

ARTICLE 46:33

LONG TERM SERVICES AND SUPPORTS

Chapter

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OMBUDSMAN SERVICES

Section

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46:33:02:01 Definitions. As used in this chapter:

(1) “Home- and community-based alternative living center” means:

(A) An assisted living center, as defined in SDCL subdivision 34-12-1.1(2);

(B) A community living home, as defined in SDCL subdivision 34-12-1.1(13); or

(C) A residential living center as defined in subdivision 44:23:01:01(8);

(2) “Long-term care facility” means:

(A) A nursing facility, as defined in SDCL subdivision 34-12-1.1(6); or

(B) The geriatric nursing home at the Human Services Center;

(3) “Ombudsman” means a state employee who has the duties and authority set forth in the federal Older Americans Act of 1965, 42 U.S.C. § 3058g, (as of April 30, 2021); and

(4) “Resident” means a resident of a long-term care facility or a home- and community-based alternative living center located in the state.

Source:

General Authority: SDCL 1-36A-26(12).

Law Implemented: SDCL 1-36A-26.

46:33:02:02 Services. The ombudsman may provide the following services:

(1) Identify, investigate, and resolve complaints from any source made by, or on behalf of, a resident relating to any action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of a resident including the welfare and rights of residents with respect to the appointment and activities of guardians and representative payees;

(2) Represent the interests of a resident before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of a resident;

(3) Provide information as appropriate to other agencies and the public regarding the problems and concerns of residents;

(4) Inform residents, family members, and others acting on behalf of residents about how to access assistance and services and other providers or agencies, including legal services;

(5) Ensure regular and timely access and response;

(6) Comment on, facilitate public comment on, and recommend changes to, existing or proposed laws, rules, regulations, and other governmental policies and actions that affect the health, safety, welfare, and rights of residents;

(7) Provide technical support for the development of resident and family councils to protect the well-being and rights of residents;

(8) Educate long-term care facility staff, home- and community-based alternative living center staff, community members, and state and local agency staff concerning the rights and welfare of residents;

(9) Promote the development of citizen organizations to advocate for the well-being and rights of residents; and

(10) Provide services to assist residents in protecting the health, safety, welfare, and rights of residents.

Source:

General Authority: SDCL 1-36A-26(12).

Law Implemented: SDCL 1-36A-25.

46:33:02:03 Access. An ombudsman shall have access to long-term care facilities, home- and community-based alternative living centers, and residents. An ombudsman shall also have access to:

(1) All files, records, or other information concerning a resident, if:

(A) The ombudsman has the permission of the resident, or the legal representative of the resident; or

- (B) The resident is unable to communicate consent to the review and has no legal representative; or
- (2) All files, records, or other information as is necessary to investigate a complaint if:
 - (A) A legal guardian of the resident refuses to give the permission; and
 - (B) The ombudsman has reasonable cause to believe that the guardian is not acting in the best interests of the resident.

Source:

General Authority: SDCL 1-36A-26(12).

Law Implemented: SDCL 1-36A-27, 1-36A-28.

46:33:02:04 Posting of information. Every long-term care facility and home- and community-based alternative living center shall post in a conspicuous location a notice of the ombudsman's toll-free number and the name, address, and phone number of the office of the appropriate ombudsman and a brief description of the services provided by the office. The form of the notice shall be as prescribed by the office or approved by the office. This information shall also be distributed to the resident, family members, and legal guardians upon the resident's admission to the long-term care facility or home- and community-based alternative living center.

Source:

General Authority: SDCL 1-36A-26(12).

Law Implemented: SDCL 1-36A-26.