

**VERMONT
LONG TERM CARE OMBUDSMAN
PROJECT**

**of
Vermont Legal Aid, Inc.**

**Annual Report
October 1, 2011 - September 30, 2012**

STATE LONG TERM CARE OMBUDSMAN
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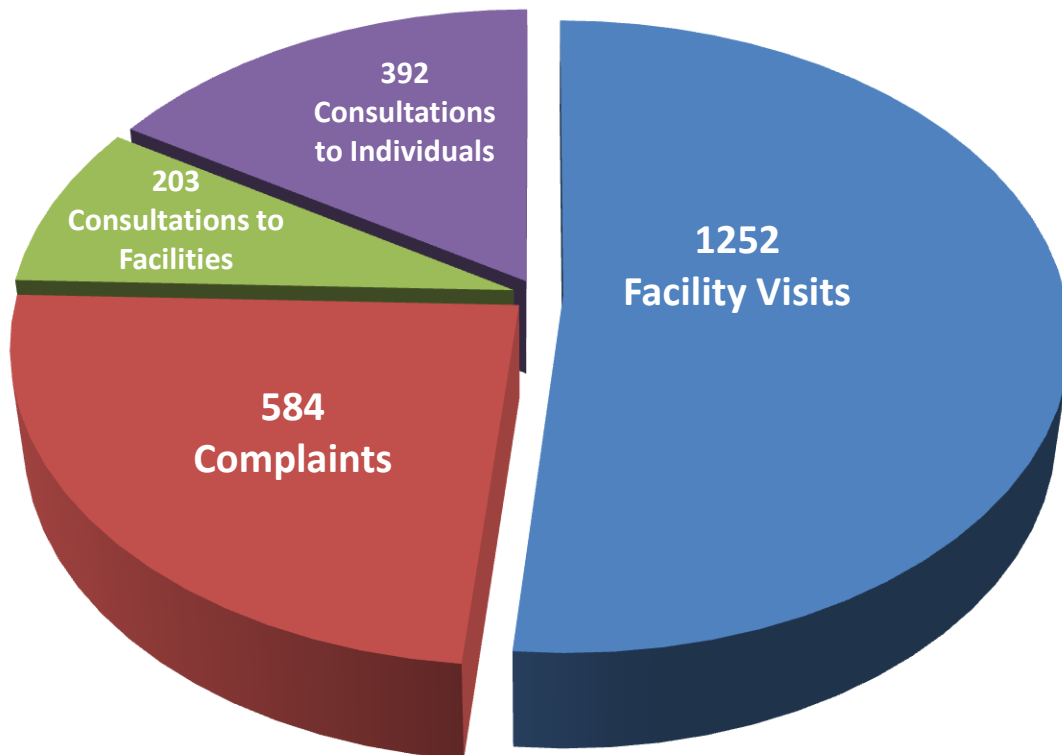
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Highlights 2012



In 2012 Ombudsmen:

- ✓ **Responded to complaints promptly:**
97% within two working days
- ✓ **Achieved positive outcomes:**
82% of people served were fully or partially satisfied with result
- ✓ **Maintained a regular presence in long term care facilities:**
100% of all facilities received a visit from an ombudsman at least once each quarter

Key Numbers 2012

- 163** Number of licensed long term care facilities (nursing homes, residential care homes and assisted living residences) in Vermont
- 6,178** Number of licensed long term care beds in Vermont
- 2,599** Number of individuals receiving long term care services in community settings through Choices for Care
- 4.6** Number of paid ombudsmen available to provide services to residents in long term care facilities and individuals receiving long term care services in community settings
- 14** Number of volunteer ombudsmen available to provide services to residents in long term care facilities

Our Role

Long term care ombudsmen help protect the safety, welfare, and rights of Vermonters who live in long term care facilities and who receive long term care services in the community through the Choices for Care Waiver (CFC).

An ombudsman's primary responsibility is to investigate and resolve complaints on behalf of these individuals.

Federal and state law also requires ombudsmen to:

- help individuals who receive long term care services seek administrative and legal remedies to protect their rights, health, safety and welfare;
- review and comment on any existing or proposed law, regulations or policies related to the rights and well being of individuals receiving long term care services; and
- educate community members about Vermont's long term care system and about the issues that affect individuals who receive long term care.

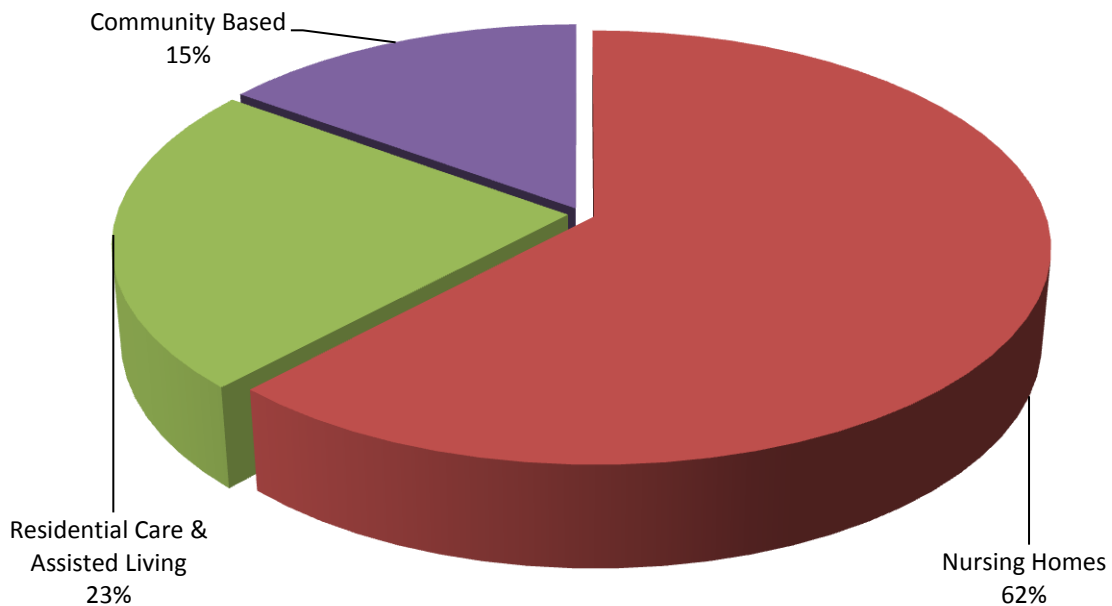
Federal and state law also requires ombudsmen to be free of any conflict of interests so they can be an independent voice for individuals receiving long term care services.

The organizational structure of the Vermont Ombudsman Project ensures its independence. The project is housed within Vermont Legal Aid (VLA). All staff are employees of VLA. No ombudsmen or member of their immediate family is involved in the licensing or certification of long term care facilities or providers. They do not work for or participate in the in the management of any facility. Each year the Commissioner of DAIL must certify that VOP carries out its prescribed duties free of any conflicts of interest. (See Appendix 4)

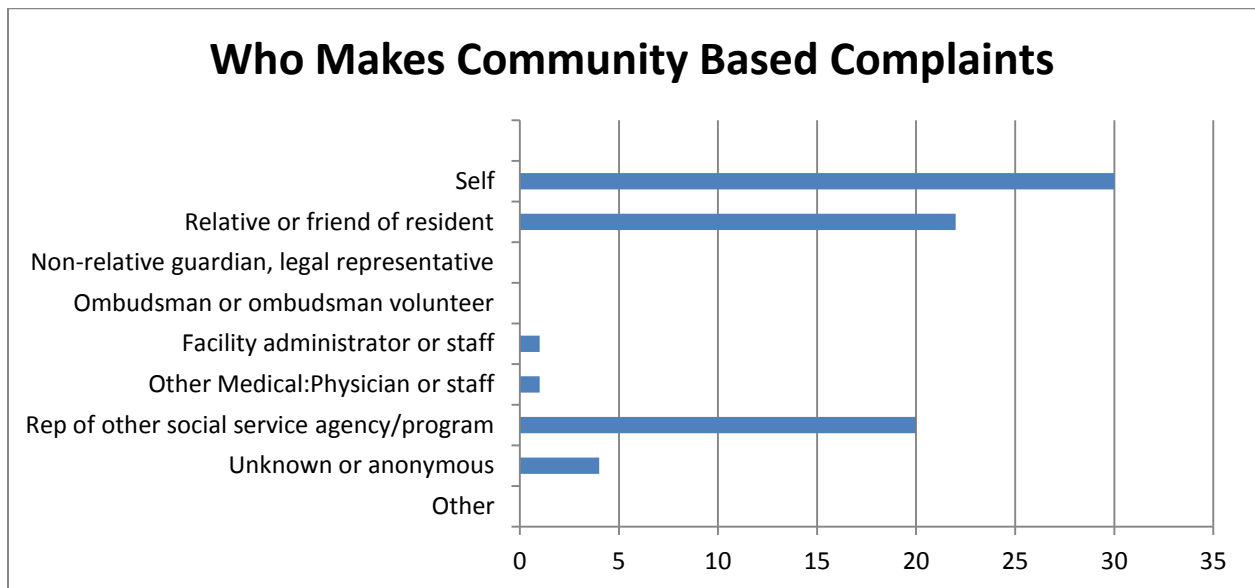
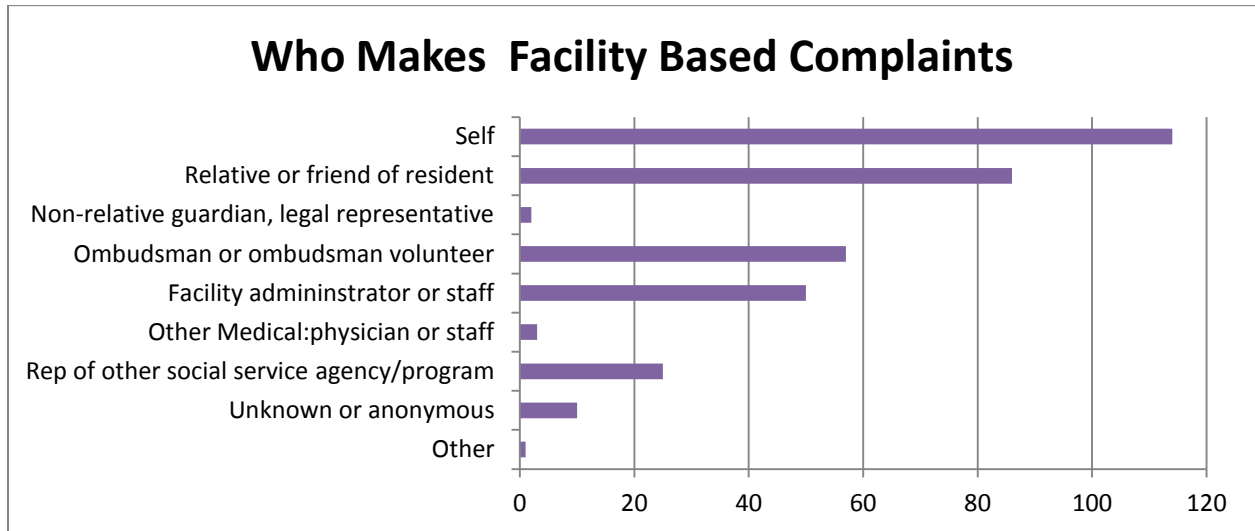
Complaints 2012

Even though Vermonters receive long term care services in a variety of settings, they share the same concerns. They want to be treated with dignity. They want to receive good care and they want their care to reflect their individual needs and preferences.

Distribution of Complaints Among all Long Term Care Settings



Ombudsmen investigate every complaint they receive. They try to resolve problems to the satisfaction of the person receiving services, no matter who initiates the complaint.



Most complaints are made by individuals receiving services or someone acting on their behalf. However, many providers recognize that individuals receiving services need an independent advocate, to make sure that their concerns are understood and addressed. They often contact ombudsmen when confronted with particularly challenging individual or unique behavior problems.

The complaint statistics in this report give an overview of the concerns that were important to individuals receiving long term care services in 2012.

These are specific examples of facility based complaints that residents or family members brought to our attention last year:

- a facility failed to respond to a change in the resident's medical condition
- the resident could not reach her call bell
- the facility failed to post staffing information
- staff yelled at family members when they raised concerns about the resident's care
- the furniture was dirty
- the facility failed to control resident to resident altercations
- the facility refused to readmit a resident after a brief hospital admission
- the facility failed to develop a discharge plan for a resident who wanted to return home

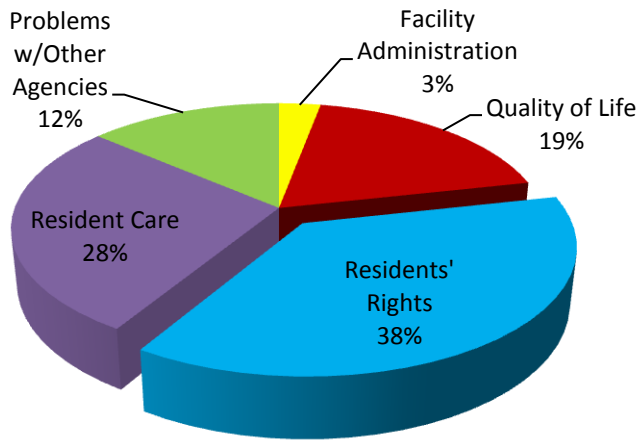
It is important to keep in mind that not all facility based complaints are complaints against the facility. Residents may contact us about a problem with a state or federal agency, family member or medical provider

The federal Administration for Community Living (ACL) and the state Department of Disabilities, Aging and Independent Living (DAIL) require the Vermont Long Term Care Ombudsman Project (VOP) to collect and record specific information about each complaint it receives.

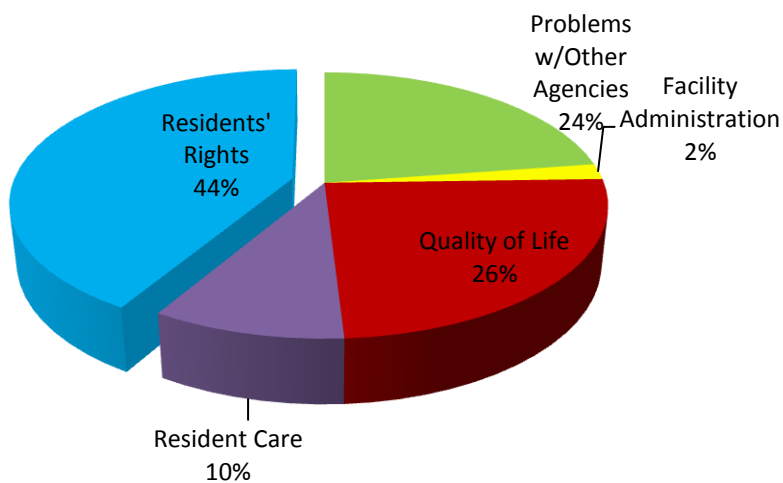
AoA divides facility based complaints into five major categories. (See Appendix 1 for the specific number of complaints in each category.)

We responded to 499 facility based complaints in 2012. As in prior years, we received more complaints about residents' rights than any other category.

Nursing Homes



Residential Care Homes and Assisted Living



Residents' rights complaints are complaints against a facility about:

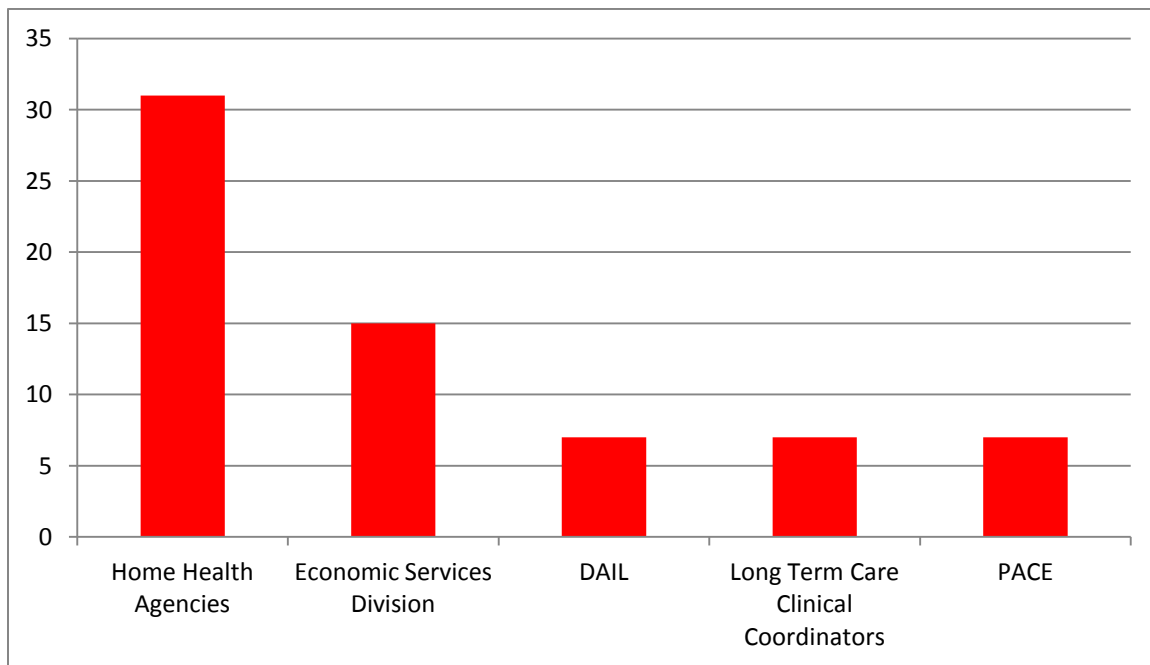
- Access to information;
- Admission, transfer and discharge;
- Autonomy, privacy, choice, preference; and
- Financial mismanagement and mismanagement of property.
- Abuse, neglect and exploitation

We responded to 85 community based complaints in 2012. Vermont is one of about a dozen states that authorizes ombudsmen to investigate complaints on behalf of individuals living in the community.

Currently, the ACL reporting system requires the ombudsmen to put all complaints initiated by or on behalf of individuals receiving home and community based services in one “homecare” category. Unlike facility based complaints, the system does not allow us to divide these complaints into specific categories. However, DAIL asks us to give a brief description of each complaint we open in the quarter and to report on who the complaints are against.

Not all CFC complaints are against individuals or agencies that provide CFC services. CFC beneficiaries live in the community and can experience a wide range of problems that require assistance from an ombudsman.

Agencies or organizations with five or more complaints in 2012



How We Help 2012

A client in the community received skilled services from the Home Health Agency (HHA). She needed specialized wound VAC care. On Saturday, urine was leaking from her catheter into her wound. The HHA nurse changed the catheter, but did not know how to change the dressing. The client had to go to the ER for the dressing change. On Sunday, urine was again leaking from the client's catheter into her wound. The client's husband called the HHA and was told that someone would get back to him. No one did and no one showed up for the Sunday afternoon or evening shift. The ombudsman filed a complaint with the Survey and Certification agency on behalf of the client. She also contacted the director of the HHA who instructed the triage staff to call her directly whenever there is gap in coverage. The director also agreed to provide an in-service on wound VAC dressing changes to all skilled staff.

The daughter of a client in a nursing home complained that the facility had not ordered new pads for the arms of her mother's wheelchair. The skin on her mother's arm breaks down and her arms were bleeding because she did not have the correct pads on the chair. The daughter also complained that an aide had broken her mother glasses. The facility had sent her a bill for replacement glasses which she had paid. The ombudsman attended a care plan meeting and raised these concerns. The facility immediately ordered a new wheel chair for the client and reimbursed the daughter for the glasses.

Client had been receiving a lifeline unit as part of his CFC service plan for several years. His mother told the ombudsman that her son was just informed that he should never have received lifeline because she is living in the home. She explained that her son suffers from a debilitating disease. He has seizures and she needs to stay at his side when they occur. She uses lifeline to call the ambulance. The ombudsman was successful in obtaining a variance so they could keep lifeline in the home.

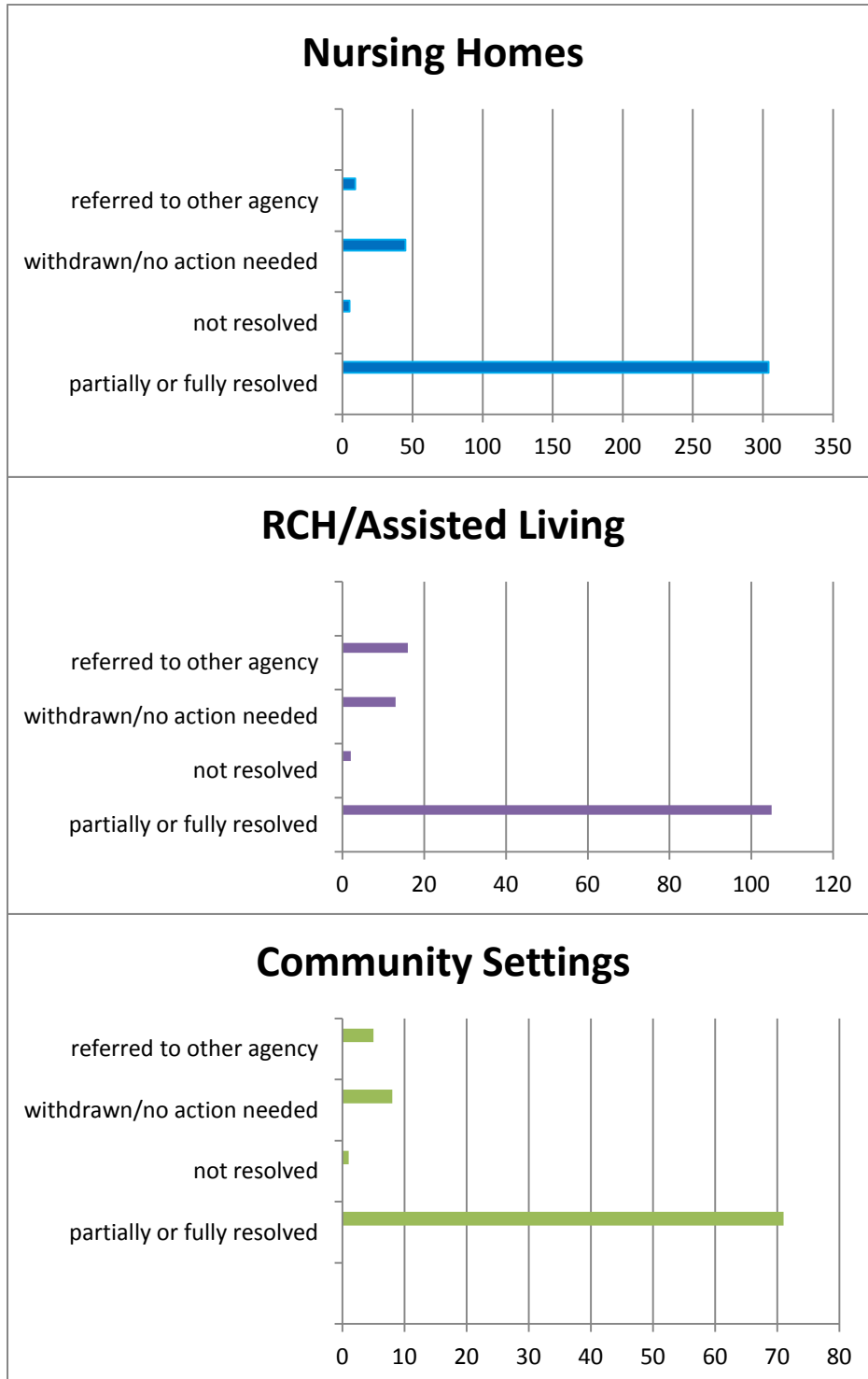
The ombudsman visited a residential care home in the middle of the summer and it was very hot in the building. A resident complained that the air conditioner had broken the previous year and the owner was not going to replace it. The ombudsmen had just visited the nursing home on the same campus. The air conditioner and fans were working and the residents were very comfortable. Ombudsman met with the owner and requested an air conditioner be installed in the residential care home as soon as possible. The air conditioner was installed and residents were much more comfortable.

A resident complained that the nursing home charged him \$1,000 a month for medications despite the fact that he was a veteran and entitled to free medication from the VA. The nursing home would not allow him to use the VA pharmacy because it refused to package the medication in blister packs. Eventually the ombudsman was able to persuade the nursing home to dispense the medications directly from a bottle, thereby enabling the resident to get his medications from the VA at no charge.

A client who received services in the community moved in with his son and was told by DVHA that he had to change his Primary Care Physician because the PCP was located 6.7 miles outside the 30 mile transportation limit set by Medicaid. Ombudsman worked with DVHA transportation unit, the Medicaid A transportation broker, and the HHA to obtain a waiver for the 30 mile transportation limit.

Ombudsmen try to resolve complaints to the satisfaction of the person receiving services. Ombudsmen achieved positive outcomes 82% of the time.

Disposition of Complaints



When ombudsmen investigate complaints, they first talk to the person receiving services to determine the nature of the problem and find out how the person would like it to be resolved. If ombudsmen cannot get direction from the individual, they will work with whoever has the authority to make decisions for that person.

Other Activities 2012

In 2012, paid staff and volunteers made 1,285 facility visits in addition to all their other activities. Every facility in Vermont received at least one general, non-complaint related visit during each quarter.

Ombudsmen participate in other activities in addition to investigating complaints and providing a regular presence in facilities through their resident visits and routine facility visits.

Ombudsmen support resident and family councils. They consult with and deliver training to facility staff on a variety of issues. They also provide a regular presence in facilities during complaint investigations and routine facility visits.

Activities	Number of Instances in 2012
Consultations to Individuals	392
Consultations to Facility staff/Providers	203
Work with Resident and Family Councils	32
Training for Facility Staff	20
Community Education	19
Training and Technical Assistance for VOP Staff and Volunteers	130

Volunteers 2012

Volunteers contributed over 1,400 hours to the ombudsman project last year.

The Ombudsman Project relies on volunteers to maintain a regular presence in Vermont's 163 long term care facilities. Volunteers respond to individual complaints, attend resident council meetings, and monitor conditions in each home. Volunteers participate in a comprehensive training program before they are certified.

They receive 20 hours of classroom training. After the classroom training, they shadow supervising regional ombudsman for 30 hours of facility based training.

Funding

In FY 2012, the Long Term Care Ombudsman Project received \$649,717 from the DAIL to provide ombudsmen services in Vermont. This amount includes funds from the following:

\$83,614	OAA Title VII, chapter II
\$223,614	OAA Title IIIB
\$254,013	Medical Assistance Program (Global Commitment)
\$ 88,344	State General Funds

Volunteers

Gayle Bendoris

Ann Crider

Ann Doucette

Phil Gray

Sally Lindberg

Kurt Mehta

Winifred McDowell

Gloria Mindell

Suzi Mudge

Lynn Reilly

Carol Schoneman

Russ Tonkin

Steve Williams

Audrey Winograd

Systemic Advocacy

Ombudsmen have a broad mandate to address systemic problems that impact quality of care and quality of life.

To further this goal, ombudsmen engage in legislative and administrative advocacy. They participate in workgroups, committees and task forces that address systemic issues effecting Vermonters receiving long term care.

In 2012 the ombudsmen project participated in:

- Elder Justice Coalition
- Pain and Palliative Care Workgroup
- Dual Eligible Stakeholders
- Dual Eligible Appeals and Performance/Outcome Measures Subcommittees
- Center on Aging Community Advisory Council
- “Quality Care No Matter Where” Advisory Committee
- Act 60 Workgroup (Surrogacy for DNRs and COLSTs)
- LANE – Local Area Network for Excellence in nursing homes
- AOA TAG (Technical Advisory Group to advise AOA on a national evaluation tool for ombudsman programs)

The ombudsmen bring the long term care consumer’s voice to the administrative and legislative process:

- Submitted comments to the state and CMS on Vermont’s proposal to CMS for a demonstration grant to integrate care for dual eligibles
- Testified before HAOC committee on APS and DAIL’s CFC reinvestment strategy
- At the committee’s request, testified before HAOC committee on APS, DAIL’s CFC reinvestment strategy and OASIS
- At the committee’s request, testified before the MHOC on OASIS and gaps in mental health services for people receiving long term care
- At ACL’s request, met with Assistant Secretary Greenlee to discuss the expansion of the LTCO program to individuals receiving HCBS

Recommendations 2012

I. Ensure that Choices for Care Savings are reinvested in home and community based services.

Choices for Care has saved the state a significant amount of money since 2005. The legislature intended that those savings be reinvested in home and community based services.

There is unmet need in our home and community based system:

- People with moderate needs are on “wait lists” for homemaker and adult day services.
- Participants with high and highest needs have seen reductions in housekeeping, meal preparation, laundry, shopping, and money management services.
- Direct care workers who provide home and community based services need and want better pay and appropriate and effective training.

The legislature should define “savings” and direct DAIL to establish a transparent process for determining how those savings should be reinvested in our home and community based system.

II. Ensure that individuals in enhanced residential care (ERC) receive appropriate services.

There has been a significant growth in ERC since 2005. It is an integral part of our home and community based system. ERC allows individuals who need nursing home level of care to receive enhanced services in licensed residential care homes (RCH). Generally, RCHs provide a more homelike setting, often closer to the

resident's family and community. ERC providers receive additional payments to provide enhanced services including:

- Recreation activities
- 24 hour supervision, and
- Case management

DAIL divides responsibility for monitoring ERC homes between the Division of Disability and Aging Services and the Division of Licensing and Protection. This bifurcated system makes it difficult for residents, family members and advocates to address concerns about a home.

DAIL should develop a consistent, coordinated system for monitoring ERC homes to ensure that they meet the residential care home licensing requirements and that they provide quality enhanced services.

Respectfully Submitted,

Jackie Majoros, State Long Term Care Ombudsman
Vermont Legal Aid
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802.383.2227

Appendix 1

NUMBER OF CLOSED FACILITY BASED COMPLAINTS IN THE FIVE MAJOR COMPLAINT CATEGORIES

1. RESIDENTS' RIGHTS	Nursing Facilities	Residential Care Homes & Assisted Living
A. Abuse, neglect, exploitation	4	3
B. Access to information	15	7
C. Admission, transfer, discharge	39	22
D. Autonomy, choice, rights, privacy	59	15
E. Financial, property	22	10
TOTAL	139	60

2. RESIDENT CARE	Nursing Facilities	Residential Care Homes & Assisted Living
F. Care	82	12
G. Rehabilitation, maintenance of function	20	1
H. Restraints	1	0
TOTAL	103	13

3. QUALITY OF LIFE	Nursing Facilities	Residential Care Home & Assisted Living
I. Activities and social services	10	8
J. Dietary	16	6
K. Environment	42	22
TOTAL	68	36

4. ADMINISTRATION	Nursing Facilities	Residential Care Homes & Assisted Living
L. Policies, procedures, attitudes, resources	3	1
M. Staffing	7	2
TOTAL	10	3

5. PROBLEMS WITH OTHER AGENCIES	Nursing Facilities	Residential Care Homes & Assisted Living
N. Certification, licensing agency	1	2
State Medicaid agency	10	3
Others	32	19
TOTAL	43	24
TOTAL FOR THE FIVE MAJOR COMPLAINT CATEGORIES	363	136

Appendix 2

HISTORY OF THE OMBUDSMAN PROGRAM

At the National Level:

The Long Term Care Ombudsman Program began in 1972 in response to growing concerns about the quality of care and quality of life in nursing homes. It originated as a five state demonstration project mandated by the Older Americans Act (OAA). In 1978, the OAA was amended to require each state to establish an ombudsman program. In 1981, Congress expanded the scope of the program to include residential care homes.

The Nursing Home Reform Act of 1987 (OBRA '87) strengthened the ombudsmen's ability to serve and protect long term residents. It required nursing home residents to have "direct and immediate access to ombudspersons when protection and advocacy services become necessary." The 1987, reauthorization of the OAA required states to ensure that ombudsmen would have access to facilities and to patient records. It also allowed the state ombudsman to designate local ombudsmen and volunteers to be "representatives" of the state ombudsman with all the necessary rights and responsibilities.

The 1992 amendments to the OAA incorporated the long term care ombudsman program into a new Title VII for "Vulnerable Elder Rights Protection Activities". The amendments also emphasized the ombudsman's role as an advocate and agent for system wide change.

In Vermont:

Vermont's first ombudsman program was established in 1975. Until 1993, the state ombudsman was based in the Department of Aging and Disabilities (DAD), currently DAIL. Local ombudsmen worked in each of the five Area Agencies on Aging. In response to concerns that it was a conflict to house the state ombudsman in the same Department as the Division of Licensing and Protection, which is responsible for regulating long term care facilities, the legislature gave DAD the authority to contract for ombudsman services outside the Department.

DAIL has been contracting with Vermont Legal Aid (VLA) to provide ombudsman services for almost 20 years. The Vermont Long Term Care Ombudsman Project was established by VLA to protect the rights of Vermont's long term care residents and to fulfill the mandates of the OAA and OBRA '87. The state and local ombudsman work in VLA offices throughout Vermont.

In 2005 the Vermont legislature expanded the duties and responsibilities of the ombudsman project. Act No. 56 expanded ombudsman services to individuals receiving home based long term care through the home and community based Medicaid waiver, Choices for Care.

Appendix 3

VERMONT LONG TERM CARE OMBUDSMAN PROJECT STAFF

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AGENCY OF HUMAN SERVICES

DEPARTMENT OF DISABILITIES, AGING AND INDEPENDENT LIVING

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December 14, 2012

Ms. Jackie Majoras
Long Term Care Ombudsman Program
VT Legal Aid
264 North Winooski Avenue
Burlington, Vermont 05402

Dear Jackie:

The Department of Disabilities, Aging and Independent Living (DAIL) utilizes the DAIL Advisory Board to make a determination of the Long Term Care Ombudsman Program's capacity to carry out all prescribed duties in the Older Americans Act (OAA) and in the Statute, Title 33, Section 7509 without conflict of interest.

We appreciate the information you have shared to date with the DAIL Advisory Board and the consultation you have sought from the Advisory Board. The Advisory Board, determined in its meeting on December 13, 2012 that the Vermont Long-Term Care Ombudsman Program is carrying out all prescribed duties without conflict of interest.

DAIL appreciates the important work the Long-Term Care Ombudsman Program is doing through-out Vermont in responding to individuals concerns, whether they reside in residential facilities or are receiving Choices For Care (CFC) services in their homes. Thank you for the advocacy the Long-Term Care Ombudsman Program provides in strengthening elder rights for Vermonters.

Best Regards,

A handwritten signature in black ink, appearing to read "Susan Wehry".

Susan Wehry, M.D.
DAIL Commissioner

Cc: Marie Bean, DAIL