2023 SENATE HUMAN SERVICES

SB 2088

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

SB 2088
1/11/2023

Relating to the licensing of assisted living facilities and powers and duties of the department of health and human services.

9:00 AM **Madam Chair Lee** called the hearing to order. **Senators Lee, Cleary, Clemens, K. Roers, Weston, Hogan** are present.

Discussion Topics:

- Written notice
- Licensing process
- Ombudsmen office
- Monitor medication

9:02 AM **Corey Kjos, Enterprise Operations Manager, ND Department of Health and Human Services** testimony in favor #12823

9:18 AM **Shelly Peterson, President, ND Long Term Care Association** testimony in opposition #12878

9:37 AM **Chris Jones Executive Director, ND Department Health and Services** verbal testimony in favor

9:45 AM **Chrystal Bartuska Director, North Dakota Insurance Department Medicare Division** provides additional information

9:46 AM **Madam Chair Lee** closed the hearing

Patricia Lahr, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

SB 2088
1/17/2023

Relating to the licensing of assisted living facilities and powers and duties of the department of health and human services.

3:26 PM **Madam Chair Lee** called the hearing to order. **Senators Lee, Cleary, Clemens, K. Roers, Weston, Hogan** are present.

3:24 P.M. **Senator Roers** moved DO NOT PASS
3:24 P.M. **Senator Hogan** seconded

Roll call vote.

Senators	Vote
Senator Judy Lee	Y
Senator Sean Cleary	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Kent Weston	Y

Motion passes 6-0-0

Senator K. Roers will carry the bill.

3:27 PM **Madam Chair Lee** closed the hearing.

Patricia Lahr, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2088: Human Services Committee (Sen. Lee, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2088 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

TESTIMONY

SB 2088

NORTH Dakota | Health & Human Services
Be Legendary.

Testimony
Senate Bill No.2088
Senate Human Services Committee
Senator Lee, Chairman

January 11, 2023

Chairman Lee, and members of the Senate Human Services Committee, I am Corey Kjos, Enterprise Operations Manager with the Department of Health and Human Services (Department). I appear before you in support of Senate Bill No. 2088, which was introduced at the request of the Department.

The Department is recommending that we discontinue the licensing of Assisted Living facilities. The current practice of licensing Assisted Living facilities does little more than place an administrative burden on the Department as well as the facility while providing little to no oversight of the facility. Each year the facilities must submit an application, payment for license, and written agreements with the tenant. The agreements must include separate rates for rent and services provided to the tenant, as well as payment terms, refund policies, rate changes, tenancy criteria, and living unit inspections. They must also provide a copy of the written notice provided to tenants that explain how the tenant may report a complaint regarding the assisted living facility. The Department reviews these documents and issues the license based on this information.

This is where the current licensing process falls short. There currently isn't any authority, under the licensing provisions, provided to the Department that would allow us to act on any complaint received by a tenant against an assisted living facility. The Department does not have the authority to suspend or revoke a license based upon a complaint

received, in fact the Department, under the licensing provisions, does not have the authority to investigate a complaint. If complaints are received, they are to be forwarded to the appropriate agency, entity, or program for investigation. The complaints are typically sent to the Long-Term Care Ombudsmen which works to ensure that the issue is resolved to the tenants liking, and unless the tenant allows the Ombudsmen to share the information the Department does not find out what the resolution was to the complaint. Even if the Department is provided information as to the resolution of the issue, no further action can be taken by the Department to reduce or eliminate future complaints or concerns.

In closing the current licensing process ends up being no more than a rubber stamp by the Department for a facility to operate which likely provides the residents and their families a false sense of security that the State has oversight or is performing any type of regulation of the facilities.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

Testimony on SB 2088
Senate Human Services Committee
January 11, 2023

Good morning, Chairman Lee and members of the Senate Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent 192 assisted living, basic care, and skilled nursing facilities in North Dakota. We are here to oppose SB 2088 and ask that you kill the bill.

SB 2088 proposes to repeal assisted living licensure requirements. We are opposed to repealing the requirement of assisted living facilities to be licensed. In 2001 the legislature established a requirement to have all providers register with the state. In 2003 the registration process was repealed and a new licensing requirement was put in place. As well as DHS was given the authority to develop rules regarding assisted living. Our goal in requiring assisted living licensure was so consumers could have their long term care insurance policy pay for services in this environment. At the time and today, long term care insurance won't provide coverage if the facility is not licensed. Today, every state in the nation licenses assisted living and it would be a step backwards to not have it licensed in North Dakota.

Today, 24% of tenants living in assisted living have long term care insurance that is helping to pay their monthly bill. If licensure is repealed, all of these consumers could lose their coverage.

I would like to share a little about assisted living in North Dakota, as well as share with you the regulations on assisted living.

Attached is a draft of our 2023 Issue and Data Booklet and the section on assisted living.

Secondly, see a map of the location of assisted living facilities spread throughout North Dakota.

Third, see what the bill is proposing to repeal within NDCC 50-32.

50-32-03 Powers and Duties of the Department
The department shall:

1) Take action and give directives necessary to implement this chapter.
2) Establish a method to receive complaints related to assisted living facilities and to forward the complaints to the appropriate agency for investigation.
3) Establish rules governing the licensing of assisted living facilities to regulate the application for approval, denial, renovation, and requirements of a license.

Tim Weidrich of the Department of HHS reached out to our Association late last year and suggested we form a workgroup to look at an assisted living licensure, as it was anticipated assisted living licensure would join their division that currently regulates basic care and nursing facilities.

We identified a number of assisted living providers who were interested in this discussion and submitted their names to DHHS. Because of SB 2088 and the desire of DHHS to repeal licensure

requirements, they have told us the workgroup on assisted living licensure no longer needs to meet.

We believe a collaborative approach to assisted living licensure and standards is the best approach and ask that SB 2088 be killed so that collaborative process can move forward.

Two important sections on assisted living would remain in place:

50-32-04. Assisted living facility health services - Limitations on hospice services.

1. An entity may provide health services to individuals residing in an assisted living facility owned or operated by that entity. For purposes of this subsection, health services means services provided to an individual for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability.
2. A tenant of an assisted living facility who is in need of hospice services and who exceeds tenancy criteria, as determined by the facility, may remain in the facility only if the tenant contracts with a third party, such as a hospice agency, or utilizes family support, or both, to meet those needs.

50-32-05. Assisted living facilities - Duties - Educational requirements.

1. Each assisted living facility must have clear, concise, and understandable tenancy criteria that is fully disclosed to all tenants, in writing, before the tenancy agreement is signed. Before a facility unit is rented, the facility or landlord shall evaluate the tenant's ability to meet the facility's tenancy criteria.

2. Each assisted living facility shall require the administrator of the facility to complete twelve hours of continuing education per year. The assisted living facility shall require all direct care staff to receive annual education or training in the areas of:
   a. Resident rights;
   b. Fire and accident prevention and training;
   c. Mental and physical health needs of tenants;
   d. Behavior problems and prevention; and
   e. Control of infection, including universal precautions.
3. Each assisted living facility shall maintain a record for each tenant. The tenant record must include:
   a. An initial evaluation to meet tenancy criteria;
   b. The tenancy agreement signed by the tenant or the tenant's legal representative;
   c. If applicable, a medication administration record that documents medication administration consistent with applicable state laws, rules, and practices; and
   d. An itemized list of services provided for the tenant.
4. Before hiring, the assisted living facility shall conduct a reference and previous employment check and a check of applicable registries of each applicant being considered for employment at the facility.
5. At least once every twenty-four months, each assisted living facility shall conduct a consumer satisfaction survey. The assisted living facility shall provide each tenant with a copy of the results of the survey.

I want to share with you North Dakota and National Assisted Living Satisfaction Survey results. Although North Dakota facilities rank higher

in all measures than their counterparts in other states, our results I'm sure have decreased because of the impact of the pandemic.

Assisted living facilities, through Governor Burgum's Executive Order and CDC guidance, were required to restrict visitation, shut down dining and group activities, and required constant testing and daily screens for Covid symptoms. Assisted living tenants expressed a lot of frustration with Covid restrictions and satisfaction scores I'm sure were impacted. What was once a very popular living arrangement has been forever impacted and it will take time to regain the high trust and support that was once common in assisted facilities in North Dakota.

Pinnacle Quality Insight – Assisted Living
December 2022

	VALUE	North Dakota	Nation
OVERALL SATISFACTION	5	62%	44%
	4	32%	38%
	3	5%	13%
	2	0%	3%
	1	0%	1%
Positive Score		94%	82%

	VALUE	North Dakota	Nation
PERSONAL CARE	5	68%	48%
	4	27%	36%
	3	5%	11%
	2	0%	3%
	1	0%	1%
Positive Score		95%	84%

	VALUE	North Dakota	Nation
QUALITY OF FOOD	5	37%	33%
	4	38%	36%
	3	16%	20%
	2	8%	8%
	1	1%	4%
Positive Score		75%	69%

	VALUE	North Dakota	Nation
DINING SERVICES	5	67%	52%
	4	27%	33%
	3	4%	11%
	2	1%	3%
	1	1%	1%
Positive Score		94%	85%

	VALUE	North Dakota	Nation
CLEANLINESS	5	76%	65%
	4	21%	28%
	3	2%	6%
	2	0%	1%
	1	0%	1%
Positive Score		97%	93%

	VALUE	North Dakota	Nation
RESPONSE to PROBLEMS	5	68%	52%
	4	26%	28%
	3	4%	12%
	2	1%	4%
	1	0%	3%
Positive Score		94%	80%

	VALUE	North Dakota	Nation
COMMUNICATIONS	5	64%	52%
	4	27%	29%
	3	7%	13%
	2	1%	4%
	1	0%	3%
Positive Score		91%	81%

	VALUE	North Dakota	Nation
RECOMMEND to OTHERS	5	82%	65%
	4	15%	22%
	3	3%	7%
	2	0%	2%
	1	0%	3%
Positive Score		97%	87%

In summary, we ask that you kill SB 2088 and encourage DHHS to move back to the collaborative on assisted living licensure. DHHS has broad rule making authority over assisted living and we have a committed group of facilities excited to engage in this conversation.

Thank you again for the opportunity to testify. I would be happy to answer any questions.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501
(701) 222-0660

Assisted Living Facts

ASSISTED LIVING AT A GLANCE

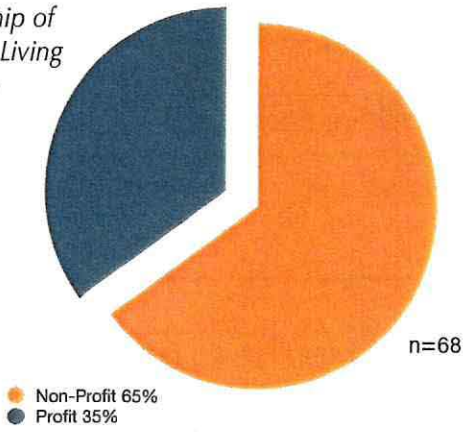
75 licensed assisted living facilities

3,149 licensed units

2022 average occupancy was **82%**

n=33

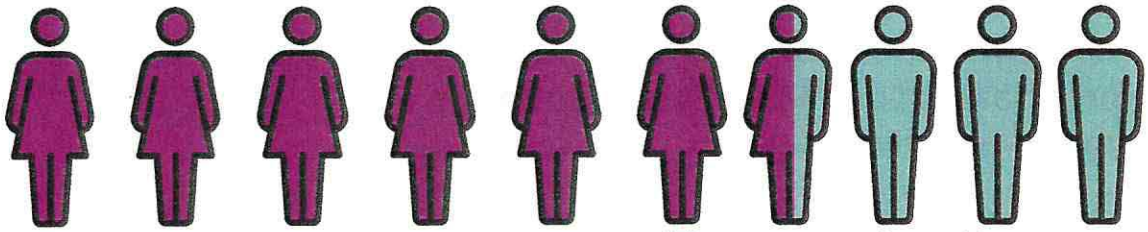
Ownership of Assisted Living Facilities



Assisted Living Facts

- An assisted living facility is a congregate residential setting with private apartments and contracted services.
- A la carte services are contracted based upon an agreed upon service plan.
- A typical rental package includes meals, housekeeping, activities, transportation, and laundry.
- Facilities provide a full range of services from bathing to medication management to hospice care.
- Assistance with daily care, isolation, depression and the need for supervision are the top issues precipitating the desire to move into an assisted living facility.
- Current tenants range in age from 55 to 102 with the average age being 86.

Gender of Assisted Living Residents



66% of tenants in North Dakota ASSISTED LIVING are female.

North Dakota Long Term Care Association

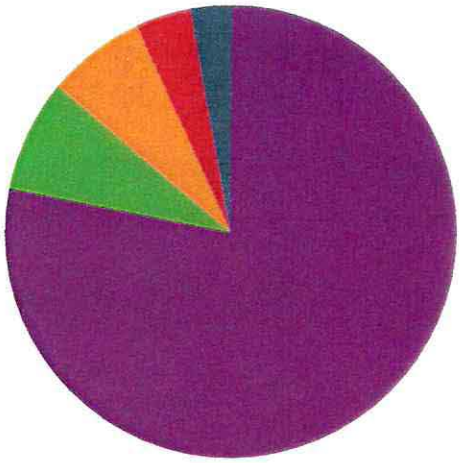
01/09/23

Tenants - Moving In and Out

When individuals move into an assisted living facility, ***where do they come from?***

Most individuals were living in their own home prior to moving into an assisted living facility.
The top three reasons for assisted living move-in:

1) Assistance with daily care
2) Social Isolation/Depression
3) Continuous Supervision



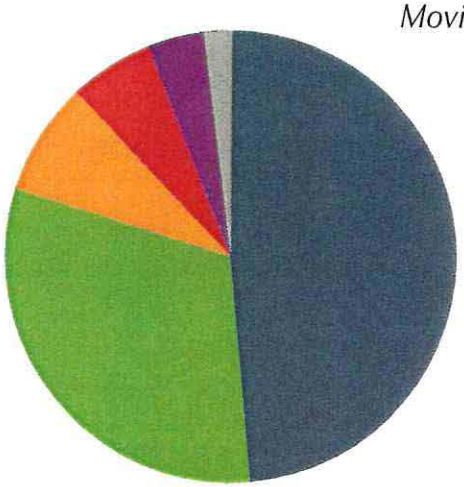
Moving In

- Home 78%
- Other Assisted Living Facility 8%
- Other 7%
- Nursing Facility 4%
- Hospital/Swing Bed 3%

When individuals move out of an assisted living facility, ***where do they go?***

Almost half of the tenants moving out of assisted living facilities are admitted to a skilled nursing facility. Advancing medical needs and growing cognition issues necessitate the move to a higher level of care.

Moving On



- Nursing Facility 48%
- Death 31%
- Home 8%
- Other Assisted Living Facility 6%
- Basic Care Facility 4%
- Hospital/Swing Bed 2%
- Other <1%

Assisted Living Facts

Care needs of assisted living tenants

47% of tenants have impaired mental status ranging from mild confusing or forgetfulness to a mental health diagnosis.

57% of tenants need full assistance with medication administration. These tenants on average take 11.8 over-the-counter and prescription medications daily.

99% of tenants are fully independent in eating, 95% independent with transferring, 94% with toileting, and 66% with dressing.

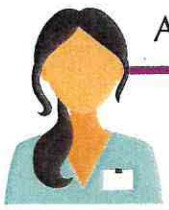
57% of tenants periodically use the assistance of a walker or cane.

51% of tenants do not need any assistance to walk.

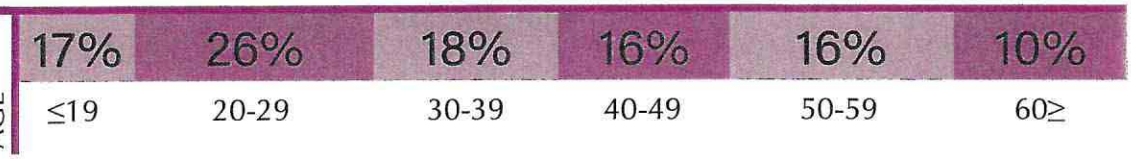
Assisted Living WORKFORCE

- Top issues impacting assisted living facilities are workforce and occupancy.
- 861 individuals are employed in 22 assisted living facilities.

- As of August 1, 2022, 22 assisted living facilities reported the average time a nurse is onsite is 7.5 hours per day.
- In 2022 the mid-point CNA wage is $18.32
- Over one-quarter (26%) of the workforce is age 50 and older, the oldest employee is 80, who escorts tenants to appointments.



Age of Assisted Living Workforce



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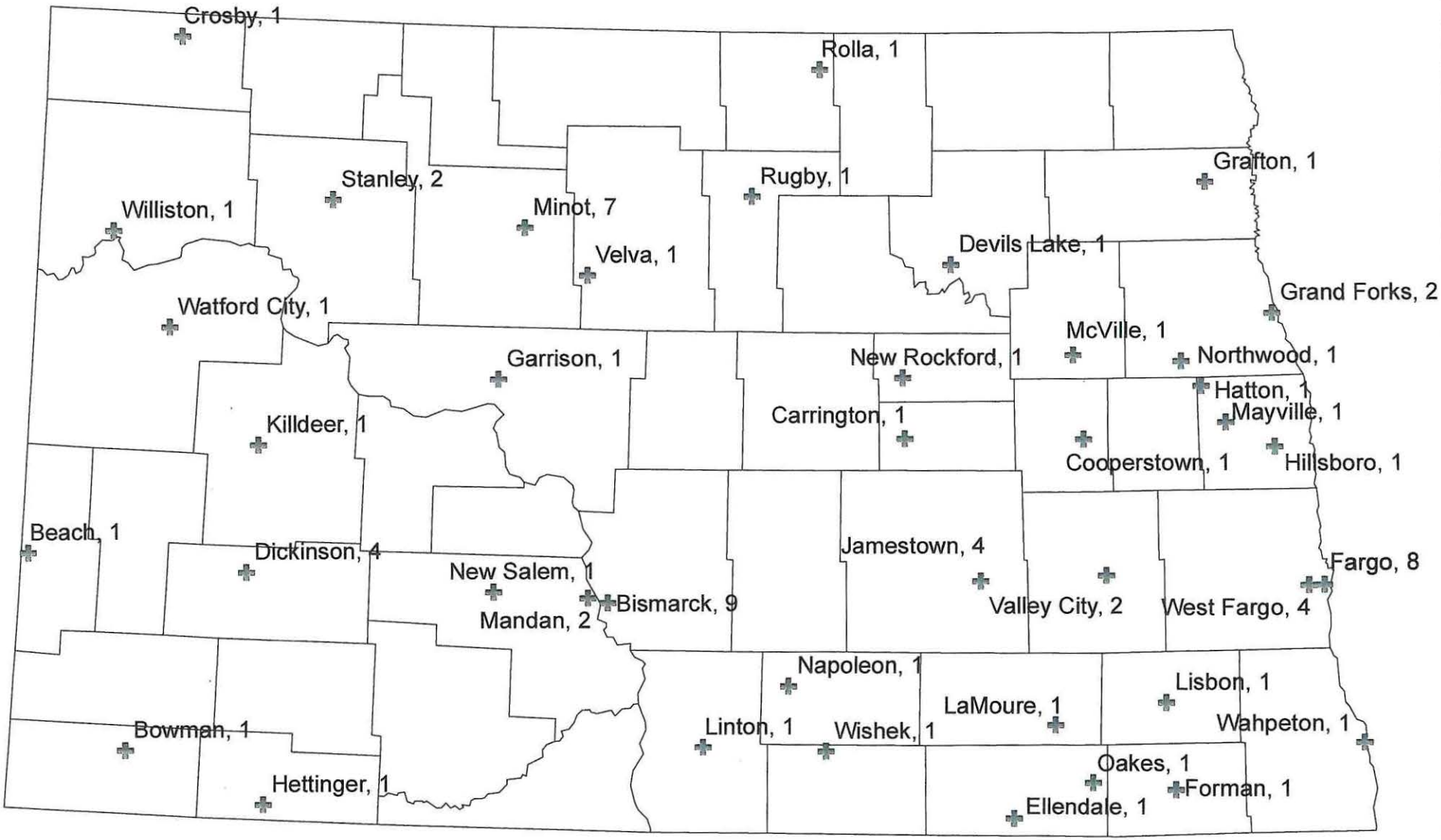
North Dakota Assisted Living Facilities, 2022



City (Number of Assisted Living Facilities)

North Dakota Long Term Care Association

Source: ESRI, North Dakota Long Term Care Association
Created by the North Dakota Healthcare Wokforce Group on 12/19/2022

CHAPTER 50-10.1
LONG-TERM CARE OMBUDSMEN

50-10.1-01. Definitions.

As used in this chapter:

1. "Administrative action" means any action or decision made by an owner, employee, or agent of a long-term care facility, or by a public agency, which affects the provision of services to a resident of a long-term care facility.
2. "Department" means the department of human services.
3. "Long-term care facility" means any skilled nursing facility, basic care facility, nursing home as defined in subsection 3 of section 43-34-01, assisted living facility, or swing-bed hospital approved to furnish long-term care services; provided, that a facility, as defined by subsection 2 of section 25-01.2-01, providing services to developmentally disabled persons is not a long-term care facility.
4. "Resident" means a person residing in and receiving personal care from a long-term care facility.

50-10.1-02. Appointment of state and regional long-term care ombudsmen.

The executive director of the department shall appoint a state long-term care ombudsman and such regional long-term care ombudsmen as the executive director deems necessary within the limits of legislative appropriations.

50-10.1-03. Duties of state long-term care ombudsman.

The state long-term care ombudsman shall:

1. Investigate and resolve complaints about administrative actions that may adversely affect or may have adversely affected the health, safety, welfare, or personal or civil rights of persons in long-term care facilities or persons who have been discharged from long-term care facilities within nine months of the complaint against the facility.
2. Monitor the development and implementation of federal, state, and local laws, regulations, and policies that relate to long-term care facilities in the state.
3. Gather and disseminate information to public agencies about the problems of persons in long-term care facilities.
4. Train volunteers and assist in the development of citizen organizations to participate in the ombudsman programs.
5. Report to any state agency those factors found by the state long-term care ombudsman to relate to those duties of that agency which impact on the care given to residents of a long-term care facility in this state.
6. Act as an advocate for residents of long-term care facilities.
7. Carry out any activities consistent with the requirements of this chapter, including the delegation to regional or volunteer community long-term care ombudsmen of any duties imposed by this chapter, which the executive director of the department deems appropriate.
8. Adopt rules in accordance with chapter 28-32 consistent with and necessary for the implementation and enforcement of this chapter.

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 reasonable 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. Reasonable access is defined as access by an ombudsman during normal working hours or by appointment and upon notification to the administrator or person in charge of the facility.
2. Have access to all personal and medical records of any resident of a long-term care facility who has sought ombudsman services, or on whose behalf such services have

been sought, except that no record may be obtained without the written consent of a resident or a legal representative of a resident, or unless a court orders the disclosure.

50-10.1-05. Chapter to be posted - Retaliation prohibited.

A copy of this chapter must be posted in a conspicuous place in each long-term care facility, along with a statement of the right to file a complaint concerning administrative actions which affect any resident and the address where a complaint may be filed. Each resident, the spouse of each resident having a spouse, and any designated representative of a resident must be provided with copies of the posted documents at the time the resident is admitted to the long-term care facility. A long-term care facility, and its agents, may not take or threaten retaliatory action against a resident, employee, or any other person on account of the filing of a complaint by or on behalf of that resident, or on account of the providing of information to a long-term care ombudsman constituting or relating to a complaint.

50-10.1-06. Establishment of reporting system - Recognition of reports by ombudsmen.

The department shall establish a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. The department shall submit this information to the appropriate state agency which is responsible for the licensing or certification of the long-term care facility involved and to the appropriate federal agency. Each state agency responsible for licensing or certification of long-term care facilities shall coordinate its activities with the statewide uniform reporting system by submitting to the department in a timely manner all complaints and information it receives on conditions that adversely affect the health, safety, welfare, or personal or civil rights of residents; provided, that the information is not privileged under the law. The ombudsman program may recognize investigative reports conducted by an appropriate agency or organization.

50-10.1-07. Confidentiality and disclosure of records and files.

Those records and files of the state and regional ombudsman, and their authorized agents, which relate to, or identify any resident of a long-term care facility or a complainant, are confidential and may not be disclosed unless:

1. A resident, or a legal guardian or attorney in fact, consents in writing to the release of the information and designates to whom the information must be disclosed;
2. The ombudsman authorizes a disclosure which does not reveal the identity of any complainant or resident; or
3. A court of competent jurisdiction orders the disclosure.