

# NC LONG-TERM CARE OMBUDSMAN PROGRAM

ACLS 1068 Training - April 7, 2017

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# Objectives

- At the end of the training, each attendee would have gained more insight into:
  - The Ombudsman Program
  - Residents' Rights in Adult Care Homes
  - Discharge Rule, Discharge Requirements
  - Responsibilities of the Provider in Protecting Residents

# NC LTCOP STRUCTURE

State Long-Term Care  
Ombudsman  
NC Division of  
Aging and Adult Services

16 Area Agencies on Aging  
34 Regional Long-Term Care Ombudsmen

Boards of County Commissioners  
County Community Advisory Committees

# North Carolina Long-Term Care Ombudsman Program

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# Ombudswhat??

“An Ombudsman is a professional acting as the advocate for his client in exercising his rights, or in helping him to negotiate the complex rules and regulations of a given bureaucracy”

# Long-Term Care Ombudsman Program

Program mission:

To protect residents' rights and improve the quality of care and quality of life for residents in long-term care facilities by providing direct access and advocacy services that assist residents in protecting their health, safety, welfare, and exercising their rights.

# Long-Term Care Ombudsman Program

- The Long-Term Care Ombudsman Program was established in every state through authorizations incorporated into the Older Americans Act of 1978.
- In 1989, the Long-Term Care Ombudsman Program was codified into state law through N. C. G. S. 143B-181.15-.25 which mirrors federal laws set forth in the Older Americans Act.

# Laws and Regulations

## Older Americans Act, Title VII, Chapter 2

Provides guidance to states in regards to how states establish the Program's roles/responsibilities and how the program operates in the areas of:

- Designation
- Access to Residents and Residents' records
- Data Collection about complaints processed
- Disclosure/confidentiality
- Program Interference



# Laws and Regulations

## **Final Rule 45 CFR §§1321 and 1324**

Provides guidance to states in regards to how states establish the Program's roles/responsibilities and how the program operates in the areas listed in previous and following slides.

- Final Rule (Published February 11, 2015)
- Implemented July 1, 2016
- 45 CFR 1321 and 1324

# Laws and Regulations

## NCGS 143B-181.15

Establishes the legal base for program operation such as:

- Location of the program
- Specific roles and responsibilities of the Office of State Long-Term Care Ombudsman and the Office of Regional Long-Term Care Ombudsman.
- How ombudsmen access residents, records, facilities.
- Complaint resolution process
- Confidentiality
- Retaliation/willful interference

# Long-Term Care Ombudsman Program

## Mandated Responsibilities

- Attempt to resolve complaints made by or behalf of residents in long-term care facilities.
- Provide information to the general public on long-term care issues.
- Promote community involvement with long-term care residents and facilities.
- Assist providers with staff training about Residents' Rights.

# Long-Term Care Ombudsman Program

## Mandated Responsibilities

- Work with long-term care providers to resolve issues of common concern
- Provide information to public agencies, legislators, and others on problems impacting the rights of long-term care residents as well as make recommendations for resolution of issues identified.

# Long-Term Care Ombudsman: Important Principles

- The LTC Ombudsman Program's mandate is to respond to complaints that are made **by** or **on behalf** of a resident.
- When a complaint is received, the first step for our program is to determine if the complaint is appropriate for the Long-Term Care Ombudsman Program.
- The second step is usually for an Ombudsman to visit the resident in the facility.

# Long-Term Care Ombudsman: Important Principles

Confidentiality is the “backbone” of the Long-Term Care Ombudsman Program.

Ombudsmen are recognized by HIPAA as healthcare oversight agents; however, per our Program’s federal/state law, all Ombudsmen use written informed consent of the resident or legal representative to access medical records.

# Long-Term Care Ombudsman: Important Principles

Ombudsman laws **prohibit retaliation and reprisal** against residents or any person who shares information with an Ombudsman representative including Community Advisory Committee (CAC) member.

Laws also prohibit any entity from willfully interfering with an Ombudsman representative in the performance of their duty.

# Major Roles of the Long-Term Care Ombudsman Program



# Advocate

Individual Level

Facility Level

Systemic Level

# Information and Referral Source

Choosing a facility

Long-term care regulations

Getting to the correct resource

Legal issues

Insurance

# Support Person/Listener

# What do we do with complaints?

Empowerment

Investigation

Mediation

Training/Assistance

Resolution or Referral

Follow-Up

# Ombudsman Program Parameters

No regulatory authority

Do not investigate abuse, neglect, or financial exploitation

Client (**Resident**) directs plan of action

Informed Consent

Confidentiality

# Declaration of Residents' Rights 1/2/3

- To be treated with respect, consideration, dignity and full recognition of his or her individuality, and right to privacy.
- To receive care and services which are adequate, appropriate and in compliance with relevant federal and state laws, rules and regulations.
- To receive upon admission and during his or her stay, a written statement of the services provided by the facility and the charges of these services.

# Declaration of Residents' Rights 4/5/6

- To be free of mental and physical abuse, neglect and exploitation.
- Except in emergencies, to be free from chemical and physical restraint, unless authorized for a specified period of time by a physician according to clear and indicated medical record need.
- To have his or her personal and medical records kept confidential and undisclosed without the written consent of the individual or guardian, which consent shall specify to whom disclosure can be made, except as required by applicable state, federal statute, regulation or third party contract.

# Declaration of Residents' Rights 7/8/9

- To receive a reasonable response to his or her requests from the facility administration and staff.
- To associate and communicate privately and without restriction with people, and groups of his or her own initiative at any reasonable hour.
- To have access at any reasonable hour to telephone, where he or she may speak privately.



# Declaration of Residents' Rights 10/11/12

- To send and receive mail promptly and unopened, unless the resident requests that someone open and read mail, and to have access at his or her expense to writing instruments, stationery and postage.
- To be encouraged to exercise his or her rights as a resident and citizen, and to be permitted to make complaints and suggestions without fear of coercion and retaliation.
- To have and use his or her own possessions where reasonable and have an accessible, lockable space provided for security of personal valuables. This space shall be accessible only to the resident, the administrator, or supervisor-in-charge.

# Declaration of Residents' Rights 13/14

- To manage his or her personal needs funds unless such authority has been delegated to another. If authority to manage personal needs funds has been delegated to the facility, the resident has the right to examine the account at any time.
- To be notified when the facility is issued a provisional license or notice of revocation of license by the North Carolina Department of Health and Human Services and the basis on which the provisional license or notice of revocation of license was issued. The resident's responsible family member or guardian shall be notified.

# Declaration of Residents' Rights 15/16

- To have freedom to participate by choice in accessible community activities and in social, political, medical, and religious resources and to have freedom to refuse such participation.
- To receive upon admission to the facility a copy of this section.

# Declaration of Residents' Rights 17

- To not be transferred or discharged from a facility except for medical reasons, the residents' own or other residents' welfare, nonpayment for the stay, or when the transfer is mandated under State or federal law. The resident shall be given at least 30 days' advance notice to ensure orderly transfer or discharge, except in the case of jeopardy to the health or safety of the resident or others in the home. The resident has the right to appeal a facility's attempt to transfer or discharge the resident pursuant to rules adopted by the MCC, and the resident shall be allowed to remain in the facility until resolution of the appeal unless otherwise provided by law. House Bill 677 requires facilities to convene the ACH Resident Discharge Team.

# Requirements of the Discharge Rule

- 10A NCAC 13G .0705 (FCH), 10A NCAC 13F .0702 (ACH)
- Discharge of the resident initiated by the facility involves the termination of residency resulting in the resident's move to another location
- The bed is not being held for the resident

# Discharges – What's the Rule?

10A NCAC 13G. 0705 / 10A NCAC 13F .0702

- Discharge shall be based on one of the following conditions
  1. Discharge is necessary for the resident's welfare and resident's need cannot be met in the facility as documented by resident's physician, physician's assistant or nurse practitioner.
  2. Resident's health has improved sufficiently.
  3. The safety of other individuals in the facility is endangered.
  4. The health of other individuals is endangered as documented by physician, physician assistant or nurse practitioner.
  5. Failure to pay the costs of services and accommodation by the due date
  6. The discharge is mandated under N.C.G.S. 131D-2(a1)

# Notices of discharge and Appeal Rights

- Must be made at least 30 days before the resident is discharged.
- Must include the Adult Care Home Hearing Request Form.
- Must be hand delivered with receipt requested to the resident and also sent certified mail to the resident's responsible person or legal representative.
- Copy is maintained in the resident's record.
- Failure to use or to provide these forms will invalidate the discharge.

# Safe and Orderly Discharge

- Facility shall prepare sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the facility as evidenced by:
  1. Notify DSS staff responsible for placement.
  2. Explain to the resident, responsible person or legal representative why the discharge is necessary.
  3. Inform the resident, responsible person and legal representative about appropriate destination.
  4. Offer resident's information to the caregiver with whom resident will be placed.



## Safe and Orderly Discharge (contd)

- Provide written notice of the name, address, and telephone number of the following, if not provided:
  1. The regional long-term care ombudsman, and
  2. The protection and advocacy agency established under federal law for persons with disabilities.

## If the discharge is appealed.....

- The facility shall provide copies of all relevant documentation to the resident and the Hearing Unit at least five working days prior to the scheduled hearing.
- The facility shall not discharge the resident before the final decision resulting from the appeal has been rendered.

# Resident Initiated Appeal

- Facility administrator may require a 14-day written notice from the resident or responsible party meaning they could be charged for the days of the required notice.

Exception to the required notice is when a delay will jeopardize the health or safety of the resident.

# Adult Care Home Resident Discharge Team

## N.C.G.S. §131D-4.8(e)

- The facility shall convene the adult care home resident discharge team to assist with finding a placement for a resident if, at the time of notice of discharge, the destination is unknown, or the destination is not appropriate for the resident.
- Local management entities shall take the lead role for the discharge destination for those residents whose primary unmet needs are related to mental health, developmental disabilities, or substance abuse and who meet the criteria for the target population established by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

## Adult Care Home Resident Discharge Team - contd

- Local departments of social services shall take the lead role for those residents whose primary unmet needs are related to health, including Alzheimer's disease and other forms of dementia, welfare, abuse, or neglect.
- Upon the request of the resident or the resident's legal representative, the Regional Long-Term Care Ombudsman shall serve as a member of the adult care home resident discharge team.
- All information and records acquired by the adult care home resident discharge team in the exercise of its duties are confidential unless all parties give written consent to the release of that information.

# Responsibilities of the Provider

- Capacity to provide care in terms of adequate staffing, staff knowledge and training.
- Meeting resident's need for supervision.
- Adequate resident assessment.
- Adequate services.

# Responsibilities of the Provider in providing the highest quality of care in the Statutes:

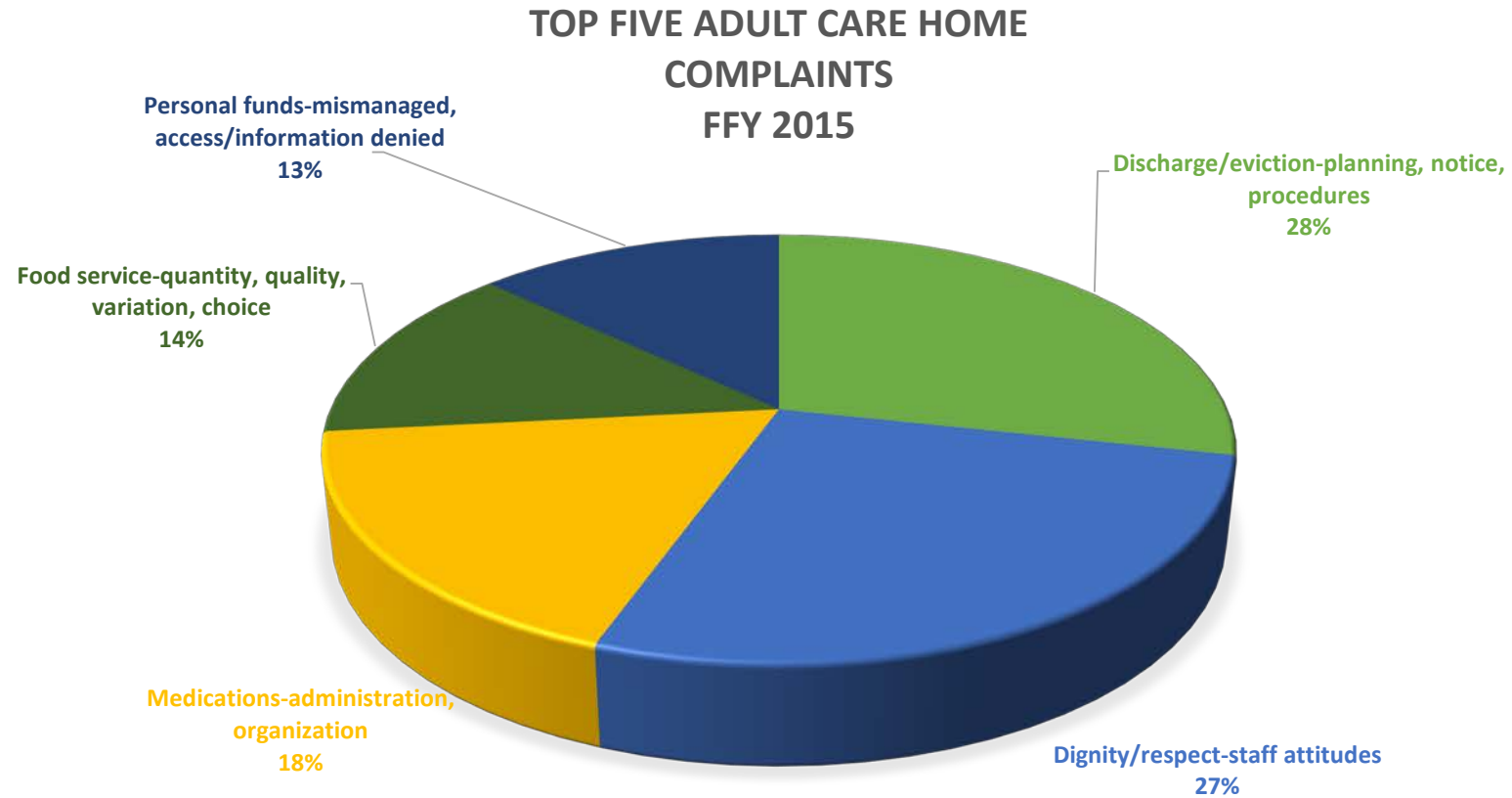
	Family Care Home	Adult Care Home
<b>Resident Assessment</b>	10A NCAC 13G .0801	10A NCAC 13F .0801
<b>Resident Care Plan</b>	10A NCAC 13G .0802	10A NCAC 13F .0802
<b>Personal Care &amp; Supv</b>	10A NCAC 13G .0901	10A NCAC 13F .0901
<b>Health Care</b>	10A NCAC 13G .0902	10A NCAC 13F .0902
<b>Licensed Health Professional Support</b>	10A NCAC 13G .0903	10A NCAC 13F .0903
<b>Nutrition and Food Service</b>	10A NCAC 13G .0904	10A NCAC 13F .0904
<b>Activities</b>	10A NCAC 13G .0905	10A NCAC 13F .0905
<b>Other Resident Services</b>	10A NCAC 13G .0906	10A NCAC 13F .0906 [other resident care & services]

# Total FFY 2015 Complaints

Total FFY 2015 Complaints	1,535	
Ombudsman Complaint <u>Categories</u>	Total	Adult Care Home Percent
Resident Rights	767	(50%)
Resident Care.	247	(16%)
Quality of Life	337	(22%)
Administration:	99	(6%)
Not Against Facility	85	(6%)

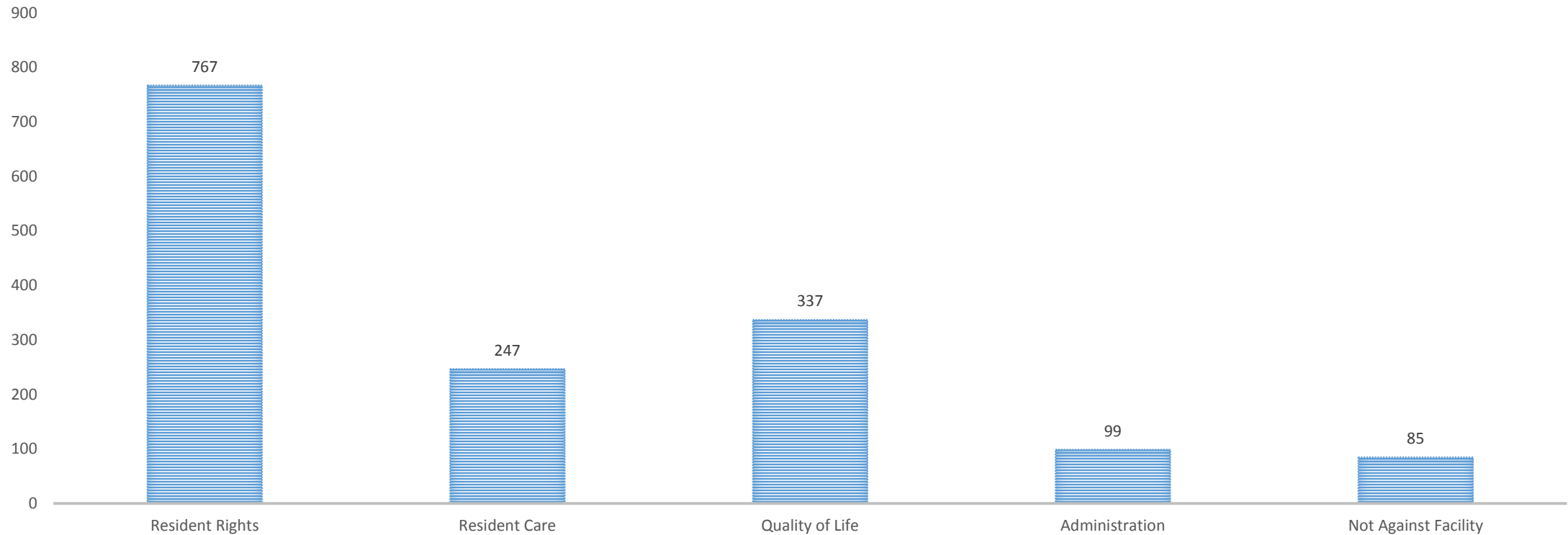


# Top Five Adult Care Home Complaints (2015)



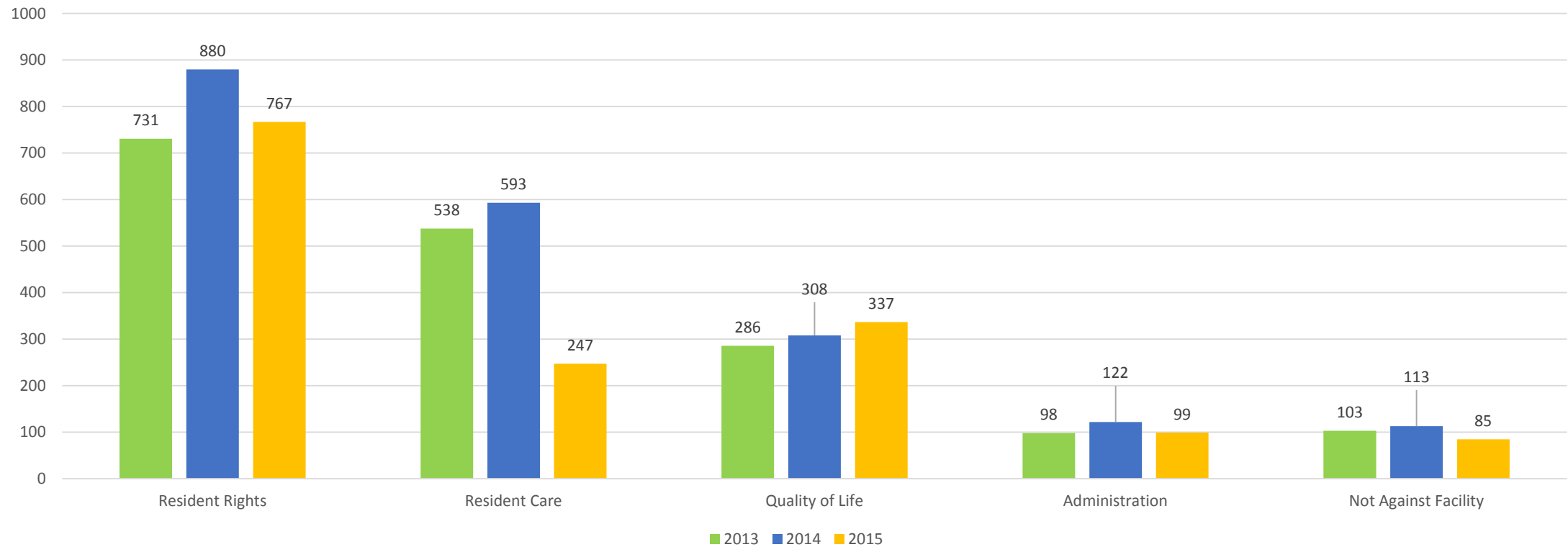
# Adult Care Home Complaints By Category (2015)

**2015 ADULT CARE HOME COMPLAINTS BY CATEGORY**



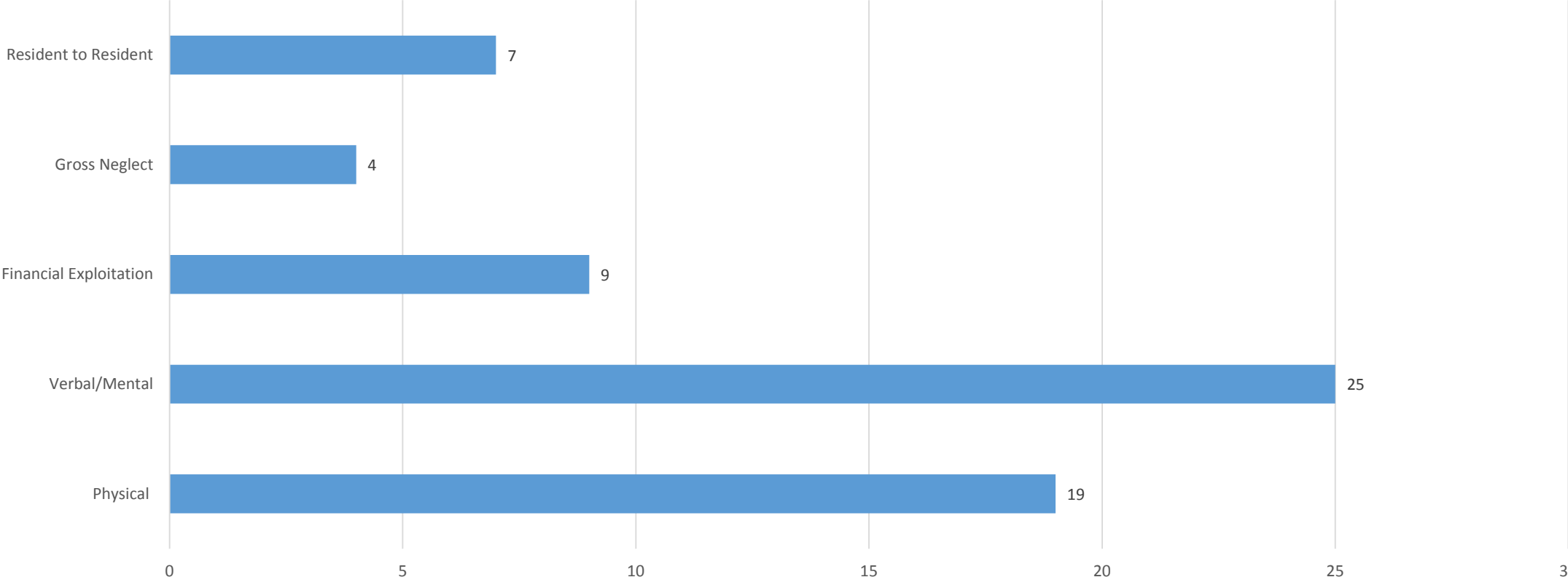
# Three Year Comparison of Adult Care Home Complaints By Category

Three Year Comparison  
Adult Care Home Complaints by Category

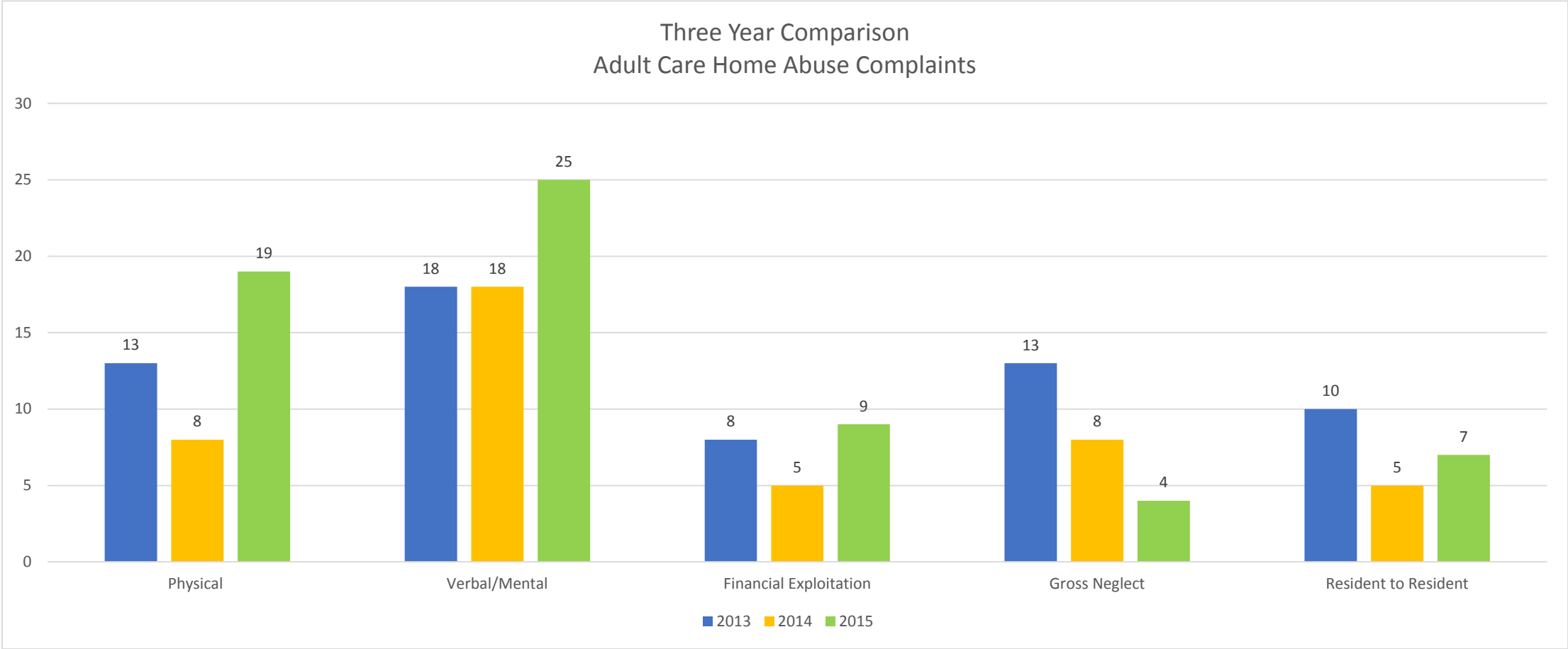


# Abuse Complaints in Adult Care Homes (2015)

2015 Adult Care Home Abuse Complaints



# Three year Comparison of Abuse Complaints in Adult Care Homes (2015)



# Scenarios

# Scenario 1

- A resident was issued a transfer/discharge notice in June 2016. *The notice was not properly completed and there was not a Hearing Request Form attached.*
- This notice was never acted on until after the Adult Home Specialist visited the facility on a complaint that involved the resident several months later. After the Adult Home Specialist left the facility the resident was told “that’s it, you’re packing your bags!” Numerous staff members proceeded to ask him why he complained to the Adult Home Specialist.
- Resident had previous involvement with the Regional Ombudsman and called her for help with his rights related to transfer/discharge. The Regional Ombudsman obtained resident consent and began speaking to facility management about the notice. When the Ombudsman questioned the notice, management insisted that they gave “verbal notice” to the resident a few weeks prior.
- The Regional Ombudsman tried to provide information on how to properly reissue the discharge notice—including links for webinars from DMA Hearing Office, but they refused. Facility management continued to tell resident that he was going to be “kicked out” by the next Friday.
- While resident was out of facility for appointment, staff entered his room and started packing his personal belongings.

# Scenario 1: Discussion

- What resident rights were being violated?

17—Transfer/discharge

12—personal possessions

8—freedom to communicate freely/11—right to complain without fear of retaliation.

- What could have been done differently to uphold the residents' rights?



# Scenario 2

Background: Jane is a resident at your facility and has been with you for five years. She has intellectual disability and has been in group homes and adult care homes her entire life. She has been a smoker since she was 18 years old. She was recently appointed a new guardian. Jane gets very few visitors, but does have a friend that lives out of state that communicates with her regularly. This communication is one of the things Jane most enjoys.

One day, Jane refused to go to her dental appointment because she just found out her friend from out of state was making a surprise visit. You remind Rebecca that she has been complaining for a few weeks about tooth pain off/on and sometimes this dentist is hard to get appointments rescheduled; she remains adamant she will not go to the appointment and risk missing her friend. She tells you that she would rather take “an extra Tylenol or two” until the appointment is rescheduled than miss her friend.

You notify her guardian of her choice to refuse the dental appointment. Guardian tells you that if Jane does not go to the appointment, her smoking materials need to be held for the rest of the week, “no matter how much she begs for them, don’t give them to her.” Guardian sends email to show resident stating the same. This makes Jane very upset—crying and yelling—accusing you and the guardian of “always teaming up against me.”

What would you do?

# Scenario 2

- What resident rights are being violated?

1—Respect/Dignity

15—Right to freedom of choice in activities

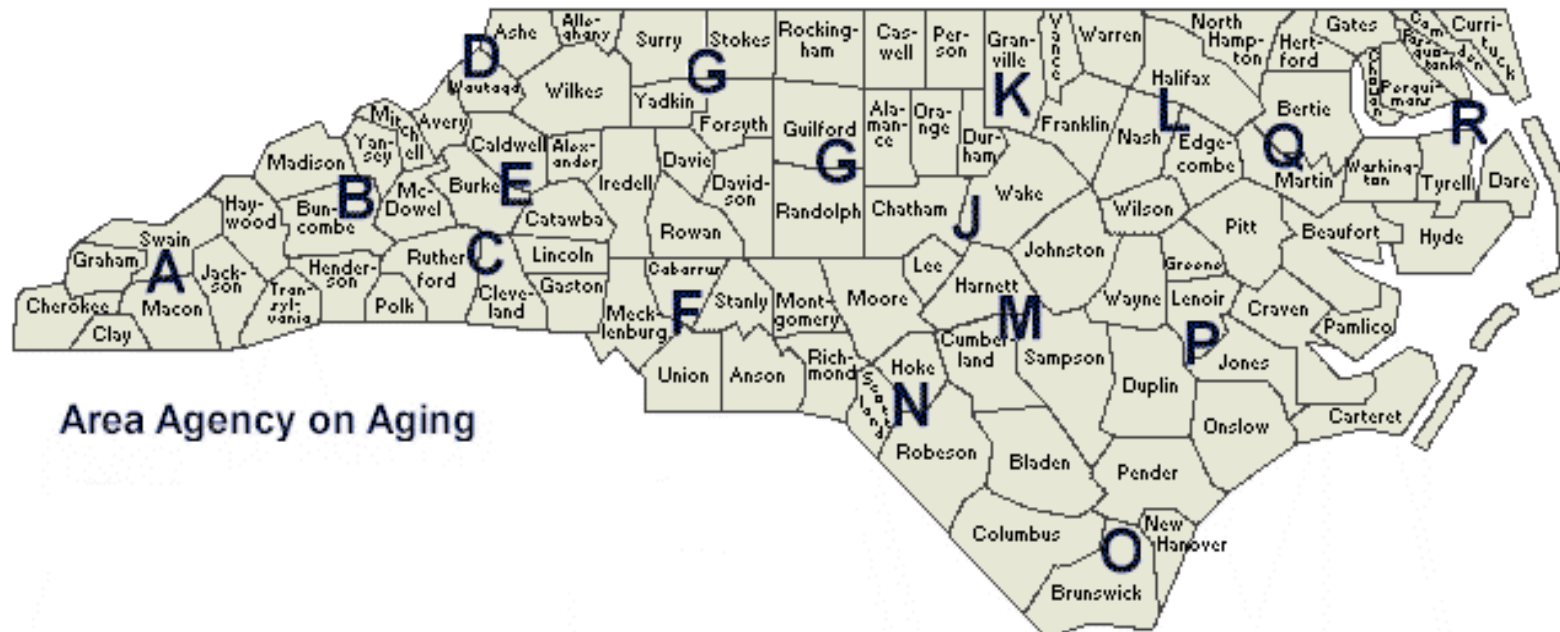
- What are some best practices for these type of situations?

## How do I reach an Ombudsman?

Contact your local Area Agency on Aging or the  
N.C. Division of Aging  
and Adult Services

# Regional Long-Term Care Ombudsmen are located within the Area Agencies on Aging (AAA)

- Contact Information for N.C. Regional LTC Ombudsmen
- <http://www.ncdhhs.gov/aging/ombud/ombstaff.htm>
- 



Thank you

Questions

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