VERMONT
LONG TERM CARE OMBUDSMAN PROJECT

Vermont Legal Aid

Annual Report
October 1, 2012 - September 30, 2013

STATE LONG TERM CARE OMBUDSMAN
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The Vermont Long Term Care Ombudsman Project
2013

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 conflicts of interest 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. Current staff consists of the State Long Term Care Ombudsman, 4.6FTE Regional Ombudsmen, a .2FTE Volunteer Coordinator and 12 Certified Volunteer Ombudsmen. 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 DAIL must certify that VOP carries out its prescribed duties free of any conflicts of interest. (See Appendix 4)

Positive Outcomes Achieved in 2013

- **Responded to complaints promptly**

  Ombudsmen responded to 95% of the complaints they received within two days of receiving the complaint.

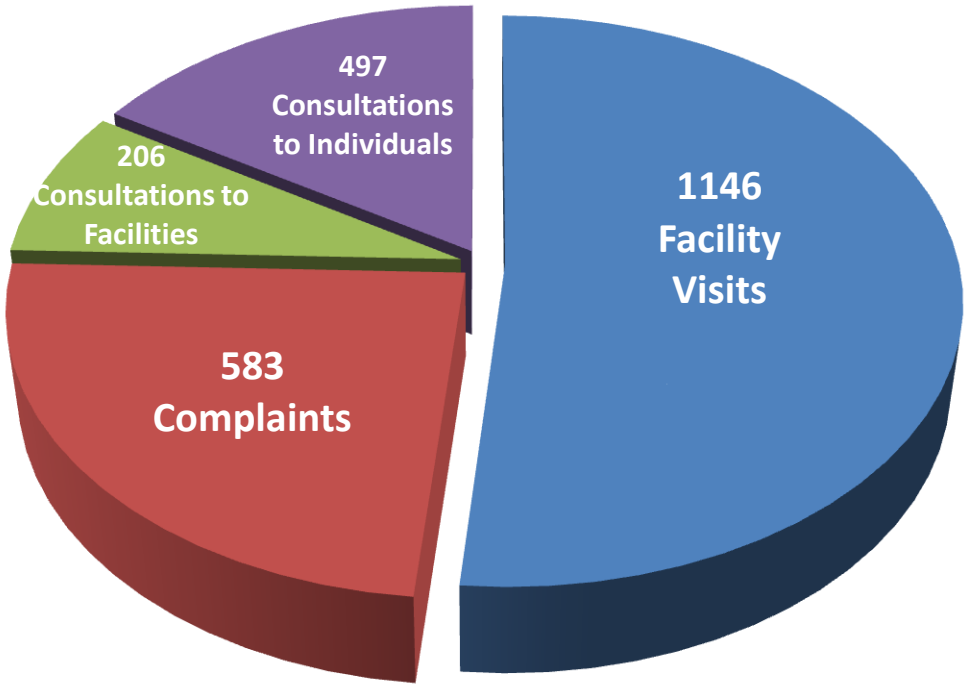
- **Achieved positive results for clients**

  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**

  100% of all facilities received a visit form an ombudsman at least once a quarter.

Overview of Our Activities in 2013



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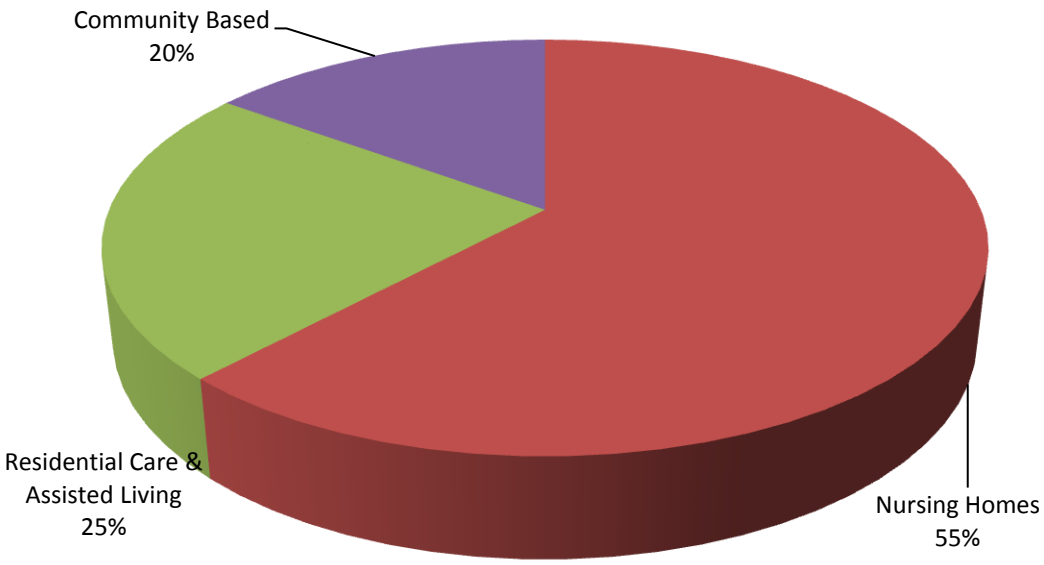
Complaint Investigation

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.

Over 6,000 Vermonters live in licensed long term care facilities (nursing homes, residential care homes or assisted living residences). Over 5,000 Vermonters receive long term care services in community settings. Ombudsmen serve all these individuals and respond to any complaint they receive from them or from someone acting on their behalf.

The complaint statistics in this report give an overview of the issues that were important to Vermonters receiving long term care services in 2013.

Distribution of Complaints in all Settings



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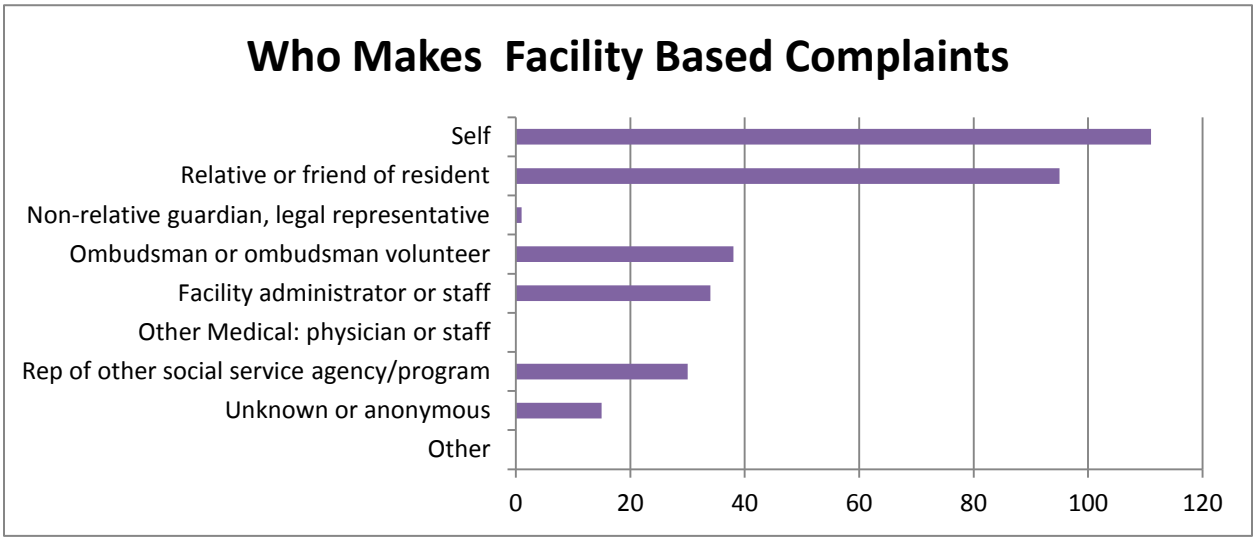
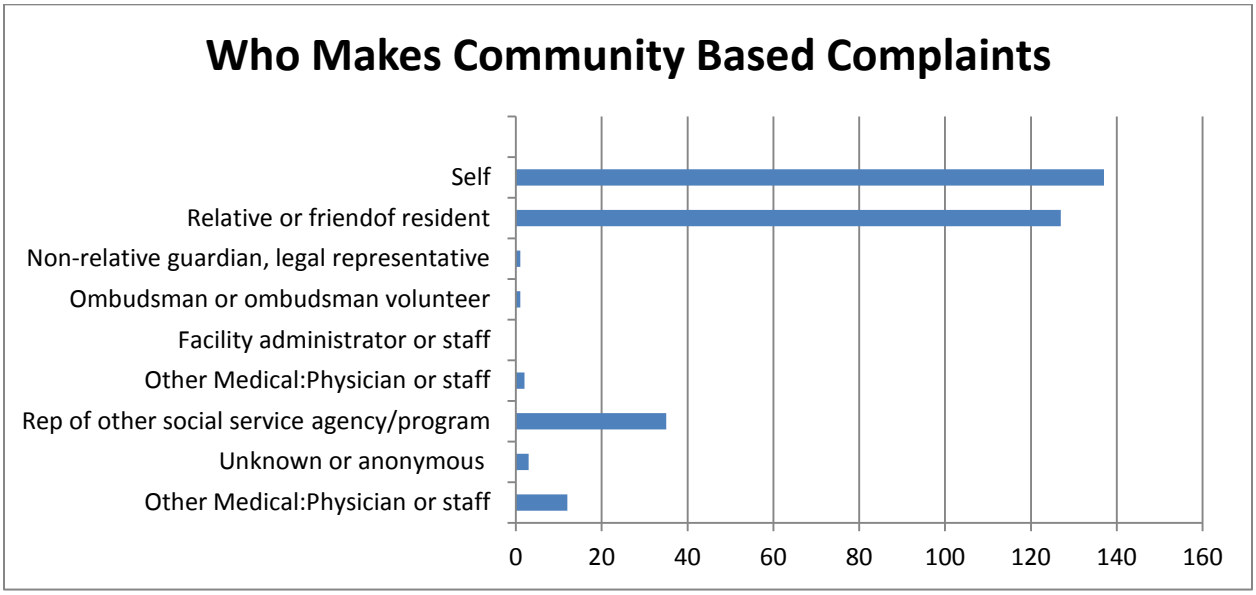
Who Makes Complaints?

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

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





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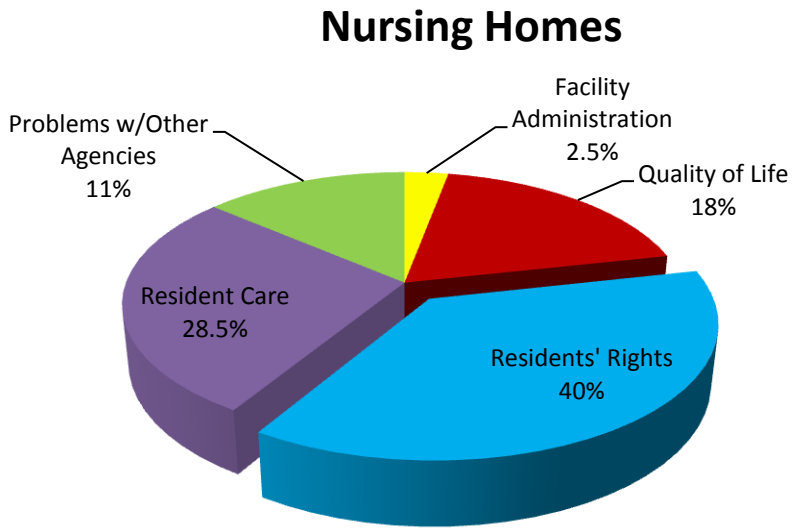
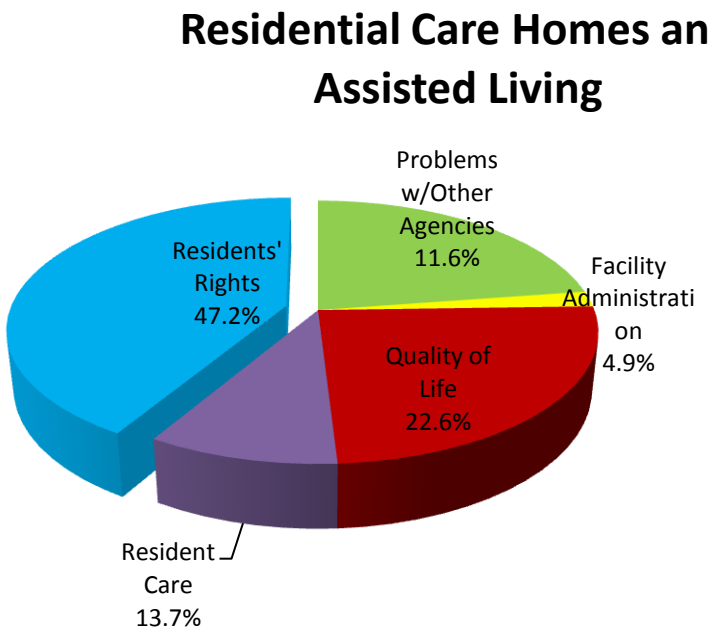
Overview of Facility Based Complaints

We responded to 583 complaints in 2013. We received 465 facility based complaints and 118 complaints from or on behalf of individuals receiving long term care services in the community.

It is important to keep in mind that not all complaints are complaints against facilities or providers of long term care services. Individuals may contact us about a problem with a state or federal agency, family member or medical provider.

What Types of Complaints do we Receive?





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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.) As in prior years, we receive more complaints about residents' rights than any other category.

Examples of Facility Based Complaints in 2013

When ombudsmen investigate complaints, they talk to the person receiving services to determine the nature of the problem and to 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.

All these complaints were resolved to the satisfaction of the resident or the person acting on their behalf.

The resident had been living in a one bedroom unit at an Assisted Living Residence. She was informed by the administrator that she would be getting a roommate and would have to share her apartment because she was now on Medicaid.

***

The resident was in nursing home for rehab after a cardiac event. He wanted to return home but the facility had not identified a discharge date and had not worked to get the services in place that would enable him to return home.

A family member complained that the resident was sent to a doctor's appointment on a cold rainy day in shorts and a tee shirt and had to wait an hour after the appointment for a ride back to the nursing home. Also, the resident's call bell was out of reach and the staff attitude toward the family was not always professional.

***

A family member complained that the nursing home staff did not help the resident to the bathroom or transfer in and out of bed in a timely manner even though the resident used his call light. Staff responded to the call, but just reset the call light without providing assistance. The resident is a fall risk, but attempts to transfer on his own because he cannot get the staff to help him.

***

Several RCH residents complained that they felt like "second class citizens". The curtains in their rooms were torn and the housekeeping was poor. They also complained about the food. It was not always hot. They were not always served what was on the menu. Sometimes there was not enough food for seconds and standard condiments were not always available.

***

RCH wanted to discharge a resident because they thought she needed more care than they could provide even though they were authorized to provide nursing home level of care under the enhanced residential care program.

***

A nursing home resident complained that she did not like having to sit in her wheelchair at the nurse's station. She was rushed to breakfast without first dressing or brushing her hair or teeth. She also complained that she had to wait a long time to see her doctor.

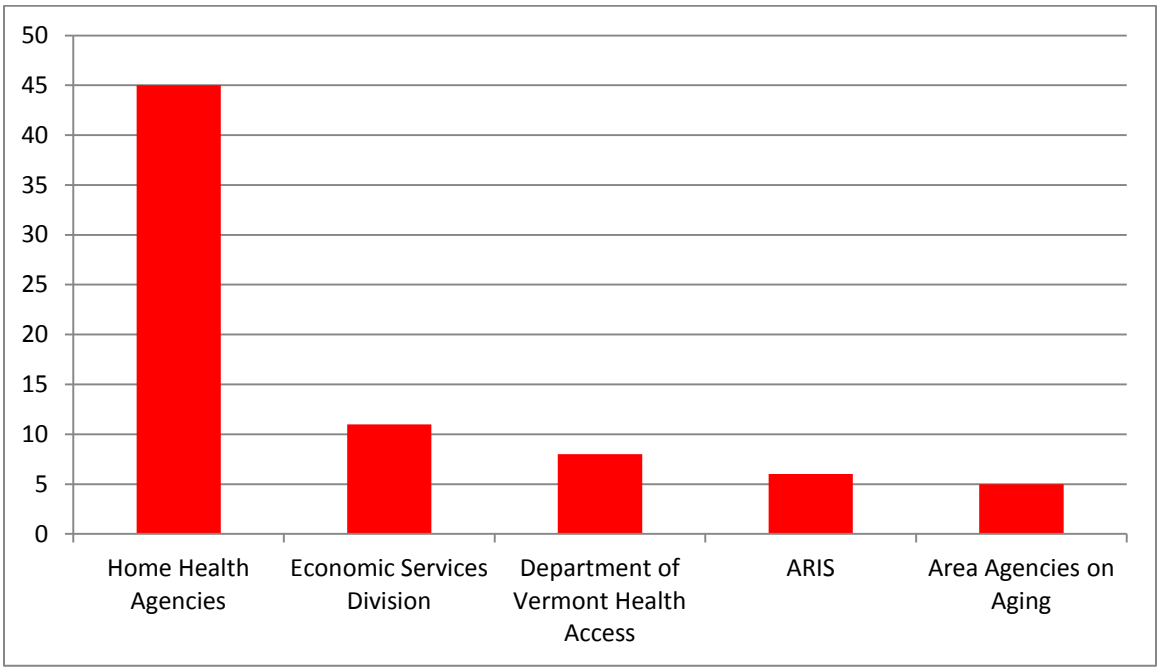
***

A nursing home resident complained that her wheelchair was very uncomfortable. She had complained to staff but nothing was done to resolve the problem. The ombudsman discussed the resident's concerns with the facility. She was told that they would make a PT referral, but the referral was either lost or never made.

Overview of Community Based Complaints in 2013

We responded to 118 community based complaints in 2013. The percentage of community based complaints we received rose from 14.5% in 2012 to just over 20% in 2013.

Agencies or organizations with five or more complaint



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.

Approximately 25% of the community based complaints we received were complaints concerning the HHA's inability to provide the personal care and homemaker services required in the client's service plan or its failure to provide adequate training for new staff. Clients also complained that aides and homemakers often did not call before cancelling a visit which made it difficult for them to implement their backup plans.

Examples of Community Based Complaints

All these complaints were investigated by the ombudsmen and resolved to the satisfaction of the individuals or the person acting on their behalf.

Client complained that her home health agency (HHA) case manager discouraged her from applying for moderate need services. The case manager incorrectly told her that her children's income would be included in determining her eligibility.

***

Client who was receiving hospice services complained that she was having difficulty obtaining equipment from the HHA that she needed in order to use the toilet and shower.

***

Client complained that he could not get Medicaid to pay for transportation to his doctor because his office was located in an adjoining county.

***

Client's wife complained that they had been waiting for a decision on her husband's Medicaid application. He had gone without services for months. They had decided to stop services because they were afraid they would be billed if Medicaid was denied and they did not have the money to pay the HHA.

***

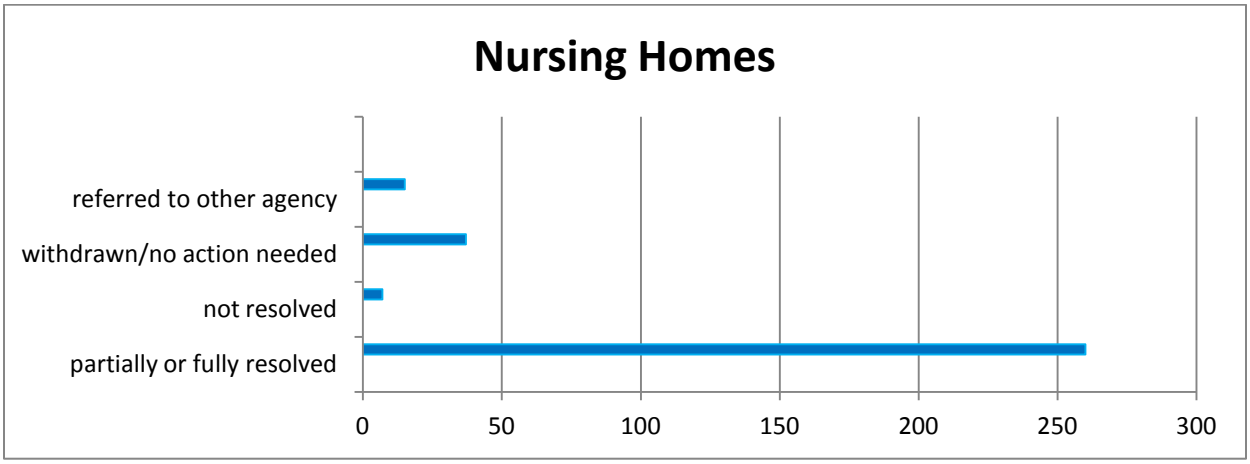
Client complained that her doctor "dropped her" because of her disruptive husband. The doctor prescribed blood pressure and pain meds but would not order home health services. The client needed incontinence supplies and supplies to treat an open wound.

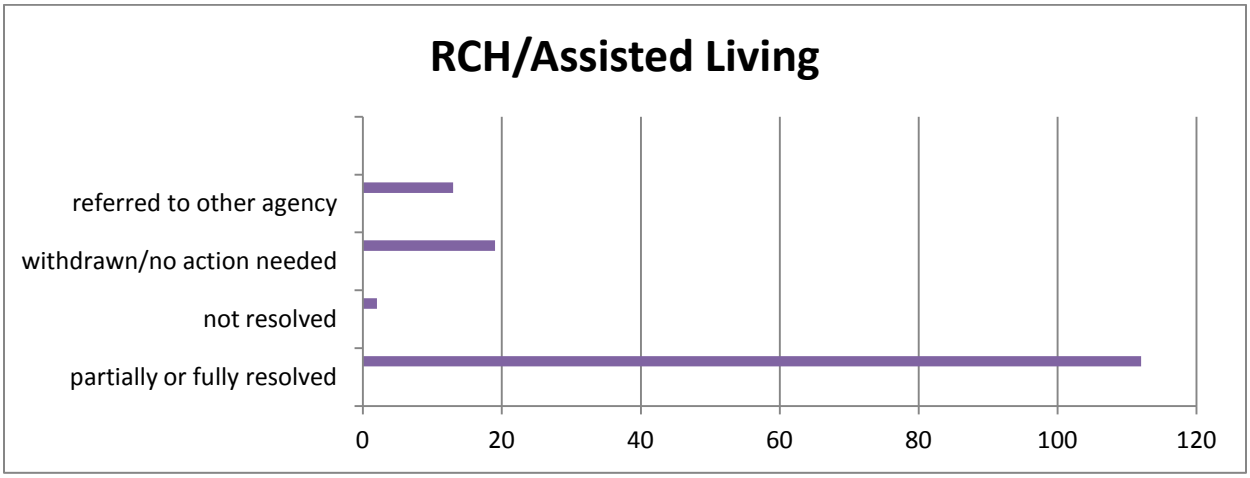
***

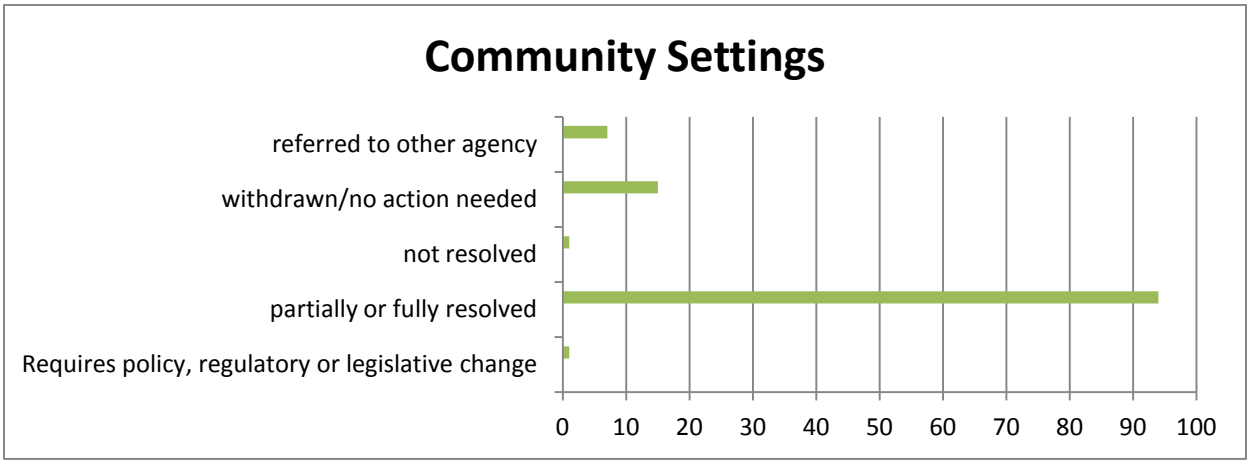
The client needed to be escorted to the van so he could go to adult day. His primary caregiver could not so this because she had to leave for work before the van arrived. The client and caregiver complained that the AAA case manager did not explore options with them or help them figure out how to resolve the problem.

Disposition of Complaints in All Settings

Ombudsmen try to resolve complaints to the satisfaction of the person receiving services. In 2013, they achieved a positive outcome for 80% of the people they served.







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Other Ombudsman Activities

Ombudsmen provide a regular presence in long term care facilities. In 2013 paid staff and volunteers made 1,146 facility visits. Every facility in Vermont received at least on general non-complaint related visit during each quarter.

Ombudsmen do more than investigate complaints and provide a regular presence in facilities. They give residents, family, facility staff and other long term care service providers information about long term care services. They answer question and provide brief advice about particular issues or problems.

Last year the number of consultations increased almost 17%, from 595 to 696. Ombudsmen also train facility staff on residents' rights and abuse neglect and exploitation and they educate the public on long term care services and the role ombudsmen play helping individuals access and maintain those services.

Activities in 2013

Activities	Number of Instances in 2013
Consultations to Individuals	492
Consultations to Facility staff/Providers	205
Work with Resident and Family Councils	28
Training for Facility Staff	17
Community Education	18

Our Volunteers

Volunteers contributed over 1,300 hours to the ombudsman project last year.

The Ombudsman Project relies on volunteers 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.

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 2013, the Long Term Care Ombudsman Project received $649,587 from DAIL to provide ombudsmen services in Vermont. This amount includes funds from the following:

$83,616	OAA Title VII, chapter II
$223,614	OAA Title IIIB
$254,013	Medical Assistance Program (Global Commitment)
$ 88,344	State General Funds
$649,587	**Total**

Thank you Volunteers!

Ann Crider,

Hope Grifo,

Ann Doucett,

Phil Gray,

Sally Lindberg

Winifred McDowel,

Gloria Mindell

Teresa Patch

Carol Schoneman

Carol Smith

Russ Tonkin

Steve Williams

Audrey Winograd

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Systemic Advocacy

Ombudsmen have a broad mandate under state and federal law to address systemic problems that impact 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 and general visits and their consultations with residents, family members and providers to help guide their systemic advocacy.

Ombudsmen participate in workgroups, committees and task forces that address systemic issues effecting Vermonters receiving long term care.

In 2013 the ombudsman project participated in the:

- Elder Justice Coalition
- Pain and Palliative Care Workgroup
- Dual Eligible Stakeholders Workgroup
- 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 an national evaluation tool for ombudsman programs)
- DAIL workgroup on housing options for people who need long term care services and supports
- APS financial Exploitation Advisory Workgroup
- APS Vulnerable Adult Workgroup
- Adult Family homes Stakeholder Workgroup

They also bring the long term care consumer's voice to the administrative and legislative process. During 2013, the State Long Term Care Ombudsman:

- Met with the Commissioner of Mental Health and DAIL to discuss gaps in mental health services for people receiving long term care services and supports
- 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 HCOC committee on DAIL's CFC reinvestment strategy
- At the committee's request, testified before the MHOC on OASIS and gaps in mental health services for the people we serve
- Commented on Certificate of Need regulations governing party status of the ombudsman
- Testified before House Human Services on H.105 (bill requiring APS to submit quarterly reports and H.140 (bill clarifying and codifying CFC provisions in session law,) and the Dual Eligible Initiative
- Testified before Senate Health and Welfare and House Health Care on S.73 (bill extending the moratorium on Home Health Agency CON's)
- Testified before Senate Health and Welfare on the importance of reinvesting in HCBS
- Submitted comments with other VLA advocates to AHS on Vermont's Global Commitment Extension Request
- Testified before House Health Care Committee on APS
- Submitted written comments to Administration on Aging Administration on Community Living on the proposed federal ombudsman regulations

Recommendations

#1

Choices for Care savings should be reinvested in home and community based services in a timely manner.

This is similar to the recommendation that we made last year about reinvestment of CFC savings. We thank the legislature for taking action in last year's budget bill defining savings and setting out a process that should encourage timely reinvestment. However, Choices for Care earned over $6 million in savings in state fiscal year 2013 and almost all of those savings have yet to be reinvested.

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

- People with moderate needs are on lists waiting for homemaker and adult day services and many who make it onto the program do not receive the services in their service plan due to a shortage of direct care workers and personal care attendants

- Participants with high and highest needs have seen reductions in housekeeping, meal preparation, laundry, shopping, and money management services. DAIL has never proposed using savings to restore some of these lost benefits.

- Direct care workers who provide home and community based services need and want better pay and appropriate and effective training.

Recommendation

The legislature should:

→ **establish a process that would require the timely reinvestment of savings that includes meaningful public input; and**

→ **examine DAIL's practice of holding several million dollars in reserve to pay for unlikely pressures in the next fiscal year.**

#2

We should explore new ways to protect vulnerable adults free from abuse, neglect and exploitation

The legislature has taken steps to ensure that Vermont's Adult Protective Services Program protects vulnerable adults from abuse, neglect and exploitation. We applaud its efforts and commitment to this issue. However, APS cannot be solely responsible for protecting vulnerable Vermonters.

Other states have established multi-disciplinary teams to analyze deaths of elder or vulnerable adults that are associated with abuse, neglect and exploitation. These fatality review teams are modeled on successful child abuse and domestic violence fatality review efforts. These teams:

- raise awareness in agencies and in the community about the abuse neglect and exploitation of vulnerable adults;

- help identify gaps in the system;

- make recommendations about changes to the system that contributed to or failed to prevent the death;

- enable stakeholders to share their expertise, educate one another about their roles and foster cooperation;

Recommendation:

The legislature should enact legislation establishing a multi-disciplinary Vulnerable adult Fatality Review Team that is authorized to review the death of any person who meets the definition of vulnerable adult as defined in Title 33 §6902 (14) who:

(i) was the subject of an adult protective services investigation;

(ii) whose death came under the jurisdiction of or was investigated by the Office of the Chief Medical Examiner; or

(iii) whose death was due to abuse or neglect or acts suggesting abuse or neglect.

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	3	1
B. Access to information	14	1
C. Admission, transfer, discharge	37	26
D. Autonomy, choice, rights, privacy	58	34
E. Financial, property	15	7
TOTAL	**127**	**29**

2. RESIDENT CARE	Nursing Facilities	Residential Care Homes & Assisted Living
F. Care	72	13
G. Rehabilitation, maintenance of function	19	6
H. Restraints	0	1
TOT		
TOTAL	**91**	**20**

3. QUALITY OF LIFE	Nursing Facilities	Residential Care Home & Assisted Living
I. Activities and social services	14	14
J. Dietary	21	12
K. Environment	22	7
TOTAL	**57**	**33**

4. ADMINISTRATION	Nursing Facilities	Residential Care Homes & Assisted Living
L. Policies, procedures, attitudes, resources	0	2
M. Staffing	8	5
TOTAL	**8**	**7**

5. PROBLEMS WITH OTHER AGENCIES	Nursing Facilities	Residential Care Homes & Assisted Living
N. Certification, licensing agency	1	0
State Medicaid agency	6	2
Others	29	15
TOTAL	**36**	**17**
TOTAL FOR THE FIVE MAJOR COMPLAINT CATEGORIES	**319**	**146**

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

Vermont Legal Aid

October 2013

State Long Term Care Ombudsman:

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* Michelle Carter also covers the "Quintowns":

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Hancock
Pittsfield
Stockbridge
Granville

VERMONT APPENDIX 4

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Voice (802) 871-3350
Fax (802) 871-3281

January 14, 2014

Long-Term Care Ombudsman Program
Vermont Legal Aid
264 North Winooski Avenue
Burlington, VT 05402

Dear Jackie,

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 January 9, 2014, the Board received both written and verbal assurances from you, that to the best of your knowledge no staff, volunteers or their immediate family members has 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. This writing serves that purpose and is hereby submitted for inclusion as an appendix to the Ombudsman's annual report, as required by 33 V.S.A. §7509(b).

Respectfully submitted,

Susan Wehry, M.D.
DAIL Commissioner

Cc: Janet Cramer, Chair, DAIL Advisory Board
Suzanne Leavitt, DAIL