

CHAPTER 75-03-25 OMBUDSMAN PROGRAM

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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. "Complaint" means a written or verbal statement of alleged violation of a statute, rule, regulation, or policy, or other alleged wrongful act or omission related to health, safety, welfare, personal, or civil rights of a long-term care resident.
4. "Department" means the department of human services.
5. "Immediate family" means a member of the household or a relative with whom there is a close personal or significant financial relationship.
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.
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.

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.
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.
10. "Resident" means an individual residing in and receiving personal care from a long-term care facility.
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)

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

Repealed effective April 1, 2016.

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 local and volunteer ombudsman and encourage the development of citizen organizations to take part in the ombudsman program;
11. Provide technical assistance for the development of a long-term care resident councils and family councils for the protection of 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)

75-03-25-04. Appointment of the regional long-term care ombudsman.

Repealed effective April 1, 2016.

75-03-25-05. Duties of the local ombudsman.

The 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 local ombudsman's service area has regular, reliable, and timely access to the local and 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 long-term care resident councils and long-term care family councils;
8. Recruit and train the volunteer ombudsman, maintain documentation, and investigate any complaints about the volunteer ombudsman, in the form and manner required by the department;
9. Conduct an annual evaluation of each 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)

75-03-25-06. Certification of the volunteer ombudsman - Qualifications.

The state long-term care ombudsman may certify a volunteer ombudsman. A volunteer ombudsman must be at least eighteen years of age. The volunteer ombudsman is not paid and is not an employee of the department. Each certified volunteer ombudsman 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 long-term care ombudsman 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 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)

75-03-25-07. Duties of the volunteer ombudsman.

The 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 local ombudsman; and
5. Assist the 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)

75-03-25-08. Restrictions on services offered by volunteer ombudsman.

While in the role of the volunteer ombudsman in an assigned long-term care facility, the local ombudsman 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)

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, local, and 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 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)

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

1. An ombudsman may not serve as guardian or conservator or in any other decisionmaking capacity for a long-term care resident who is in a facility served by the ombudsman.
2. 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 by, or participate in the management of, a long-term care facility.
3. An ombudsman may not have 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 any 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)

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 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)

75-03-25-12. Legal counsel.

Legal counsel shall be provided to any ombudsman against whom suit or other legal action is brought or threatened to be brought in connection with the performance of official ombudsman duties.

History: Effective March 1, 1997.

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

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

75-03-25-13. Retaliation prohibited.

A long-term care facility, and its agents, may not take or threaten retaliatory action against a long-term care resident, an employee, or any other individual because of the filing of a complaint by or on behalf of the long-term care resident, or because of the provision of information to a long-term care ombudsman constituting or relating to a complaint. Examples of retaliatory actions include:

1. The discharge from or termination of employment;
2. The demotion, negative work performance evaluation, reduction of hours worked, reduction of benefits or work privileges, or reduction in remuneration for services of the employee; or
3. The restriction or prohibition of access by the employee to any place of employment or to individuals affiliated with the place of employment.

History: Effective March 1, 1997.

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

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, 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 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

75-03-25-15. Statewide uniform reporting system.

1. The department shall establish a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities.
2. The department shall conduct the following actions through the statewide uniform reporting system:
 - a. Maintain and publicize the availability of a statewide toll-free telephone number for the reporting of complaints regarding long-term care issues;
 - b. Coordinate the receipt, investigation, referral, and resolution of complaints;
 - c. Maintain statistical information;
 - d. Compile and mail a statistical report to other agencies as required;
 - e. Gather and disseminate information regarding issues facing long-term care facilities;
 - f. Assist in the development of administrative and legislative proposals for improving the quality of life and care of a long-term care resident of a long-term care facility; and
 - g. File an annual report that includes a summary of cases, information and referral requests, and long-term care issues.
3. No information maintained in the statewide uniform reporting system shall be disclosed for the purpose of rating or comparing services provided by individual long-term care facilities.

History: Effective March 1, 1997.

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

Law Implemented: NDCC 50-10.1-03(8), 50-10.1-06