

VERMONT LONG TERM CARE OMBUDSMAN PROJECT

Vermont Legal Aid

Annual Report

October 1, 2015 - September 30, 2016

INTERIM STATE LONG TERM CARE OMBUDSMAN

Eric Avildsen

LOCAL OMBUDSMEN

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The Vermont Long Term Care Ombudsman Project

Who Are We?

Long Term Care Ombudsmen protect the safety, welfare, and rights of more than 11,000 Vermonters who receive long term care services in institutions like nursing homes, residential care homes and assisted living residences and in the community. Ombudsmen help them get individualized, person centered care that reflects their needs and wishes.

An ombudsman's primary duty is to investigate and resolve complaints. Federal and state law also requires ombudsmen to:

- help individuals seek administrative and legal remedies to protect their rights, health, safety and welfare;
- review and comment on laws, 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 services.

➤ **We Achieve Positive Outcomes.**

- **Responded to complaints promptly**

Ombudsmen responded to 96% of the complaints they received within two business days of receiving the complaint.

- **Achieved positive results for clients**

80% of the individuals served by the ombudsmen were fully or partially satisfied with the resolution of their complaint.

- **Maintained a regular presence in long term care facilities**

Every facility received a visit from an ombudsman at least once every 3 months.

➤ **We Are an Independent Voice.**

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 management of any facility. Each year the Commissioner of the Department of Aging and Independent Living (DAIL) must certify that VOP carries out its duties free of any conflicts of interest. (See Appendix 4.)

The organizational structure of the Vermont Ombudsman Project enhances its ability to operate free of any conflicts of interest. The project is housed within Vermont Legal Aid (VLA). All ombudsmen are employees of VLA. During FY2016, the Staff consisted of the State Long Term Care Ombudsman (Jackie Majoros until her retirement on September 15th, at which point Vermont Legal Aid Executive Director, Eric Avildsen, stepped in as interim SLTCO), 5.4 FTE local Ombudsmen, and a .2 FTE Volunteer Coordinator and 16 Certified Volunteers.

➤ **We Protect the Rights of Residents.**

The Federal Nursing Home Reform Act and the State Residential Care Home (RCH) and Assisted Living Residence (ALR) Regulations recognize that residents are entitled to quality care and a quality of life that reflects their individual needs and preferences. These laws give residents specific rights to ensure that they will be treated with dignity and respect and that they will enjoy the same rights as someone living in the community.

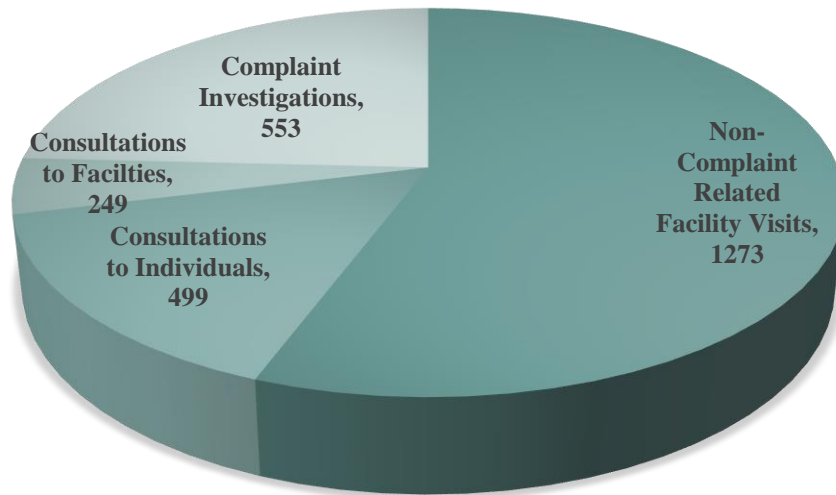
Every year a significant portion of our complaint investigations involve residents' rights. In 2016, about 39% of our facility based complaints involved residents who wanted to exercise rights guaranteed to them under the Nursing Home Reform Act or state RCH or ALR regulations.

Throughout this report, we will highlight specific rights guaranteed to NH, RCH and ALR residents.

You have the right to privacy in treatment and care.

The home is providing foot care for all residents in the activities room. You are embarrassed to get this care in such a public setting. The home must provide the care in a private setting.

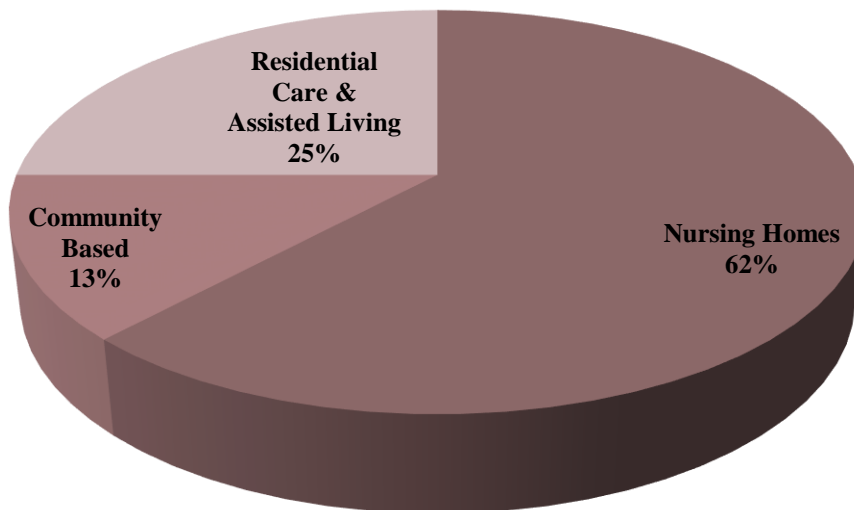
Overview of All Our Activities



Distribution of Complaints in All Settings

Vermonters receive long term care services in a variety of settings, including nursing homes, residential care home, assisted living residences and in the community. However, no matter where they receive their care, they share the same goals. 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 in All Settings

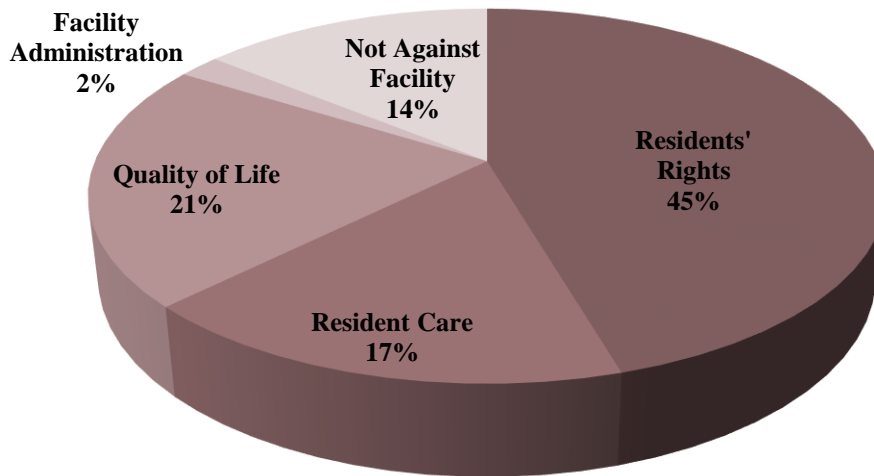


Facility Based Complaints

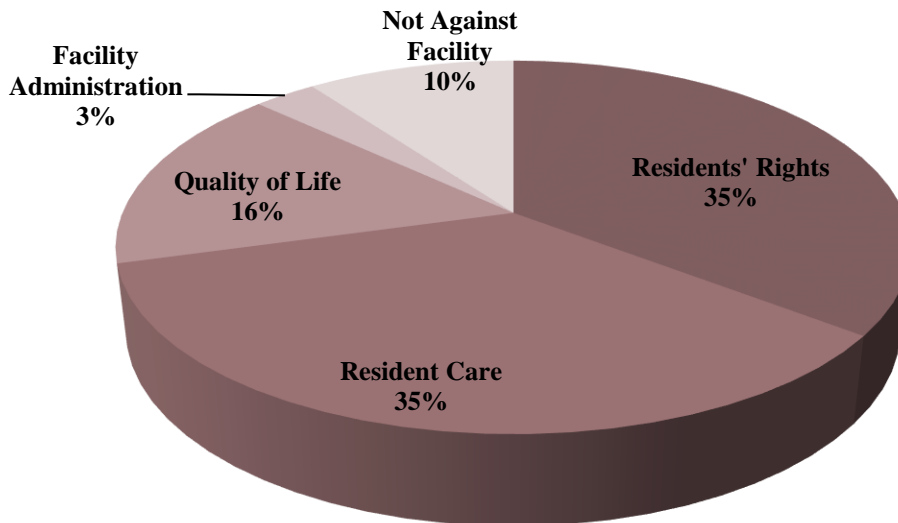
We are required to collect, categorize, and record specific information about each complaint we receive. (See Appendix 1 for specific complaint details.) Each year, residents' rights, care and quality of life make up the majority of the complaints received.

Not all complaints are against facilities. In 2016, about 15% of the facility-based complaints investigated involved a state, federal or private agency or medical provider outside a facility.

Residential Care Home Complaints



Nursing Home Based Complaints



Who Makes Complaints?

Most complaints are made by the individuals receiving services or their friends or relatives. However, many providers contact us because they recognize that people receiving services need an independent advocate to make sure their concerns are heard and addressed. No matter who makes the complaint, we try to resolve the problem to the satisfaction of the person receiving services.

We open a case for each complaint we investigate. In 2016 we opened 394 cases, 325 facility based cases and 69 cases concerning individuals in community settings.

| FY2016: Who Makes Complaints? | | | |
|--|---------------------|--|--------------------------|
| | Nursing Home | Residential Care/ Assisted Living | Community Setting |
| Resident | 111 | 54 | 44 |
| Relative/friend of resident | 37 | 22 | 11 |
| Non-relative guardian, legal representative | 1 | 1 | 2 |
| Ombudsman/ombudsman volunteer | 25 | 11 | 0 |
| Facility administrator/staff or former staff | 12 | 4 | 0 |
| Other medical: physician/staff | 0 | 2 | 1 |
| Representative of other health or social service agency or program | 11 | 6 | 9 |
| Unknown/anonymous | 21 | 6 | 2 |
| Other: Bankers, Clergy, Law Enforcement, Public Officials, etc. | 0 | 1 | 0 |
| Total | 218 | 107 | 69 |

You have the right to refuse medical treatment.

The home told you that you cannot have the chips your 10 year old grandson brought you because you are on a sodium restricted diet. Your grandson rarely visits and you don't want to make him feel bad by refusing his gift. You can refuse to follow your special diet if you can understand and weigh the consequences.

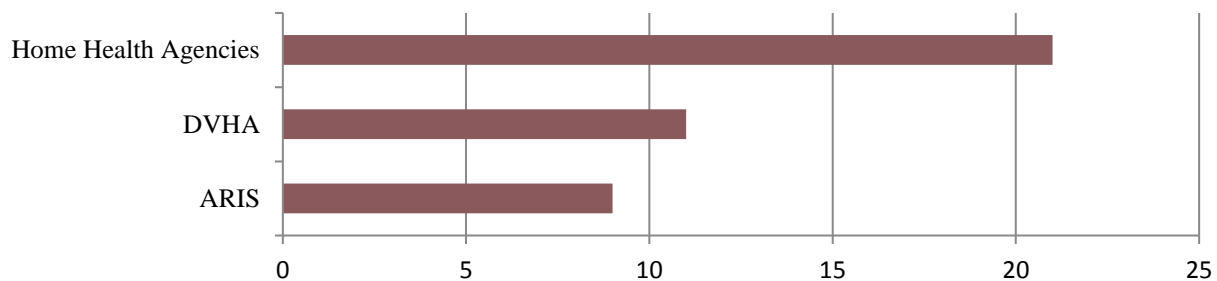
Community Based Complaints in 2016

We responded to 71 community based complaints. This is approximately 22% of all the complaints closed in 2016, compared to 16% in 2015.

Home health agencies provide the majority of the personal care, homemaker and case management services that people receive through Choices for Care. About 20% of the community-based complaints were complaints against the home health agencies.

The failure to provide clients with appropriate transportation to their medical appointments by Medicaid transport providers was the largest area of complaints among those living at home. In addition, the volume of complaints related to missing or erroneous payments of caregivers also increased during the year.

Agencies or Organizations with Five or More Complaints



You have the right to receive the care you need free of mistreatment or abuse.

You would like a bath once a week because it helps relieve the pain in your back. The aides must help you with your weekly bath without complaining about how long it takes or without handling you roughly because they are in a hurry to help the next resident.

Complaints We Investigated and Resolved in 2016

Many resident families complained to the Ombudsman that staffing was insufficient at the nursing home in which their loved ones reside. They felt as if they were not being heard. The Ombudsman gathered their stories and information, and submitted a complaint to the State licensing agency. The nursing home was cited for short staffing and subsequently increased their staffing level.

*

The manager of a residential care home told a resident that she needed to pay for a new sofa for the living room of the home, as the old one had been discarded. The resident questioned why she had to use her savings to do this. An Ombudsman contacted the manager to let her know the replacement of the sofa is the home's responsibility and not the resident's.

*

A client living at home, who hires and directs her own caregivers, called an Ombudsman to say her caregivers were not being paid. She feared losing her workers and thus her ability to live in her own home. The Ombudsman investigated the complaint, contacted the payroll services provider, and helped resolve the problem allowing the caregivers to be paid.

*

A nursing home resident wanted to return home and had repeatedly asked the nursing home staff for help. He complained to the Ombudsman that he was being ignored. The Ombudsman intervened and determined that the nursing home staff was not adequately completing his discharge planning. Working with the resident and the facility staff, the Ombudsman helped the resident find a private caregiver to live with, and helped him move out of the facility.

*

A nursing home sent a letter to the mother of a former nursing home resident, threatening to legally pursue her for the unpaid nursing home bill of the resident. The Ombudsman informed the resident and her mother of regulations that prohibit this practice and helped her to write a letter to the nursing home's corporate office. The Ombudsman also discussed the regulations and concerns with the nursing home's administrator and ensured that no action would be taken to pursue payment by the resident's mother.

*

Access to nursing home care can sometimes be difficult. The Ombudsman received a call from a resident's family saying he was trapped in a mental health facility and could not move into a nursing home. Although he no longer needed to be in a mental health facility, he did need nursing home level of care. The Ombudsman identified the possible alternative facilities, reviewed them with the client advocate, and helped him move into the nursing home of his choice.

*

A resident of a nursing home became extremely ill, requiring hospitalization, and the nursing home informed the Ombudsman. The Ombudsman determined that the resident's agent on her Advance Directive had not been notified and discovered that the facility had not even checked to see if there was such a document. After the Ombudsman's intervention, the agent was contacted and the facility reminded of the requirement to maintain a record and follow the terms of any Advance Directives.

*

A resident of a residential care home was hospitalized. The next morning, the residential care homeowner came to the hospital to inform her she could not return to the home. The Ombudsman determined that this was not proper notice of discharge and helped the resident to make a report to the state licensing agency. This ensured that adequate notice was given, the resident had time to plan for a move to a different facility, and the client's unused rent money was returned in a timely fashion.

*

A home-based client reported to the ombudsman that his ill-fitting wheelchair was causing pressure sores and that he had been trying address the problem with a wheelchair vendor and his case manager for over a year. The client reported that he had received excellent wound care, physical therapy, and case management but that the vendor was unresponsive. The ombudsman investigated the complaint, identified the possible solutions, and referred the case to VLA's Disability Law Project for an action against the wheelchair vendor that resolved the problem.

*

A residential care home resident asked an ombudsman if they could attend a church. The ombudsman arranged a meeting with the home's administrator to discuss this request and reminded her of the resident's right to transportation for medical services and local community functions. A plan to attend church services was developed and the resident now attends church services weekly along with other members of the home.

Non-Complaint Related Activities

The ombudsman's primary duty is to investigate complaints made by or on behalf of individual's receiving long term care services in facilities or in the community.

They also empower individuals by giving them information to help them resolve complaints on their own and they give family members guidance about how to approach facilities with their concerns. They support resident and family councils by helping them work with nursing and residential care homes to address facility wide problems.

Ombudsmen also educate facility staff on the role of the ombudsmen and residents' rights, including the resident's right to be free from abuse, neglect and exploitation.

| Activities in FY2016 | |
|---|------------------------------------|
| Activities | Number of Instances in 2016 |
| Consultations to Individuals | 499 |
| Consultations to Facility Staff/Providers | 249 |
| Work with Resident and Family Councils | 38 |
| Community Education | 11 |
| Total | 797 |

You have the right to manage your own money.

The home wants to become your representative payee because you were late paying them last month. Your daughter was on vacation and you usually sit down and go over your bills with her. The home cannot take control of your finances without your permission.

Our Volunteers

Volunteers contributed over 1,570 hours in 2016.

We rely on volunteers to help us with all our activities. They enable us to maintain a regular presence in Vermont's 162 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. It includes 20 hours of classroom training and independent study. After the classroom training, they shadow their supervising local ombudsman for 30 hours of facility based training.

Funding

In FY 2016, the Long Term Care Ombudsman Project received \$702,779 from DAIL to provide ombudsmen services in Vermont. This amount includes funds from the following:

| | |
|------------------|--|
| \$79,350 | OAA Title VII, chapter II |
| \$223,614 | OAA Title IIIB |
| \$311,471 | Medical Assistance Program (Global Commitment) |
| \$88,344 | State General Funds |
| \$702,779 | Total |

Thank You Volunteers!

*Matt Asinger
Bruce Boedtke
Laurie Boerma
Jean Cass
Ann Crider
Paula DiCrosta
Ann Doucette
Sharon McBride
George Long
Winifred McDowell
Gloria Mindell
Teresa Patch
Carol Schoneman
Mohammed Shaikh
Russ Tonkin
Steve Williams*

Systemic Advocacy

Ombudsmen are required under state and federal law to address systemic problems that impact the quality of care and quality of life of individuals receiving long term care in Vermont.

Ombudsmen use the information they gain during their complaint investigations, general visits, and consultations with residents, family members and providers to help guide their systemic advocacy.

Ombudsmen serve on numerous workgroups, committees and task forces related to long term care. They bring the resident's voice to the table. In 2016, ombudsmen participated in the:

- Elder Justice Workgroup
- Consumer Voice
- Individual Rights Workgroup
- National Association of State Long-Term Care Ombudsman Programs
- CFC Adult Family Care Homes Meetings
- VLA Health Care Task Force

In 2016, the Ombudsman Project focused its legislative advocacy on H.46 and S.40, companion bills that would establish an Adult Fatality Review Team in Vermont. Act 135 was passed by the legislature and was signed by Governor Shumlin on May 25, 2016, establishing the Vermont Vulnerable Adult Fatality Review Team in the Office of the Attorney General for the increased protection of vulnerable Vermonters.

The Ombudsman also supported S.20, a bill to create a new category of dental health professional in Vermont. Act 161 was signed by the Governor on June 2, 2016, establishing "dental therapist" as a new profession of licensed dental practice to increase the accessibility of oral health care for Vermonters. Federal and state law requires nursing homes to provide routine or emergency dental care or obtain that care from an outside source. The Division of Health Promotion and Disease Prevention at the Department of Health's survey of 342 Vermont nursing home residents had determined in 2014 that the need for dental care was significant, and we believe that Act 161 creates a new, flexible, affordable option that will help

facilities meet their dental care requirement, and reduce the number of Vermont nursing home residents with poor oral health.

Issues and Recommendations

- *People who need long term care often have limited access to mental health services.*

We continue to be concerned that a significant number of elders are transferred from a long-term care facility to the hospital because the facility is unable to manage behaviors associated with the person's mental illness or dementia. Federal regulations have recognized this problem and added a new behavior health requirement that emphasizes that facilities have the responsibility to provide necessary behavioral health care and services.

DAIL and the DMH should convene a group of stakeholders to help identify the root cause of this problem, and develop recommendations to address this concern.

- *Adequate Staffing Levels*

The lack of adequate staffing in long-term care facilities, as well as the insufficient number of appropriately trained healthcare workers available to meet the needs of clients living at home under the Choices for Care program, continues to be the biggest problem facing the Project's clients.

- *New Home and Community Based Services Regulations*

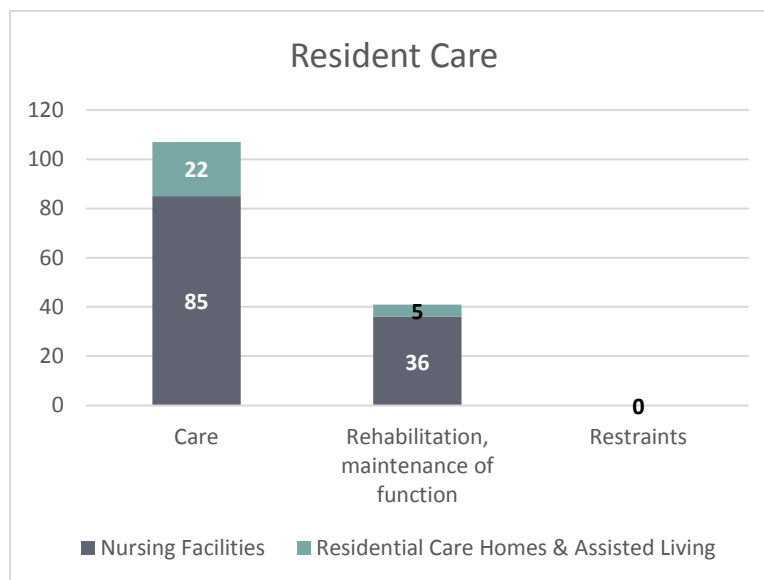
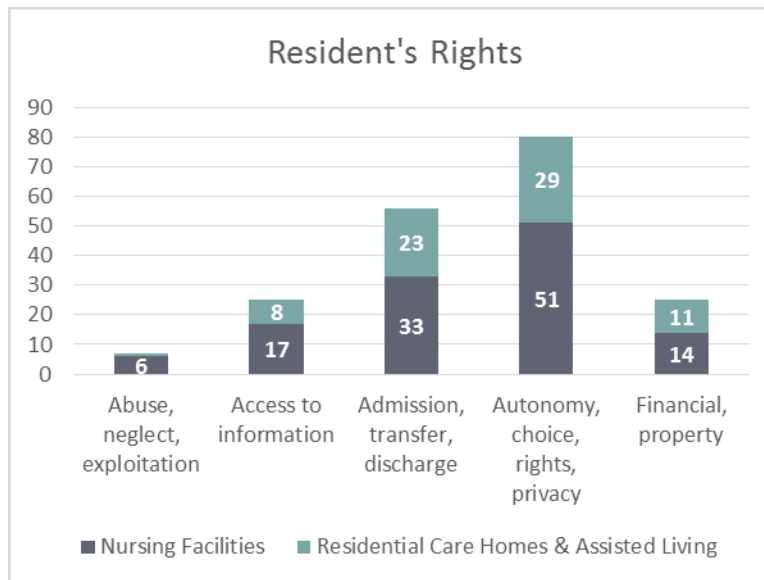
The project also intends to ensure that residential care homes, assisted living facilities, and adult family homes understand and follow the new requirements of the Home and Community Based Services regulations. We will work to ensure that all homes understand and follow the concept of person-centered care, control and choice embraced by the new regulations.

Respectfully Submitted,

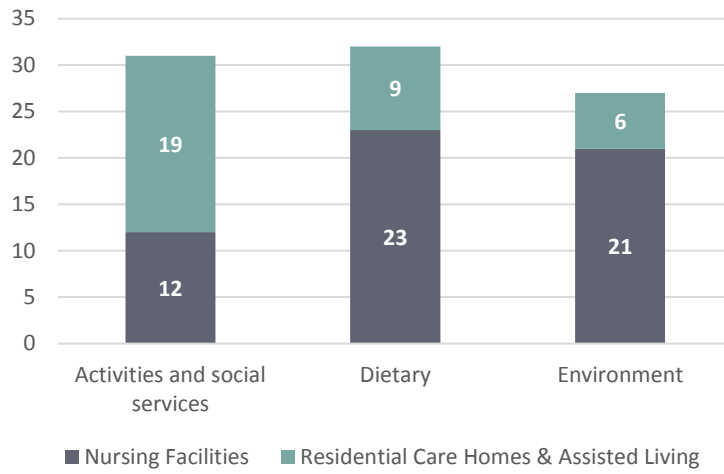
A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Eric Avildsen, Executive Director
Vermont Legal Aid
eavildsen@vtlegalaid.org
802.383.2240

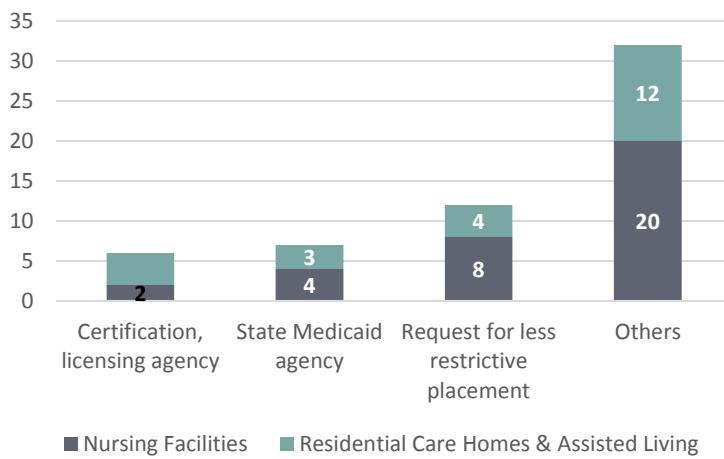
Appendix 1 – Facility Complaints in Major Complaint Categories



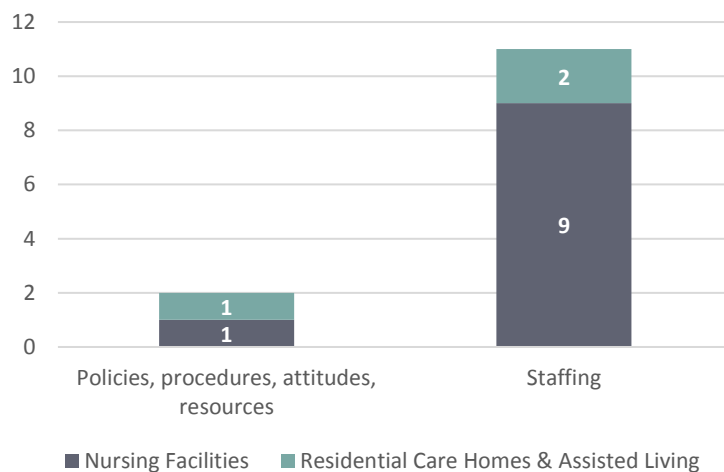
Quality of Life



Not Against Facility



Administration



Appendix 2

HISTORY OF THE OMBUDSMAN PROGRAM

At the National Level:

The Long Term Care Ombudsman Program originated as a five state demonstration project to address quality of care and quality of life in nursing homes. In 1978 Congress required that states receiving Older Americans Act (OAA) funds must have ombudsman programs. In 1981, Congress expanded 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 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 over 20 years. The Vermont Long Term Care Ombudsman Project at VLA protects 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 requires ombudsmen to service 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 Vermont Legal Aid

January 2017

Interim State Long Term Care Ombudsman:

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Appendix 4



State of Vermont

Monica Caserta Hutt, Commissioner

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Agency of Human Services

December 20, 2016
State Long Term Care Ombudsman Program
Vermont Legal Aid
264 North Winooski Avenue
Burlington, VT 05401

Dear Mr. Avildsen,

Pursuant to 33 V.S.A. §7503(10), on or before January 15 of each year the Office of the State Long-Term Care Ombudsman must "[s]ubmit to the General Assembly and the Governor a report on complaints by individuals receiving long-term care, conditions in long-term care facilities, and the quality of long-term care and recommendations to address identified problems." 33 V.S.A. §7509 provides that the Department of Disabilities, Aging and Independent Living ("Department") shall prohibit any Ombudsman or immediate family member of any Ombudsman from having any interest in a long-term care facility or provider of long-term care which creates a conflict of interest in carrying out the Ombudsman's responsibilities and directs the Department's Commissioner to establish a committee of no fewer than five persons, who represent the interests of individuals receiving long-term care and who are not State employees, to assure that the Ombudsman is able to carry out all prescribed duties in the Older Americans Act and in state statute without a conflict of interest.

The Department utilizes the DAIL Advisory Board ("Board") as the aforementioned committee. During its regularly-scheduled monthly meeting on December 8, 2016, the Board received assurances from Michelle Carter, an LTC Ombudsman on your staff, that to the best of her knowledge no Vermont Legal Aid staff, board, volunteers or their immediate family members have any interest in a long-term care facility or provider of long-term care which creates a conflict of interest in carrying out the Ombudsman's responsibilities. By a unanimous vote the committee determined that the Ombudsman is able to carry out all prescribed duties without a conflict of interest, and the committee recommended that the Commissioner convey its assessment to both the General Assembly and the Governor as required by statute. The Board also recommended that once a new State Long Term Care Ombudsman is hired and the new policies for the Ombudsman program have been finalized, that a subcommittee of the Board be formed in 2017 to review conflict of interest again. This writing serves that purpose and is hereby submitted as an appendix to the Ombudsman's annual report, as required by 33 V.S.A. §7509(b).

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Monica Hutt".

Monica Hutt
DAIL Commissioner

Cc: Robert Borden, DAIL Advisory Board
Angela Smith-Dieng, State Unit on Aging, DAIL

