

# VERMONT LONG TERM CARE OMBUDSMAN PROJECT

Vermont Legal Aid

**Annual Report**  
**October 1, 2013 - September 30, 2014**

**STATE LONG TERM CARE OMBUDSMAN**  
Jackie Majoros

**REGIONAL OMBUDSMEN**  
Michelle Carter  
Alice Harter  
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# The Vermont Long Term Care Ombudsman Project

## Overview 2014

Over 6,000 Vermonters live in licensed long term care facilities. Over 5,000 Vermonters receive long term care services in community settings through the Choices for Care Waiver.

Ombudsmen protect the safety, welfare, and rights of all these individuals. And, they help them get individualized, person centered care that reflects their needs and wishes. Throughout this report, each page will highlight an example of something that people receiving long term care services and supports wish for.

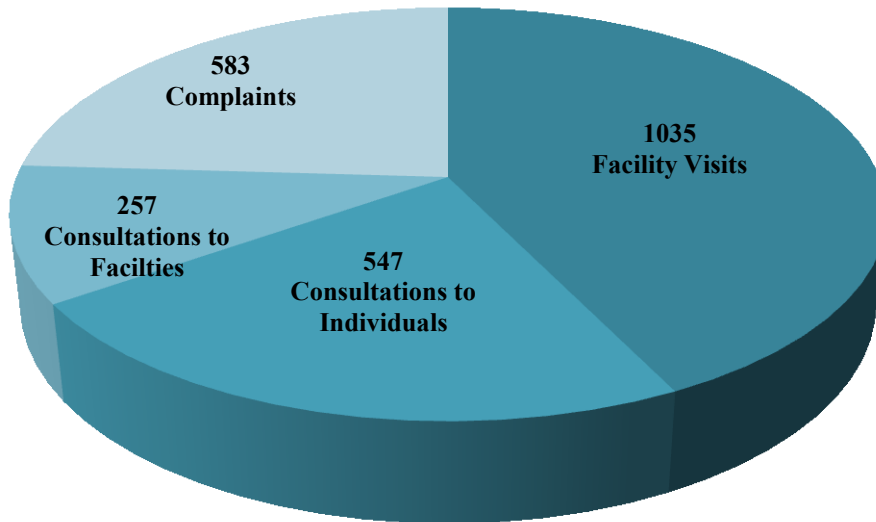
## Our Role

An ombudsman's primary responsibility is to investigate and resolve complaints. 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.

*“I wish the aides would help me wash up before they bring me breakfast. I’ve always washed up first thing.”*

## **Overview of Activities in 2014**



## **Positive Outcomes Achieved in 2014**

➤ **Responded to complaints promptly**

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

➤ **Achieved positive results for clients**

86% 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**

Over 98% of all facilities received a visit from an ombudsman at least once a quarter.

*“I wish I could go back home. I know they don’t think it’s safe, but I’ve lived there for 40 years. I’ll take my chances.”*

## **Our Structure**

Federal and state law 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 13 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.)

## **Our Volunteers**

**Volunteers contributed 1,000 hours in 2014.**

We rely 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 that includes 20 hours of classroom training. After the classroom training, they shadow their supervising regional ombudsmen for 30 hours of facility based training.

***Thank you  
Volunteers!***

*Ann Crider  
Hope Grifo  
Ann Doucett  
Phil Gray  
Sally Lindberg  
Winifred  
McDowell  
Gloria Mindell  
Teresa Patch  
Carol Schoneman  
Carol Smith  
Russ Tonkin  
Steve Williams  
Audrey Winograd*

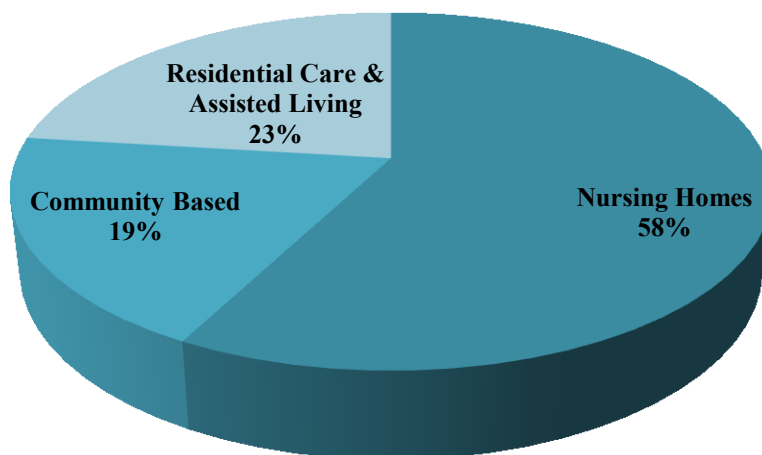
*“I wish they wouldn’t make me move to that room on the other wing. I just put up all my Christmas decorations.”*

## **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.

The complaint statistics in this report give an overview of the issues that were important to Vermonters receiving long term care services in 2014.

### **Distribution of complaints in all settings**



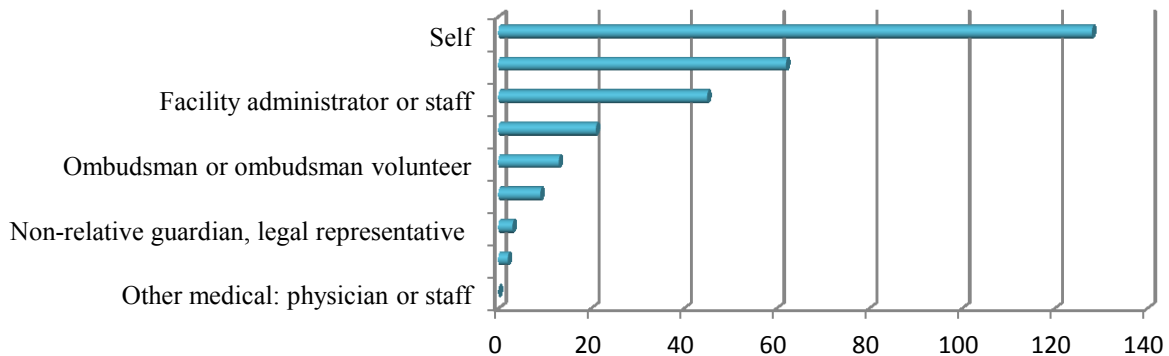
*“I wish they could find another nursing home for my father. He’s been in the ER waiting for a bed for over three months.”*

## **Who Makes Complaints?**

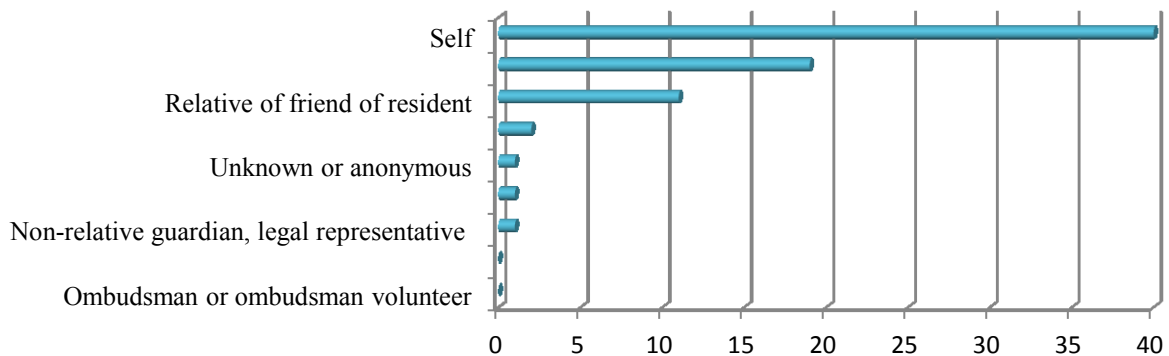
Most complaints are made by the individuals receiving services or their friends or relatives. However, many providers contact us when faced with a challenging person or situation. They recognize that people receiving services need an independent advocate to make sure their concerns are heard and addressed.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

In 2014 we responded to 524 complaints, 440 facility based complaints and 84 complaints concerning individuals in community settings.

### **Who Makes Facility Based Complaints?**



### **Who Makes Community Based Complaints?**



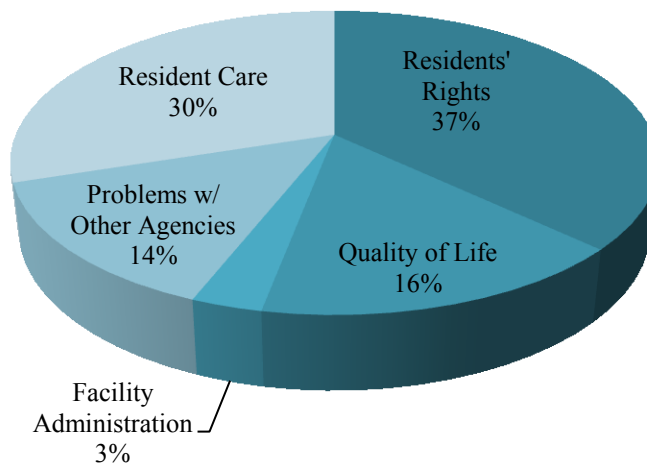
*“I wish I could go to the fair with friends for just one night. Why does the home health aide have to put me to bed at 6:00?”*

## **Overview of Facility Based Complaints**

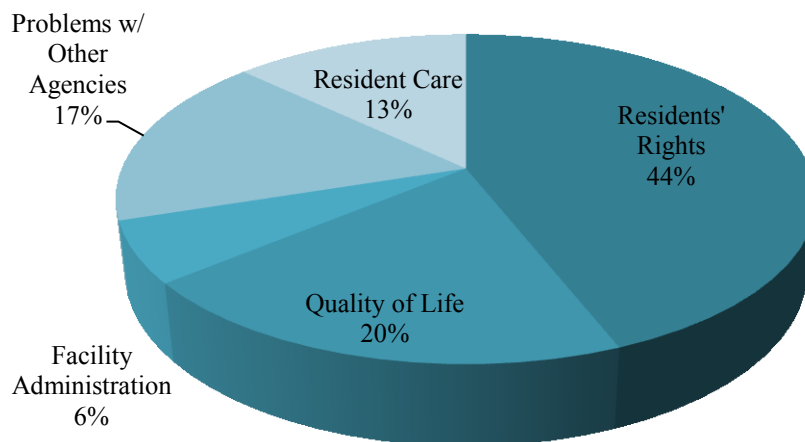
Not all complaints are against facilities or providers. Someone may contact us about a problem with a state or federal agency, family member or some other medical provider.

We are required to collect, categorize, and record specific information about each complaint. (See Appendix 1 for specific complaint details.) Residents’ rights, care and quality of life consistently make up the majority of the complaints received.

### **Nursing Home Based Complaints**



### **Residential Care Home Complaints**





*“I wish the worker would process my husband’s Medicaid application. We’ve been waiting over four months. He wants to stay at home, but we can’t afford to hire help. He needs Medicaid.”*

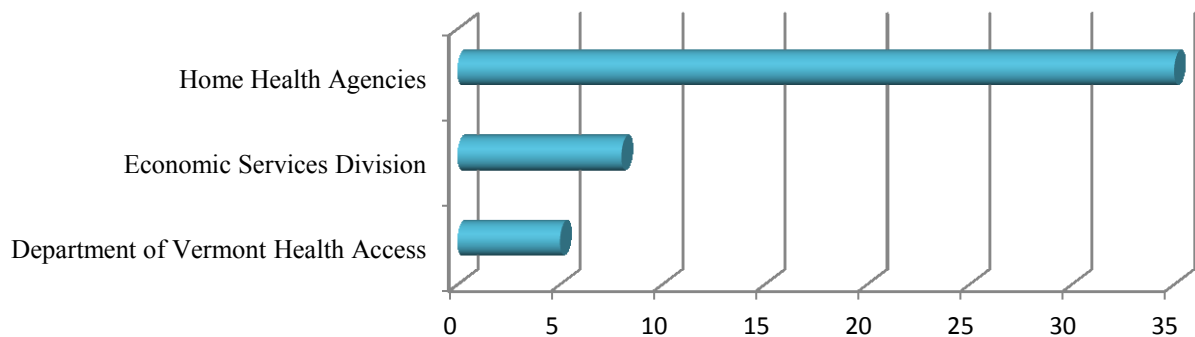
## **Overview of Community Based Complaints in 2014**

We responded to 80 complaints about home and community based services in 2014. This represents 16% of all the cases closed in 2014.

Over 40% of the community based complaints were complaints against the Home health agencies. As in prior years, we received complaints about the agencies’ inability to provide the personal care and homemaker services required in the service plan or its failure to adequately train new staff. We also received complaints that aides and homemakers did not call before cancelling visits.

Home health agencies provide a significant portion of the personal care, homemaker and case management services that people receive through Choices for Care. It is reasonable that a significant percentage of complaints we receive would be against those agencies.

### **Agencies or Organizations with five or more complaints**



*“I wish sometimes I could take a bath instead of a shower. They told me it just takes too much time.”*

## **Complaints We Investigated and Resolved in 2014**

*A Client complained that she was left in her wheelchair overnight (22 hours) because the home health agency could not fill a “put to bed” shift. The ombudsman investigated and learned that the shift was not covered because of lack of communication within the agency.*

\*

*A client complained that as a result of change in management at the nursing home all residents were required to use Hoyer lift to transfer in and out of bed. Although some aides were comfortable transferring the resident manually, she was forced to use the lift. It was uncomfortable. It made her fearful and anxious and it increased behavior issues.*

\*

*A client complained that the home health agency sent the homemaker at times that did not work for her. She is scheduled to receive three hours of service two times a week. She wanted the homemaker to come early enough in the day so that she could attend a community luncheon in her neighborhood.*

\*

*A Client complained that Medicare would no longer pay to transport her back home after a respite stay in a nursing home. Medicare will pay to transport her to the nursing home, but not back home again even though the doctor said the client is bedridden and cannot tolerate any other kind of transport.*

\*

***“I wish the home had more activities. I’m so lonely. Having nothing to do only makes it worse.”***

*A client complained that the home health agency cancelled her passive range of motion therapy because the aide who was doing the therapy no longer worked at the agency.*

\*

*A client complained that her Medicaid transportation provider often cancels her rides without advance notice. She has missed numerous medical appointments, including one for a surgical procedure.*

\*

*A client complained that her worker at economic services did not process her Choices for Care renewal application in a timely manner. As a result she owed the home health agency \$3,500 due to a gap in coverage.*

\*

*A client complained that the home health agency started using catheter bags that leak. The agency refused to use the old bags because they cost 20 cents more per bag.*

\*

*A client complained that while she was in the hospital, the home gave her cats away without her knowledge. When she returned, the home decided she no longer was able to care for a cat so it refused to allow her to get a new cat to replace the ones she’d lost.*

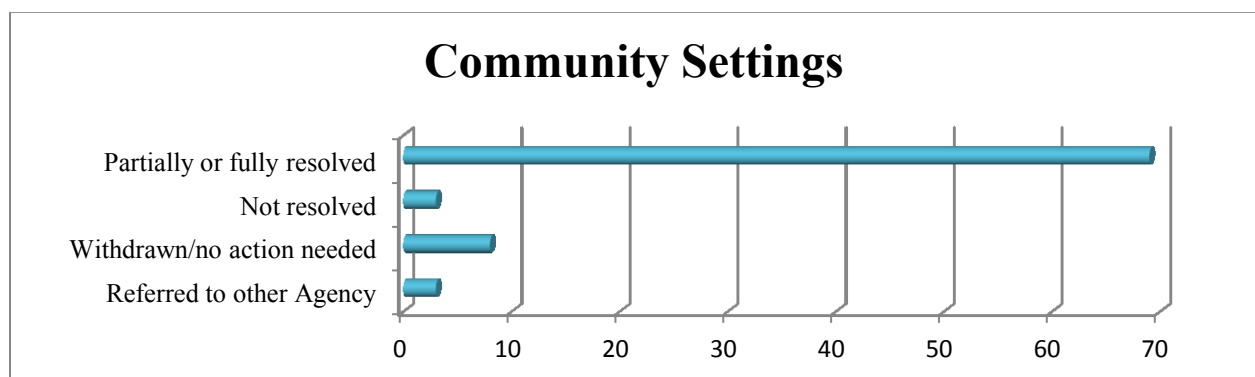
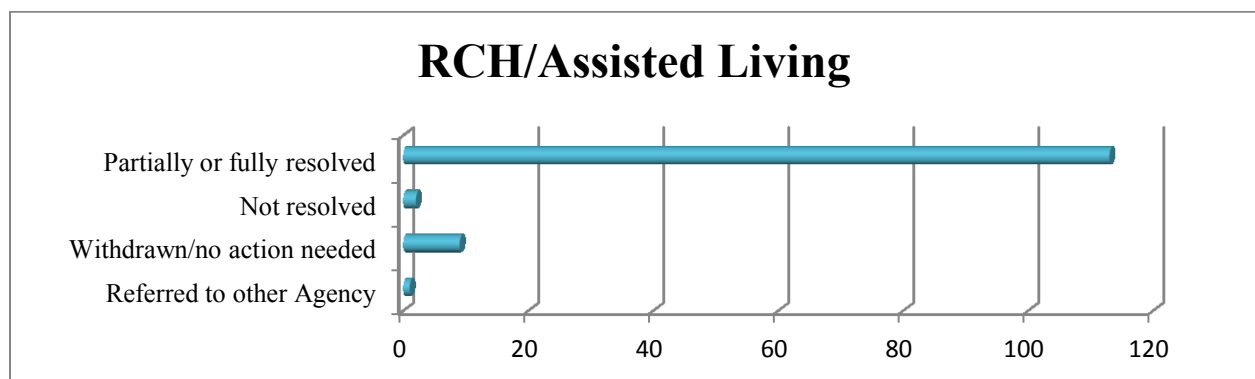
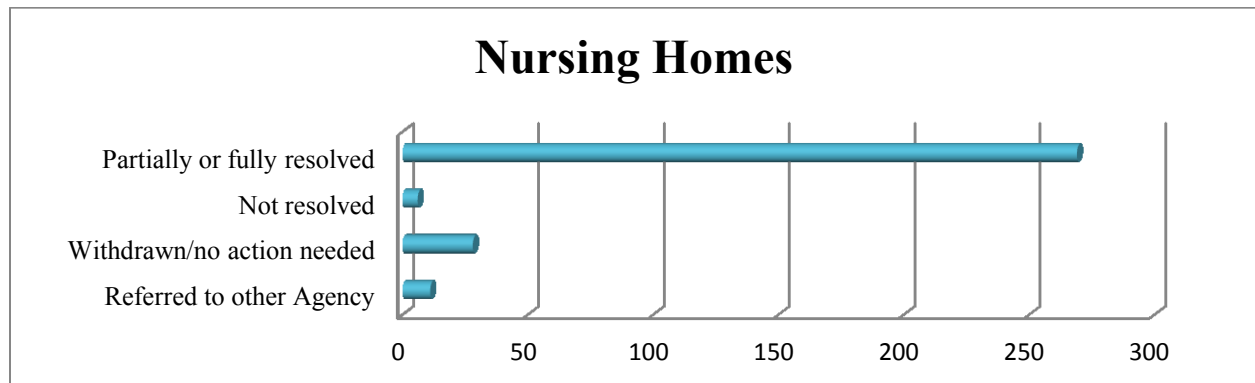
\*

*A client complained that the long term care clinical coordinator (LTCC) changed his case management from the area agency on aging (AAA) to home health based on a conversation with his ex-wife. The LTCC refused to change case management back to the AAA even though the client is capable of making his own decisions.*

*“I wish the aide put my dentures in my drawer like I asked her to. They fell on the floor and broke. The home won’t pay for new ones.”*

## **Disposition of Complaints in All Settings**

Ombudsmen try to resolve complaints to the satisfaction of the person receiving services. In 2014, they achieved a positive outcome for about 86% of the people they served.



*“I wish home health had made sure that the chair they ordered fit in my shower. I can’t shower by myself until the new chair gets here.”*

## **Other Ombudsman Activities**

Ombudsmen provide a regular presence in long term care facilities. In 2014 staff and volunteers made 1,035 facility visits. Over 98% of all facilities in Vermont received at least one general non-complaint related visit during each quarter.

Ombudsmen also give residents, family, facility staff and other long term care service providers information about long term care in Vermont. They answer questions about long term care options. They provide brief advice about specific issues or problems. And, they give residents and family members information to help them advocate on their own for better care and services.

Last year the number of consultations to individuals and providers increased almost 14%, from 703 to 804. Ombudsmen also educate facility staff on the role of the ombudsmen, residents’ rights, including the resident’s right to be free from abuse neglect and exploitation.

### **Activities in 2014**

<b>Activities</b>	<b>Number of Instances in 2013</b>
Consultations to Individuals	547
Consultations to Facility Staff/Providers	257
Work with Resident and Family Councils	32
Training for Facility staff	14
Community Education	10
<b>Total</b>	<b>860</b>

*“I wish my homemaker would go to the store I like. It would be so much easier because I know what they have.”*

## **Funding**

In FY 2014, the Long Term Care Ombudsman Project received \$655,347 from DAIL to provide ombudsmen services in Vermont. This amount includes funds from the following:

\$75,011	OAA Title VII, chapter II
\$223,614	OAA Title IIIB
\$268,378	Medical Assistance Program (Global Commitment)
\$88,344	State General Funds
<b>\$655,347</b>	<b>Total</b>

## **Systemic Advocacy**

Ombudsmen are required 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, general visits, and their 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 consumer’s voice to the table. In 2014, ombudsmen participated in the:

- Elder Justice Coalition
- Dual Eligible Stakeholders Workgroup
- Center on Aging Community Advisory Council

*“I wish the home could get me a different wheelchair. I have sores on my arms from this one.”*

- “Quality Care No Matter Where” Advisory Committee
- LANE – Local Area Network for Excellence in nursing homes
- APS Financial Exploitation Advisory Workgroup
- Adult Family homes Stakeholder Workgroup
- DAIL Moderate Needs Workgroup
- VCHIP Steering Committee
- VCHIP Care Models Workgroup
- VCHIP DLTSS Workgroup
- VCHIP Workforce Subcommittee on Direct Care Workers
- Medicaid Exchange and Advisory Board
- Vulnerable Adult Fatality Review Workgroup

In 2014, the ombudsmen focussed their legislative advocacy on obtaining additional funding for the program. We testified before the Senate and House Appropriations Committees and submitted written testimony that highlighted the need for additional resources. We met with individual lawmakers and provided them with information about the program and answered their questions about long term care in Vermont.

The Vermont Long Term Care Ombudsman Project received an additional \$57,000 in its FY2015 budget. We would like to thank the legislature for its support.

## **Recommendations**

**Recommendation #1: We should expand our efforts to protect vulnerable adults from abuse, neglect and exploitation.**

Vermont’s Adult Protective Services Program (APS) protects vulnerable adults from abuse, neglect and exploitation. We applaud the new leadership in the

*“I wish I didn’t have to take my wife to the emergency room for her wound care. The nurse who they sent this weekend said she didn’t know how to do it.”*

Division of Licensing and Protection and Adult Protective Services for the progress made toward fulfilling APS’ mandate to protect vulnerable adults. 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, and;
- enable stakeholders to share their expertise, educate one another about their roles and foster cooperation.

**Recommendation:**

**We anticipate that legislation will be introduced this year that would create a multi-disciplinary Vulnerable Adult Fatality Review Team authorized to review the death of any person who meets the statutory definition of a vulnerable adult. We recommend that the legislature adopt this legislation.**

**Recommendation #2: We should ensure that people who need long term care services also have access to mental health services.**

We have seen an increasing number of cases where individuals are transferred from a facility to the hospital because the facility is unable to manage behaviors associated with the person’s mental illness or personality disorder. There appears to be a lack of mental health resources available to facilities and a lack of resources available to support individuals in community settings.



*“I wish my caregiver would call me when she cancels. I waited all day in my pajamas for her to come.”*

Hospitals care for these individuals for extended periods of time because, in spite of their continued efforts, they cannot find appropriate long term care placements for them in Vermont.

**Recommendation: DAIL and the Department of Mental Health should convene a group of stakeholders to help them identify the root cause of the problem and provide recommendations on how address this growing problem.**

Respectfully Submitted,

Jackie Majoros, State Long Term Care Ombudsman  
Vermont Legal Aid  
[jmajoros@vtlegalaid.org](mailto:jmajoros@vtlegalaid.org)  
802.383.2227

Appendix 1

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

**2014**

<b>1. RESIDENTS' RIGHTS</b>	Nursing Facilities	Residential Care Homes & Assisted Living
A. Abuse, neglect, exploitation	3	0
B. Access to information	8	1
C. Admission, transfer, discharge	44	18
D. Autonomy, choice, rights, privacy	42	22
E. Financial, property	18	15
<b>TOTAL</b>	<b>115</b>	<b>56</b>

<b>2. RESIDENT CARE</b>	Nursing Facilities	Residential Care Homes & Assisted Living
F. Care	72	13
G. Rehabilitation, maintenance of function	19	2
H. Restraints	2	0
<b>TOTAL</b>	<b>93</b>	<b>16</b>

<b>3. QUALITY OF LIFE</b>	Nursing Facilities	Residential Care Home & Assisted Living
I. Activities and social services	16	13
J. Dietary	19	3
K. Environment	16	9
<b>TOTAL</b>	<b>51</b>	<b>25</b>

<b>4. ADMINISTRATION</b>	Nursing Facilities	Residential Care Homes & Assisted Living
L. Policies, procedures, attitudes, resources	0	1
M. Staffing	10	6
<b>TOTAL</b>	<b>10</b>	<b>7</b>

<b>5. PROBLEMS WITH OTHER AGENCIES</b>	Nursing Facilities	Residential Care Homes & Assisted Living
N. Certification, licensing agency	0	0
State Medicaid agency	9	6
Others	36	16
<b>TOTAL</b>	<b>45</b>	<b>22</b>
<b>TOTAL FOR THE FIVE MAJOR COMPLAINT CATEGORIES</b>	<b>314</b>	<b>126</b>

## 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

October 2014

#### **State Long Term Care Ombudsman:**

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\* Michelle Carter also covers the  
“Quintowns”:

Rochester  
Hancock  
Pittsfield  
Stockbridge  
Granville



**AGENCY OF HUMAN SERVICES**  
**DEPARTMENT OF DISABILITIES, AGING AND INDEPENDENT LIVING**  
 Commissioner's Office  
 103 South Main Street, Weeks 2  
 Waterbury VT 05671-1601  
 Voice (802) 871-3350  
 Fax (802) 871-3281

January 13, 2015

Long-Term Care Ombudsman Program  
 Vermont Legal Aid  
 264 North Winooski Avenue  
 Burlington, Vermont 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 8, 2015, the Board received 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,

A handwritten signature in black ink that reads "Susan Wehry".

Susan Wehry, M.D.  
 DAIL Commissioner

Cc: Janet Cramer, Chair, DAIL Advisory Board  
 Marie Bean, DAIL  
 Robert Farrell, DAIL

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<b>Developmental Disabilities Services</b>	<b>Adult Services</b>	<b>Blind and Visually Impaired</b>
<b>Licensing and Protection</b>		<b>Vocational Rehabilitation</b>