

**CHAPTER 75-03-25
OMBUDSMAN PROGRAM**

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SECTION 1. Section 75-03-25-01 is amended as follows:

75-03-25-01. Definitions. As used in this chapter:

1. "Administrative action" means an act, decision, or a failure to act or to make a decision by an owner, employee, or agent of a long-term care facility or by a public agency that affects the provision of services to a resident.
2. "Basic care facility" means any residence, not licensed under North Dakota Century Code chapter 23-16 by the state department of health, that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular twenty-four-hour medical or nursing services.
3. ~~"Community ombudsman" means an individual appointed by the department as an ombudsman on the community level as opposed to the regional or state level.~~
4. "Complaint" means a written or verbal statement of alleged violation of a statute, rule, regulation, or policy, or other alleged wrongful ~~acts~~ act or ~~emissions~~ omission related to health, safety, welfare, personal, or civil rights of a long-term care resident.
5. ~~4.~~ "Department" means the department of human services.
6. ~~"Designated representative" means a legal representative or any individual chosen by the long-term care resident to represent the long-term care resident.~~

- ~~7.5.~~ "Immediate family" means an individual whose relationship by blood, marriage, or adoption to an individual is within the second degree of kinship a member of the household or a relative with whom there is a close personal or significant financial relationship.
- ~~8.6.~~ "Legal representative" means the long-term care resident's legal counsel, an individual who possesses the resident's unlimited power of attorney or power of attorney that specifically includes the authority to release confidential information, a guardian with unlimited power, or a guardian or conservator whose grant of authority specifically includes the authority to release confidential information.
- ~~9.7.~~ "Long-term care facility" means a facility defined in North Dakota Century Code chapter 50-10.1, as any skilled nursing facility, intermediate care facility, basic care facility, nursing home as defined in subsection 3 of North Dakota Century Code section 43-34-01, boardinghouse, or swing bed hospital approved to furnish long-term care services; provided, that a facility, as defined by subsection 2 of North Dakota Century Code section 25-01.2-01, providing services to developmentally disabled persons is not a long-term care facility.
- ~~10.8.~~ "Medical record" means a record maintained by a long-term care facility relating to the medical and physical condition, care, and treatment of a particular long-term care resident. The medical record includes social and other information as required by the facility and the resident.
- ~~11.9.~~ "Reasonable access" means the ombudsman's right to access a long-term care facility, a long-term care resident, or a long-term care resident's records, based on the ombudsman's need to know information in the provision of services.
- ~~12.10.~~ "Resident" means an individual residing in and receiving personal care from a long-term care facility.
- ~~13.~~ "~~Second degree of kinship~~" means ~~an individual whose relationship to another individual by blood, marriage, or adoption is as spouse, sister, brother, mother, father, or aunt, or uncle.~~
11. "Volunteer ombudsman" means an individual appointed by the department as an ombudsman on the community level as opposed to the local or state level.

History: Effective March 1, 1997; amended effective April 1, 2016.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

SECTION 2. Section 75-03-25-02 is repealed.

~~75-03-25-02. Appointment of the state long-term care ombudsman.~~

~~The executive director of the department shall appoint an individual as the state long-term care ombudsman. The state long-term care ombudsman shall serve as a full-time, classified service employee of the division of aging services and must exhibit expertise and experience in long-term care and advocacy.~~

History: Effective March 1, 1997; repealed effective April 1, 2016.

General Authority: NDCC 50-10.1-02, 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

SECTION 3. Section 75-03-25-03 is amended as follows:

75-03-25-03. Duties of the state long-term care ombudsman. The state long-term care ombudsman shall:

1. Identify, investigate, and resolve complaints made by, or on behalf of, long-term care residents;
2. Investigate and resolve complaints involving long-term care service providers, representatives of providers, public agencies, or health and social service agencies or complaints that pertain to administrative action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of a long-term care resident, including the appointment and functions of guardians and representative payees;
3. Provide assistance to a long-term care resident in protecting the resident's health, safety, welfare, or rights;
4. Provide a long-term care resident with information and procedures to protect the long-term care resident's rights and to obtain health, safety, welfare, or rights services from long-term care service providers, public agencies, or health and social service agencies;
5. Develop and monitor the effectiveness of complaint registration and complaint resolution mechanisms that provide a long-term care resident regular and timely access to ombudsman services;
6. Represent the interests of a long-term care resident before governmental agencies;
7. Seek administrative and legal remedies to protect the health, safety, welfare, or rights of a long-term care resident;
8. Research, evaluate, comment on, and monitor the development and implementation of federal, state, and local laws, administrative rules, regulations, and other federal, state, and local policies and actions, pertaining to the health, safety, welfare, and rights of a long-term care resident;
9. Recommend changes and facilitate public comments on laws, rules, regulations, policies, actions, and decisions pertaining to the health, safety, welfare, and rights of a long-term care resident;
10. Provide training for the regional-local and community volunteer ombudsman and ~~train volunteers and~~ encourage the development of citizen organizations to take part in the ombudsman ~~program~~ program;
11. Provide technical assistance for the development of a long-term care resident ~~council~~ councils and a resident's family ~~council~~ councils for the protection of a each long-term care resident's well-being and rights; and
12. Perform other operations and projects required by federal and state aging services.

History: Effective March 1, 1997; amended effective April 1, 2016.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.
Law Implemented: NDCC 50-10.1-03(8)

SECTION 4. Section 75-03-25-04 is repealed.

~~**75-03-25-04. Appointment of the regional long-term care ombudsman.** The executive director of the department, through the director of aging services, shall designate an individual in each region to serve as the regional long-term care ombudsman. The individual designated as the regional long-term care ombudsman shall have demonstrated capability to carry out the responsibilities of the office, be free of conflicts of interest, and meet such additional requirements as the director of aging services may specify.~~

History: Effective March 1, 1997; repealed effective April 1, 2016.

General Authority: NDCC 50-10.1-02, 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

SECTION 5. Section 75-03-25-05 is amended as follows:

75-03-25-05. Duties of the regional local ombudsman. The regional local ombudsman shall:

1. Investigate and resolve complaints involving long-term care service providers, or representatives of providers, public agencies, or health and social service agencies and pertaining to administrative action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of a long-term care resident;
2. Ensure that a long-term care resident in the regional local ombudsman's service area has regular, reliable, and timely access to the regional local and community volunteer ombudsman;
3. Ensure that complaints and requests for assistance receive timely responses;
4. Represent the interests of a long-term care resident before governmental agencies and pursue administrative and legal remedies, to protect the health, safety, welfare, and rights of a long-term care resident;
5. Review and make necessary comments on existing and proposed statutes, rules, regulations, and other governmental policies and administrative actions pertaining to the health, safety, welfare, and rights of a long-term care resident;
6. Facilitate the opportunity for the public to comment on federal and state statutes, rules, regulations, policies, and administrative actions pertaining to the health, safety, welfare, and rights of a long-term care resident.
7. Advocate for and support the development of a long-term care resident councils and a long-term care resident's family councils;
8. Recruit and select train the community-volunteer ombudsman, maintain documentation of training, and investigate any complaints about the community-volunteer ombudsman, in the form and manner required by the department;

9. Conduct an annual evaluation of each ~~community volunteer~~ ombudsman in the form and manner required by the department; and
10. Perform other operations and projects required by the state long-term care ombudsman.

History: Effective March 1, 1997; amended effective April 1, 2016.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

SECTION 6. Section 75-03-25-06 is amended as follows:

75-03-25-06. Appointment Certification of the ~~community volunteer~~ ombudsman - Qualifications. ~~With the approval of the director of aging services, the regional~~ The state long-term care ombudsman may designate certify a community volunteer ombudsman. ~~If the community~~ A volunteer ombudsman is an individual, the individual must be at least age eighteen years of age. ~~If the community ombudsman is an organization, the organization must be a public or nonprofit private organization. The community volunteer~~ ombudsman is not paid and is not an employee of the department. Each designated ~~community certified volunteer~~ ombudsman shall must:

1. Have references and experiences that demonstrate the capability to fulfill comparable duties as those listed in section 75-03-25-07;
2. Be free of conflicts of interest;
3. Possess any other qualifications that the state ~~and regional~~ long-term care ombudsman ~~regard~~ determines necessary to fulfill the duties of the position;
4. Have completed initial and ongoing training;
5. Have agreed to abide by the confidentiality statement, the conflict of interest statement, and the job position description;
6. Be able to communicate with long-term care residents and facility staff;
7. Be able to communicate with residents who may be physically or mentally impaired; and
8. Understand and have the ability to advocate on behalf of residents.

History: Effective March 1, 1997; amended effective April 1, 2016.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

SECTION 7. Section 75-03-25-07 is amended as follows:

75-03-25-07. Duties of the ~~community volunteer~~ ombudsman. The ~~community volunteer~~ ombudsman shall:

1. Provide ombudsman services to protect the health, safety, welfare, and rights of a long-term care resident;
2. Be present at the ombudsman's assigned facility on a regular basis;
3. Maintain confidentiality in all ombudsman activities;
4. Receive and report concerns, issues, and complaints to the ~~regional~~ local ombudsman; and

5. Assist the ~~regional~~ local ombudsman with assessment, complaint resolution, and follow-up activities.

History: Effective March 1, 1997; amended effective April 1, 2016.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

SECTION 8. Section 75-03-25-08 is amended as follows:

75-03-25-08. Restrictions on services offered by ~~community~~ volunteer ombudsman. While in the role of the ~~community~~ volunteer ombudsman in an assigned long-term care facility, the ~~community~~ local ombudsman ~~shall~~ may not:

1. Provide direct personal care to a long-term care resident;
2. Provide transportation for a long-term care resident; or
3. Conduct personal business for a long-term care resident.

History: Effective March 1, 1997; amended effective April 1, 2016.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

SECTION 9. Section 75-03-25-09 is amended as follows:

75-03-25-09. Reasonable access to long-term care facility, residents, and records. The division of aging services of the department shall ensure that the state, regional local, and ~~community~~ volunteer ombudsmen have reasonable access to:

1. A long-term care facility and a long-term care resident;
2. Review a long-term care resident's social and medical records, as necessary to resolve a complaint, ~~if the resident or the resident's legal representative gives written permission provided under subsection 2 of North Dakota century code section 50-10.1-04;~~
3. Review a long-term care resident's medical record if a court orders disclosure;
4. Open administrative records, policies, and documents of a long-term care facility; and
5. State licensure and certification records regarding long-term care facilities.

History: Effective March 1, 1997; amended effective April 1, 2016.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

SECTION 10. Section 75-03-25-10 is amended as follows:

75-03-25-10. Conflict of interest.

1. ~~In the ombudsman's official capacity and in the performance of the ombudsman's official duties, an~~ An ombudsman may not serve as guardian or conservator or in any protective custody other decision-

- making capacity for a long-term care resident, unless the long-term care resident who is not in a facility served by the ombudsman.
2. a. Any An ombudsman or any member of the ombudsman's immediate family may not be a board member, have an ownership, operational, or investment interest in an existing or proposed long-term care facility, or be employed in the by, or participate in the management of, a long-term care facility in which the community ombudsman is assigned.
 - b. ~~If a public or nonprofit organization provides ombudsman services, an officer of the entity or any member of the officer's immediate family may not be a board member, have an ownership interest, or be employed in the long-term care facility in which the entity serves as the community ombudsman.~~
 3. An ombudsman may not have the responsibility for direct involvement in the licensure or certification of any long-term care facility.
 4. An ombudsman may not receive or have the right to receive, directly or indirectly, any remuneration, in cash or in kind, under a compensation arrangement with an owner or operator of a long-term care facility.
 5. An ombudsman may not accept gifts or gratuities of significant value from a long-term care facility or its management, a resident of or a legal representative of a resident of a long-term care facility to which the ombudsman is assigned.
 6. The state long-term care ombudsman and any local ombudsman may not accept money or other consideration from anyone other than the department for the performance of an act in the regular course the ombudsman's duties; a volunteer ombudsman, as an unpaid position, may not accept money or other consideration from anyone for the performance of an act in the regular course of the volunteer's work as an ombudsman.
 7. An ombudsman should not serve residents of a facility in which an immediate family member resides.

History: Effective March 1, 1997; amended effective April 1, 2016.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

SECTION 11. Section 75-03-25-11 is amended as follows:

75-03-25-11. Dismissal of an ombudsman. Any ombudsman may be dismissed if the ombudsman:

1. Fails to perform ombudsman services in a manner consistent with the program's policies and procedures;
2. Fails to maintain confidentiality;
3. Fails to report abuse, neglect, or exploitation of a long-term care resident with or without the victim's name in accordance with the victim's preference if a report is requested by the resident or legal representative, or is required by law; or
4. Communicates a known false statement.

History: Effective March 1, 1997; amended effective April 1, 2016.
General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.
Law Implemented: NDCC 50-10.1-03(8)

SECTION 12. Section 75-03-25-12 is amended as follows:

75-03-25-14. Resident's right to notice. The long-term care facility shall post, in a conspicuous place in each long-term care facility, ~~a copy of North Dakota Century Code chapter 50-10.1, a statement of the right~~ information about the ombudsman program, how to file a complaint concerning administrative actions which affect any long-term care resident, and the address where a complaint may be filed. The long-term care facility shall provide copies of the posted information to each long-term care resident, the long-term care resident's spouse, and any ~~designated~~ legal representative of a long-term care resident at the time the long-term care resident is admitted to the long-term care facility.

History: Effective March 1, 1997; amended effective April 1, 2016.
General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.
Law Implemented: NDCC 50-10.1-03(8), 50-10.1-05