

Annual Report to the Vermont Legislature
January 13, 2020

VERMONT LONG-TERM CARE OMBUDSMAN PROJECT

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Reporting Requirement to Vermont Legislature and Governor

The Office of the State Long-Term Care Ombudsman (Office) is to report to the General Assembly and Governor on or before January 15th of each year. The reporting requirement is required by 33 V.S.A. §7503. The Office is pleased to present our annual Legislative Report.

The Vermont Long-Term Care Ombudsman Project

1. Who Are We?

Long-term care (LTC) ombudsmen are advocates for: (1) Vermonters who are receiving long-term care services and supports in facilities; and (2) persons receiving Choices for Care in the community. LTC ombudsmen are trained to resolve problems. LTC ombudsmen can help residents living in LTC facilities and participants in Choices for Care (CFC) residing in the community with complaints they may have about their care and services.

A. The role of the Vermont LTC Ombudsman Project:

- Promote the rights of people receiving long-term care services in Vermont
- Advocate for changes that lead to better care & better quality of life

B. The Vermont LTC Ombudsman Project works with people who receive long-term care services in:

- Nursing homes
- Residential care homes
- Assisted living residences
- Adult family homes
- The community through Choices for Care

C. What does the Vermont LTC Ombudsman Project do?

- Investigate problems and concerns about long-term care services
- Help people make their own decisions about their long-term care and services
- Help people on Choices for Care access long-term services in the community
- Visit LTC facilities regularly to talk with residents and monitor conditions
- Educate facility staff and other providers about the rights and concerns of people receiving long-term care services
- Identify problem areas in the long-term care system and advocate for change
- Provide information to the public about long-term care services and options

D. The Vermont LTC Ombudsman Project is an independent voice.

- Each year the Commissioner of the Department of Aging and Independent Living (DAIL) must certify that the Vermont Long-Term Care Ombudsman Project carries out its duties free of any conflicts of interest. (See Appendix 3)
- The organizational structure of the Vermont Long-Term Care Ombudsman Project enhances its ability to operate free of any conflicts of interest. (The project is housed within Vermont Legal Aid and all ombudsmen are employees of Vermont Legal Aid.)
- No ombudsman or member of their immediate family is involved in the licensing or certification of long-term care facilities or providers.
- LTC ombudsmen do not work for or participate in the management of any facility.

E. Staffing for the Vermont Long-Term Care Ombudsman Project

- At the end of FY 2019 (October 1, 2018 to September 30, 2019), staffing for the project consisted of the State Long-Term Care Ombudsman, 4 full-time local ombudsmen, and 4 certified volunteer ombudsmen.
- On November 18, 2019, a new ombudsman was hired. Following training and certification, the new ombudsman will cover Chittenden, Franklin, and Grand Isle counties

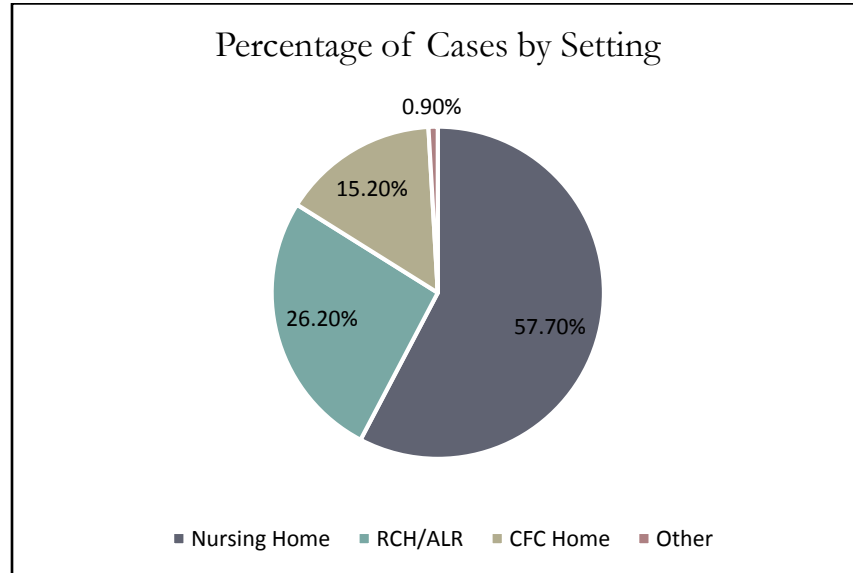
2. Complaints and Cases

- For FY2019, LTC Ombudsman Project worked on **435 cases**, which involved **679 complaints**
 - Of the 679 complaints that ombudsmen worked on during FY 2019, **89%** were fully or partially resolved to the satisfaction of the resident, participant, or complaint.

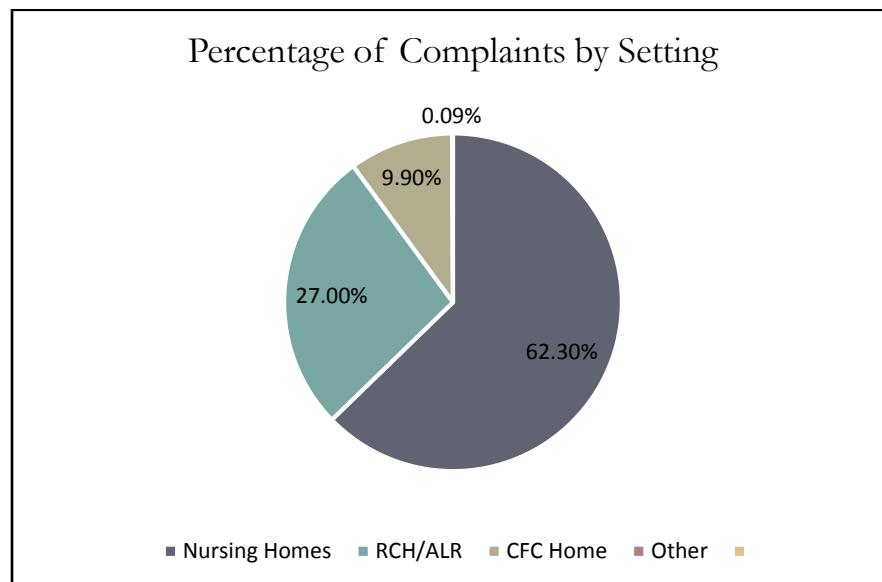
3. Where Did Cases and Complaints Come From?

Vermonters receive long-term care services and supports (LTSS) in a variety of settings. No matter where LTSS are received, the objectives are the same. Vermonters receiving LTSS must be treated with respect and dignity, and receive quality care, which is person-centered and focuses on the preferences of the resident or participant.

- In FY2019, **the number of cases** for each setting broke down as follows:
 - Nursing home cases: **251**
 - Residential care home and assisted living residence cases: **114**
 - Community-based cases: **66**



- In FY2019, the **number of complaints** for each setting is as follows:
 - Nursing home complaints: **423**
 - Residential care home and assisted living residence complaints: **183**
 - Community-based complaints: **67**



4. Complaint Categories, Totals and Percentages

Every year, ombudsmen work on a wide range of resident (and participant) complaints. For FY2019, a total of 679 complaints were addressed. The breakdown of complaints is as follows:

FY 2019 Complaint Category	Total complaints	Percent (%)
Admission, Transfer, Discharge	115	16.9%
Care	115	16.9%
Autonomy, Choice, Exercise of Rights, Privacy	105	15.5%
Complaints about Services in Settings Other Than LTC facilities	72	10.6%
Financial, Property (except for Financial Exploitation)	43	6.3%
Dietary	41	6.0%
Rehabilitation or Maintenance of Function	39	5.7%
Environment	33	4.9%
Activities and Social Services	32	4.7%
Access to Information by Resident or Resident Representative	26	3.8%
Systems/Others	26	3.8%
Staffing	11	1.6%
Abuse, Gross Neglect, Exploitation	7	1.0%
Policies, Procedures, Attitudes, Resources	7	1.0%
State Medicaid Agency	6	0.9%
Restraints – Chemical or Physical	1	0.1%
Total	679	100%

5. Complaint Categories, Totals and Percentages by Facility Type

A. Nursing Homes

FY 2019 Complaint Category	Total complaints	Percent (%)
Care	86	20.3%
Autonomy, Choice, Exercise of Rights, Privacy	74	17.5%
Admission, Transfer, Discharge	68	16.0%
Rehabilitation or Maintenance of Function	34	8.0%
Dietary	32	7.6%
Financial, Property (except for Financial Exploitation)	30	7.1%
Environment	26	6.1%
Activities and Social Services	21	5.0%
Access to Information by Resident or Resident Representative	15	3.5%
Systems/Others	15	3.5%
Staffing	6	1.4%
Policies, Procedures, Attitudes, Resources	5	1.2%
Abuse, Gross Neglect, Exploitation	4	1.0%
State Medicaid Agency	4	1.0%
Complaints about Services in Settings Other Than LTC facilities	2	0.0%
Restraints – Chemical or Physical	1	0.0%
Total	423	100%

B. Residential Care Homes & Assisted Living Residences

Complaint Category/number	Total Complaints	Percent (%)
Admission, Transfer, Discharge	45	24.6%
Autonomy, Choice, Exercise of Rights, Privacy	31	16.9%
Care	28	15.3%
Financial, Property (except for Financial Exploitation)	13	7.1%
Access to Information by Resident or Resident Representative	11	6.0%
Activities and Social Services	11	6.0%
Systems/Others	11	6.0%
Dietary	9	4.9%
Environment	7	3.8%
Staffing	5	2.7%
Rehabilitation or Maintenance of Function	3	1.6%
Abuse, Gross Neglect, Exploitation	3	1.6%
Complaints about Services in Settings Other Than LTC facilities	2	1.1%
Policies, Procedures, Attitudes, Resources	2	1.1%
State Medicaid Agency	2	1.1%
Restraints – Chemical or Physical	0	0.0%
Total	183	100%

C. Community-Based Cases and Complaints

In FY2019, ombudsmen worked on 66 CFC community-based cases, which involved 67 complaints. Home health agencies provide the majority of the personal care, homemaker, and case management services that people receive through Choices for Care. As would be expected, most community-based complaints made in FY 2019 were against home health agencies in FY 2019. Of the 53 complaints made during FY 2019, 35 (66%) involved home health agencies.

Community-Based Entity	Total Complaints made for FY19
Home Health Agency	35
State Agency (DAIL, ESD, DVHA)	4
Area Agency on Aging	4
Other	4
DME Provider	2
Physician	2
ARIS	1
Green Mountain Support Services	1
Total	53

6. Who Made Complaints?

- Below is a break-down of complainants for the 679 complaints worked on by ombudsmen during FY2019
- Most complaints are made by residents or participants, followed by friends or relatives
- No matter who makes the complaint, the LTC Ombudsman Project tries to resolve the problem to the satisfaction of the resident or participant (the person receiving long-term care services and supports)

Who made complaints in FY2019?					
Complainant	Nursing Home	Residential Care/ Assisted Living	Community Setting/Other	Total Complaints Made	% of Total Complaints Made
Resident/participant	232	107	53	392	58%
Relative/friend of resident or participant	118	33	10	161	24%
Ombudsman/ombudsman volunteer	31	19	1	51	8%
Representative of other health or social service agency or program	13	8	3	24	4%
Facility administrator/staff or former staff	14	6	1	21	3%
Other	8	0	1	9	1%
Non-relative guardian, legal representative	5	3	0	8	1%
Caregiver – non-relative/family	0	3	3	6	.01%
Unknown/anonymous	1	3	1	5	.01%
Other medical: physician/staff	1	1	0	2	.003%
Total	423	183	73	679	100%

7. Case Summaries

Below are case summaries for some of the complaints investigated and resolved by LTC ombudsmen during FY2019.

- A home and community-based services (HCBS) CFC participant contacted an ombudsman because he was not receiving all his weekly LTC services and supports. He was supposed to receive 17.5 hours of LTC services and supports per week; instead he was receiving only 9.5 hours of LTC services and supports per week. The ombudsman assisted the participant in filing a grievance with the home health agency. The ombudsman provided the relevant facts to the home health agency. The ombudsman requested written findings of the home health's inquiry into the participant's grievance – and that the finding be sent to the participant. Ultimately a split plan was initiated and the participant's 17.5 hours of LTC services and supports per week were provided.
- A HCBS CFC participant required help with his walker when he came down the stairs from his apartment building. An ombudsman was contacted after the transportation provider (which had been assisting the participant) decided that its drivers would no longer bring the walker down the stairs for the participant. The ombudsman contacted the case manager. The case manager was able to obtain a second walker that is left at the bottom of the stairs for the participant to use for outings from home.
- A HCBS CFC participant requested assistance from an ombudsman because he was anticipating that a nurse from a home health agency was planning to decrease his service plan hours and not allow the PCA to apply over the counter topical lotions to participant's back and ankle. The participant was unable to reach his back and ankle due to physical ailments. The ombudsman contacted the LTC Director. The LTC Director reviewed the participant's medical records and service plan. She later informed the ombudsman that the nurse: (1) would not be reducing the participant's care hours; and (2) the lotions could be applied by the PCA, so long as participant's skin was intact.
- A HCBS CFC LTC Medicaid participant was informed that his case manager was going to be replaced. This was to happen after the participant had three different case managers within a 2-month period. The participant felt his current case manager was doing a good job and wanted her to stay on as his case manager. The ombudsman helped the participant file a grievance. After the grievance was filed, it was agreed upon that the participant could keep his current case manager.

- A HCBS CFC participant called an ombudsman due to concerns that DVHA/ESD had not reviewed documents properly or in a timely manner, meaning the State would no longer be paying the participant's Medicare Part B premium. The ombudsman contacted the participant's Economic Services Division (ESD) case worker. In turn, the case worker reviewed the participant's case file and discovered that ESD had not accounted for a reduction in participant's income. ESD corrected the oversight.
- A relative contacted the Office because a family member was being involuntarily discharged from a nursing home. In the notice of discharge, the facility asserted that an involuntary discharge was necessary for the resident's welfare and because the facility could not meet the resident's needs. However, the documentation required to be provided by the resident's attending physician in support of the discharge stated that the physician was approached by staff about their "desire" to have the resident representative find another facility for the resident. The physician also wrote that staff did not believe that they could "satisfy" the family or meet the "needs" of the family. Documentation from the physician made clear that the basis of the proposed discharge was not the resident's welfare, or due to facility's inability to meet the resident's needs, but rather the facility's feelings about the resident's family. The ombudsman submitted an appeal on the resident's behalf noting that the facility's feelings about the resident's family were not a permissible basis for an involuntary discharge of a nursing home resident. The State agreed with the ombudsman and did not allow the discharge; with the involuntary discharge disallowed, the resident was able to remain at the nursing home.

8. Non-Complaint Related Activities

While an ombudsman's primary duty is to investigate complaints made by or on behalf of individuals receiving long-term care services in facilities or in the community, they **also**:

- Give family members guidance about how to approach facilities and home health providers with their concerns
- Support resident and family councils by helping them work with nursing and residential care homes to address facility-wide problems
- Educate facility and home health staff on the role of the Ombudsmen and residents' rights
- Perform general visits at facility
- Assist residents with advance directives

Below is a summary of the activities performed by the ombudsmen during FY2019:

Non-complaint Related Activities in FY2019	
Activities	Number of Instances
Consultations to Individuals	760
Consultations to Facilities/Agencies	359
Assist with Advance Directives	52
Work with Resident and Family Councils	35
Community Education	10
Non-Complaint-Related Facility Visits	1060
Total	2276

9. Project Volunteers

The Vermont LTC Ombudsman Project relies on volunteers to help us with all of our responsibilities and duties. Volunteers contributed close to 750.1 hours in FY 2019. Volunteers enable the project to maintain a greater presence in Vermont's 166 long-term care facilities. Volunteers do the work of paid ombudsmen, including responding to individual complaints, attending resident council meetings, and monitoring conditions in long-term care facilities. Before becoming a full-fledged volunteer, trainees must complete a comprehensive training program. The training program for all volunteers includes 20 hours of classroom training and independent study. Following the classroom and independent study requirements, the volunteer in training shadows a local ombudsman for 30 hours of facility-based training. When a trainee satisfactorily completes both the classroom and facility-based requirements, a recommendation is made for designation and certification – officially making the volunteer a representative of the office.

Thank you Volunteers!

*Laurie Boerma
Jean Cass
Ann Crider
Paula DiCrosta
Lucy Ferrada
Howard Fisher
Michelle Ratman
Nancee Schaffner*

10. Funding

In FY2019, the Vermont LTC Ombudsman Project was level funded again. The project received \$707,481 from DAIL to provide ombudsman services in the state. Funding broke down as follows:

- \$ 84,052.00 OAA Title VII, chapter II
- \$223,614.00 OAA Title IIIB
- \$155,735.50 Medical Assistance Program (Global Commitment)
- \$244,079.50 State General Funds
- \$707,481.00 Total

11. Systemic Advocacy

The Office of the State LTC Ombudsman is 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.

The Office uses information gained during complaint investigations, general visits, and consultations with residents, family members, and providers to help guide our systemic advocacy.

Representatives of the Office serve on numerous workgroups, committees, and task forces related to LTSS in Vermont. In FY2019, representatives of the Office served on the:

- Older Vermonters Act Work Group
- Consumer Voice Leadership Council
- Vermont Vulnerable Adult Fatality Review Team
- Vermont Legal Aid Individual Rights Task Force
- Vermont Legal Aid Residential Care Home Discharge Workgroup

On the federal level, the LTC Ombudsman Project worked with other state ombudsman programs (through our affiliation with NASOP – the National Association of State Ombudsman Programs) on numerous fronts, including advocating that the reauthorization of the Older Americans Act strengthen and protect State Long-Term Care Ombudsman Programs by (1) providing a separate authorization to fund ombudsman services provided to assisted living facility residents and (2) increasing federal funding. In addition, the LTC Ombudsman Project is participating in planning by NASOP's policy committee to counter efforts initiated by industry and Centers on Medicare and Medicaid (CMS) to roll-back federal regulations for long-term care facilities.

12. Issues and Recommendations

Listed below are the priority issues identified by the Vermont LTC Ombudsman Project, along with our recommendations for the state legislature:

1. Facility-initiated discharges of long-term care residents across all settings

Nationally, facility-initiated discharges continue to be one of the most frequent complaints made to State Long Term Care Ombudsman Programs. Vermont is no different: “discharge/eviction” is one of the most frequent complaint categories processed by VOP, even though our state has regulations providing residents with the right to remain in a long-term care facility (unless a limited set of circumstances apply). In the absence of atypical changes in residents’ conditions, it should **be rare** that facilities, which properly assess their capacity and capability of caring for each resident they admit, involuntarily discharge residents based on the inability to meet their needs.

Recommendations

- Vermont should track outcomes from a Centers for Medicare & Medicaid Services’ (CMS) initiative aimed at examining and mitigating facility-initiated discharges that violate federal nursing home regulations (as part of the initiative, CMS is examining each state survey agency’s intake and triage practices for facility-initiated discharges that violate federal nursing home regulations; developing examples of inappropriate and appropriate discharges for surveyors; identifying best practices for nursing homes; developing training; and evaluating enforcement options for violations¹).
- Vermont may want to examine the potential for Civil Money Penalty (CMP) Reinvestment Projects Assistance², since CMS is encouraging (as part of the facility-initiated discharge initiative identified above) states to pursue CMP-funded projects that may help prevent facility initiated discharges that violate federal regulations.
- Vermont should address the issue that many of the LTC residents long-term care services and supports (LTSS) do not get the mental health services that they need.

¹ <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions-Items/Survey-and-Cert-Letter-18-08>

² <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/LTC-CMP-Reinvestment>

2. The absence of federal regulations for residential care homes and assisted living residences, combined with weak state regulations for residential care homes and assisted living residences

There is too little accountability for residential care homes and assisted living residences to residents. Greater efforts should be undertaken by stakeholders, and supported by Vermonters as a whole, to ensure that residential care home and assisted living residents are treated with dignity and respect. One positive development is Vermont's decision to revise the current residential care home and assisted living residences regulations.

Recommendations

- Vermont's revision of its residential care home and assisted living residence regulations should emphasize resident rights, consumer protections, quality care, and enforcement.
- Vermont should look into establishing a resident quality of care and outcomes improvement task force, which would, on an ongoing basis, examine and make recommendations on how to apply proven safety and quality improvement practices and infrastructure to long-term care settings and providers of LTSS.
- Vermont should educate its residents about the role of residential care homes and assisted living residences in the state's system of LTSS.

3. Staffing and Training

Inadequate staffing levels at long-term care facilities and home health agencies, along with insufficient training, remain significant problems for Vermonters receiving LTSS. Proper staffing and appropriate training are critical to quality care for individuals receiving LTSS in any setting.

Recommendations

- Vermont should consider enacting legislation similar to the Quality Care for Nursing Home Residents Act of 2019³, but for all of its LTC facilities, in order to establish minimum nurse staffing levels under Medicare and Medicaid, expand training requirements and supervision for all nursing staff, and create whistleblower and other protections for personnel and residents.
- Vermont should report publically on their findings from an initiative from the Centers for Medicare and Medicaid (CMS) on nursing home staffing, and make recommendations. The

³ <https://theconsumervoicework.org/news/detail/latest/minimum-staffing-standards-bills-introduced>

CMS initiative requires: (1) states to target facilities with low weekend staffing for weekend surveys; and (2) state surveyors to investigate (for facilities having reported days with no registered nurse on site) facility compliance with the federal requirement for a facility to provide the services of a registered nurse eight hours a day, seven days a week (the nursing homes to be targeted for investigation will be identified through CMS's review of the Payroll-Based Journal (PBJ) data).⁴

- Vermont should report on its efforts to ensure full compliance of the Affordable Care Act provision requiring nursing home staffing information be collected through PBJ data.⁵

4. Continued industry pushback against current federal regulations governing nursing homes

The current federal regulations for nursing homes are the result of years of work. Despite rigorous review, there remain concerted efforts to undo, weaken, and delay implementation of federal nursing home regulations. It was unsettling, this past April, when CMS announced it was launching a “comprehensive review” of nursing home regulations.⁶ Any efforts undo or otherwise weaken the nursing home regulations are not in the best interests of residents.

Recommendations

- Vermont should support the passage of state laws and regulations that strengthen regulations for the state's long-term care facilities, or at a minimum, maintain the current federal regulations for nursing homes.
- Vermont should resist any efforts by the long-term care industry or CMS to weaken (or further delay implementation of) the federal nursing home requirements of participation.
- Vermont's focus should be on the care received by residents and community participants of CFC, not reducing so-called provider burden.

⁴ <https://www.cms.gov/newsroom/press-releases/cms-strengthens-nursing-home-oversight-and-safety-ensure-adequate-staffing>

⁵ <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Staffing-Data-Submission-PBJ>

⁶ <https://www.healthleadersmedia.com/strategy/cms-launches-comprehensive-review-nursing-homes-regulation>

Developments relevant to the Issues and Recommendations section from above

1. Patient Driven Payment Model

On October 1, 2019, CMS began implementation of the “Patient Driven Payment Model” (PDPM).⁷ PDPM is a new payment system for Medicare-covered nursing home care, which created a different set of financial incentives for nursing homes when deciding whom to admit; what type of care to provide; and when to discharge residents.⁸ Advocates have expressed concerns about PDPM’s impact on nursing home residents in need of skilled therapy services (in the final rule’s impact analysis, CMS indicates that nursing homes will have a greater financial incentive under PDPM to provide as little therapy as possible to residents; and the final rule allows nursing homes to provide 25 percent of a resident’s total therapy regimen, by discipline, in group and/or concurrent therapy settings).⁹ Despite a change in the financial incentives, CMS made clear that PDPM does not change Medicare coverage and eligibility.¹⁰ Furthermore, CMS states that a resident’s care needs must still drive care decisions, including the type, duration, and intensity of skilled therapy services.¹¹ Residents and their families are encouraged to be vigilant about ensuring that residents are receiving therapy services.¹²

2. Nursing Home Compare

On October 7, 2019, CMS announced changes to Nursing Home Compare making it easier for residents and families to identify facilities **with a history** of resident abuse, neglect, or exploitation. Consumers now see an icon (a red circle with a hand) on a facility’s Nursing Home Compare profile, when a facility has been cited for either or both of the following deficiencies: (a) a harm-level (scope and severity level G or higher) abuse citation on the most recent standard survey cycle or complaint survey within the past 12 months; and/or (b) an abuse citation where residents were found to be potentially harmed (scope and severity level D or higher) on the most recent standard survey cycle or complaint survey within the past 12 months and on the previous standard survey cycle or complaint survey in the prior 12 months.¹³

⁷ <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM>

⁸ <https://nursinghome411.org/wp-content/uploads/2019/10/Joint-Statement-PDPM-patient-driven-payment-model-10-19.pdf>

⁹ Id.

¹⁰ <https://www.medicareadvocacy.org/wp-content/uploads/2019/10/LTCCC-CMA-Joint-Issue-Alert-on-PDPM.pdf>

¹¹ Id.

¹² <https://nursinghome411.org/fact-sheet-nursing-home-therapy-services/?emci=ea70d62a-4c15-ea11-828b-2818784d6d68&emdi=fd3c36e8-e415-ea11-828b-2818784d6d68&ceid=7542152>

¹³ <https://www.cms.gov/newsroom/press-releases/trump-administration-empowers-nursing-home-patients-residents-families-and-caregivers-enhancing>

Revisions to the Five Star Technical Users' Guide show that nursing homes that have received the abuse icon can have their **health inspection rating** capped at a maximum of **two stars** and their **best overall quality rating** as a facility capped at **four stars**.¹⁴

These changes come after several years of increased recognition of, and concern about, nursing home resident abuse. Most recently, the U.S. Senate Committee on Finance held two hearings on resident abuse, and federal reports issued this past summer documented persistent, widespread resident abuse across the country.¹⁵

3. Phase 3 of the Revised Federal Nursing Homes Regulations

On November 28, 2019, Phase 3 of the Revised Federal Nursing Homes Regulations became effective.¹⁶ To comply with Phase Three, facilities must meet requirements pertaining to the following sections of the federal rule: (1) Quality Assurance & Performance Improvement (QAPI) Program (42 CFR, §§ 483.12, 483.70, 483.75); Person-Centered Care Planning (§ 483.21); Trauma-Informed Care/Behavioral Health Services for History of Trauma Post-Traumatic Stress Disorder (PTSD) (§§ 483.25, 483.40); Infection Preventionist (IP)(§ 483.80); Compliance and Ethics Program (§ 483.85); Physical Environment (§ 483.90); and Staff Training and Competencies (§ 483.95).¹⁷

Respectfully Submitted,



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¹⁴ <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/usersguide.pdf?emci=ea70d62a-4c15-ea11-828b-2818784d6d68&emdi=fd3c36e8-e415-ea11-828b-2818784d6d68&ccid=7542152>

¹⁵ The VOP notes that: (1) the absence of an abuse icon on Nursing Home Compare does not necessarily indicate the absence of abuse at a facility; and (2) Vermonters should use all available resources when choosing a nursing home for themselves or a loved one.

¹⁶ https://theconsumervoice.org/uploads/files/issues/summary-of-key-changes-effective-phase-3_final.pdf

¹⁷ Id.

Appendix 1

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 Ombudsman'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 DAAIL. 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.

DAAIL 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 Choices for Care (CFC) participants. The Project also fulfills the mandates of the OAA and OBRA '87. The State and Local Ombudsmen work in each of VLA's offices, which are located 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 2

VERMONT LONG-TERM CARE OMBUDSMAN PROJECT

Vermont Legal Aid

January 2020

State Long-Term Care Ombudsman:

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slondergan@vtlegalaid.org

Local Ombudsmen:

<p>Katrina Boemig</p> <p>(Windham & Windsor Counties)</p> <p>56 Main Street, Suite 301 Springfield, VT 05156 Phone: 802.495.0488 Fax: 802.885.5754 kboemig@vtlegalaid.org</p>	<p>Michelle R. Carter</p> <p>(Washington, Orange & Addison Counties)</p> <p>56 College Street Montpelier, VT 05602 Phone: 802.839.1327 Fax: 802.223.7281 mcarter@vtlegalaid.org</p> <p>* Also covers: Rochester, Hancock, Pittsfield, Stockbridge & Granville</p>	<p>Alice S. Harter</p> <p>(Essex, Orleans, Caledonia, & Lamoille Counties)</p> <p>177 Western Ave., Suite 1 St. Johnsbury, VT 05819 Phone: 802.424.4703 Fax: 802.748.4610 aharter@vtlegalaid.org</p>
<p>Alicia Moyer</p> <p>(Chittenden & Franklin Counties)</p> <p>264 N. Winooski Avenue Burlington, VT 05401 Phone: 802-448-1690 Fax 802.863.7152 amoyer@vtlegalaid.org</p>	<p>Jane Munroe</p> <p>(Rutland & Bennington Counties)</p> <p>57 North Main Street, Suite 2 Rutland, VT 05701 Phone: 802.855.2411 Fax: 802.775.0022 jmunroe@vtlegalaid.org</p>	

Appendix 3



STATE UNIT ON AGING
DEPARTMENT OF DISABILITIES, AGING AND INDEPENDENT LIVING
ADULT SERVICES DIVISION

December 19, 2019

Sean Londergan
State Long Term Care Ombudsman Program
Vermont Legal Aid
264 North Winooski Avenue
Burlington, VT 05401

Dear Mr. Londergan,

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, either paid or volunteer, Vermont Legal Aid staff and board, or any immediate family member of any Ombudsman, or Vermont Legal Aid staff and board, from having any interest in a long-term care facility or provider of long-term care which creates an organizational or individual 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 12, 2019, the Board received assurances from you, the State Long Term Care Ombudsman, that to the best of your 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 an individual or organizational 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 as an appendix to the Ombudsman’s annual report, as required by 33 V.S.A. §7509(b).

Respectfully submitted,

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

Monica Hutt
DAIL Commissioner

Cc: Jeanne Hutchins, Chair, DAIL Advisory Board
Angela Smith-Dieng, State Unit on Aging, DAIL