funding through a federal American Rescue Plan (ARP) grant for Long-Term Care Ombudsmen for thirty hours a week. He was assigned primarily the Bismarck/Mandan area as data showed an escalation of calls and concerns in that area – particularly from the residential care communities. He resigned to take full time, permanent employment.

With the reality that the grant funding was limited and that the position was part-time temporary there were inherent challenges to hire and train a new staff member. It was crucial to become creative in reassigning communities. The decision was made to revert some of the communities back to the ombudsman who previously had them. However, it was also important to not burn out that staff person. Thus, the decision was made to use the grant funding to pay for .25 FTE to increase the Dickinson based ombudsman to full time from .75 FTE. That extra time allows that ombudsman to travel to the Mandan area and be assigned the assisted living and basic care facilities there with an extra nursing home added on the route over.



## Often Asked Questions

### **Do the ombudsmen visit all the residents in every facility?**

Answer: They visit as many residents as are available on the day of their visit. Availability of residents depends on therapy, sleeping times, activity schedule etc. Also, the length of visits is somewhat dependent on travel time, the number of communities in the area to visit - to stay within the travel budget, and the number of residents per community. Over time all residents may be visited but not likely every quarter (every three months).

### **Are the ombudsmen just ‘friendly visitors’?**

Answer: No. Each visit with an individual in a LTC communities has some ‘friendly visiting’ time – weather, family, memories, career history etc. That is invaluable to learn about the individual aka ‘get to know you time’.

Time is focused on educating the individuals about the LTC Ombudsman Program, advocacy, resident rights, long-term care information etc. Ombudsmen also ask about concerns, things that don’t work for individuals in their daily routine etc. When concerns are identified, time is spent developing a resident directed plan to work through the concerns and/or effect change.

Currently there are five (5) volunteer ombudsmen. The volunteer ombudsmen commit to making at least monthly visits for a few hours per visit to one assigned nursing home. On a national level volunteerism has declined. Plus, the expectations of a volunteer ombudsman places demands beyond what many want to handle as a volunteer.

## Contact the Ombudsmen

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

Please direct individuals who live in a long-term care community to the Long-Term Care Ombudsman Program if they have questions, need help to navigate the system or have concerns that may be resolved through advocacy.

Karla Backman, State Long-Term Care Ombudsman  
(701) 328-4617, 711 (TTY) or [kbackman@nd.gov](mailto:kbackman@nd.gov)

One national stakeholder representing ombudsmen told us that the Long-Term Care Ombudsman Program is facing the “Perfect storm of need and demand, and lack of resources to do the job. That’s the nut of it. That what keeps me up at night. How do you serve people and do it effectively? It’s becoming harder and harder.”

The U.S. Government Accountability Office released a report on their review of the Long-Term Care Ombudsman Program on May 23, 2024. This is an example shared about “National Stakeholder Perspectives on Resource Limitations.”

Please read the full GAO report at the link below.

<https://www.gao.gov/products/gao-24-107209>