

**VERMONT  
LONG TERM CARE OMBUDSMAN  
PROJECT**  
of  
**Vermont Legal Aid**

**Annual Report**  
**October 1, 2010 - September 30, 2011**

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# VERMONT LONG TERM CARE OMBUDSMAN PROJECT ANNUAL REPORT

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## **Introduction**

Long term care ombudsmen 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).

Ombudsmen's primary responsibility is to investigate and resolve complaints on behalf of these individuals. Even though Vermonters receive 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.

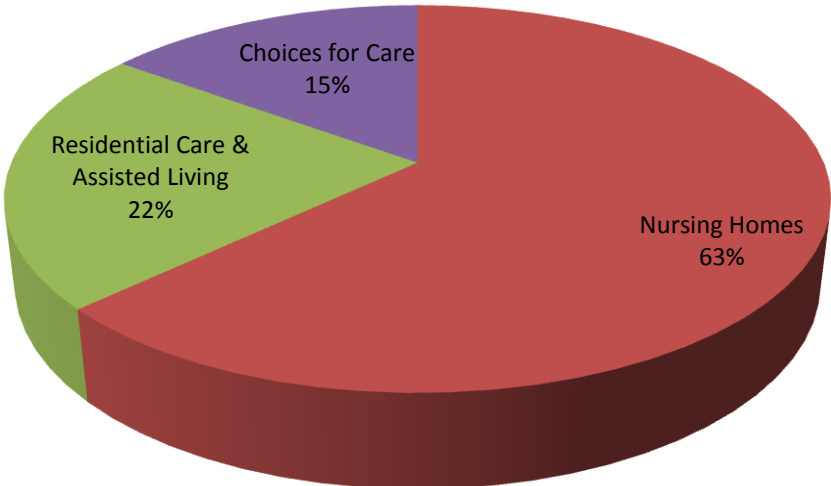
In addition to investigating and resolving complaints, federal and state law also requires ombudsmen to:

- 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.

As a result of this broad mandate, ombudsmen play an important role in improving Vermont's long term care system.

*In FY11 ombudsmen investigated 685 complaints across the long term care continuum.*

**How are Complaints Distributed Among Long Term Care Settings?**



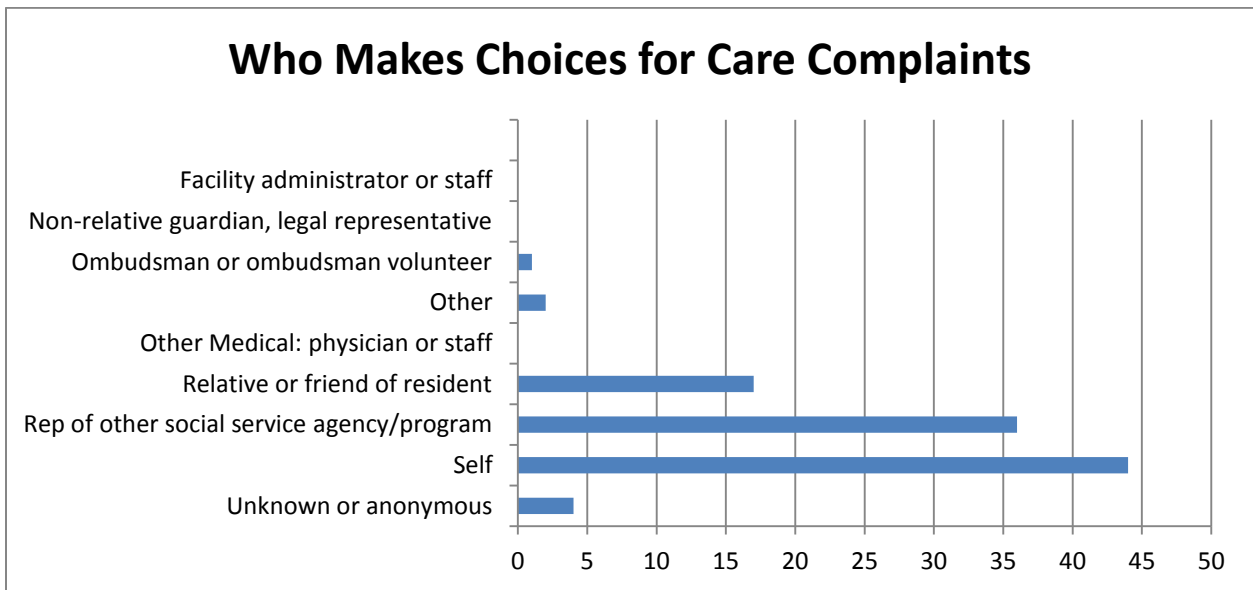
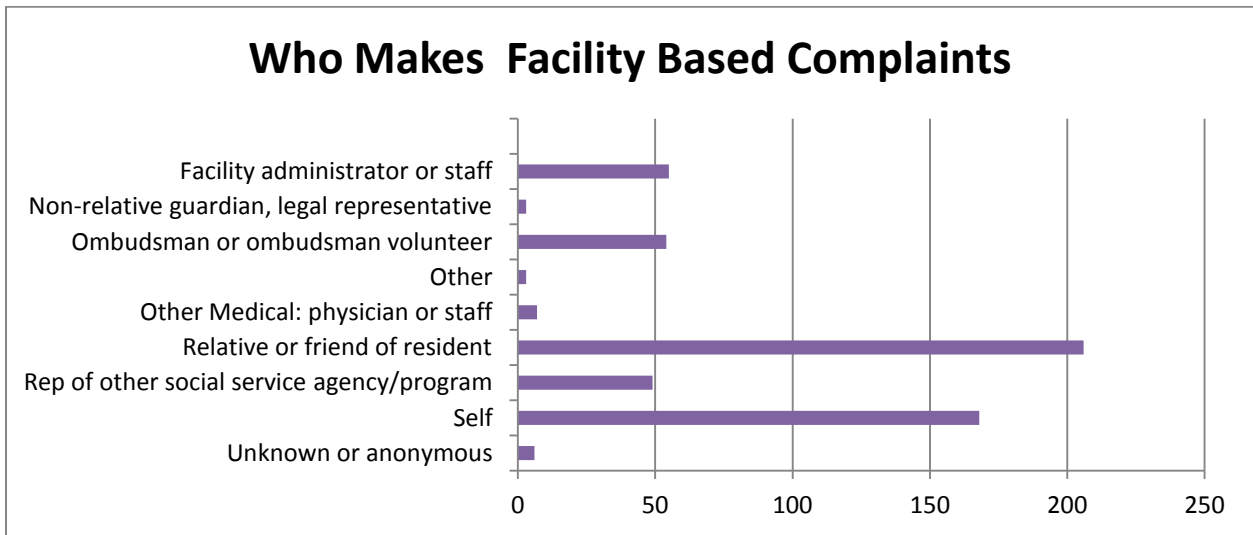
**Complaint Investigation**

Ombudsmen investigate every complaint they receive. They try to resolve problems to the satisfaction of the person receiving services, no matter who initiates the complaint. And, while working on a specific complaint, ombudsmen often facilitate changes in attitudes, practices and policies that improve the quality of life and quality of care for other Vermonters who receive long term care services. Here is an example of how resolving one person’s complaint can benefit other CFC beneficiaries.

*An individual with severe COPD wanted to use his CFC assistive technology benefit to purchase an air conditioner for his apartment. DAIL denied the request explaining that it had changed its policy and CFC beneficiaries must now submit a formal exception request. The ombudsman was concerned that summer would be over before DAIL issued a decision on the request. DAIL agreed to reinstate its former policy. Individuals with documented health conditions would be able use their assistive technology benefit to pay for air conditioners without having to go through the exception process.*

Most complaints are made by individuals receiving services or someone acting on their behalf. However, a significant number of complaints are initiated by long term care service providers. They often contact ombudsmen when confronted with a particularly challenging individual or unique behavior problem. Many providers recognize that individuals receiving services need an independent advocate, to make sure that their concerns are understood and addressed.

***Ombudsmen investigate every complaint they receive regardless of who initiates the complaint***



## Complaint Statistics

The federal Administration on Aging (AoA) 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. The complaint statistics in this report give an overview of the concerns that were important to individuals receiving long term care services last year.

- **Facility Based Complaints**

AoA defines a complaint as any concern that is brought to the attention of the ombudsmen relating to the health, safety, welfare or rights of a resident. It is important to keep in mind that not all facility based complaints are complaints against the facility. Residents may contact us about a problem with a state or federal agency, family member or medical provider.

AoA divides facility based complaints into five major categories. The following charts give the percentage of facility based complaints that we received in each of the five major categories. See Appendix 1 for the specific number of complaints in each category. As in prior years, we received more complaints about residents' rights than any other category. The residents' rights category includes complaints made against a facility about:

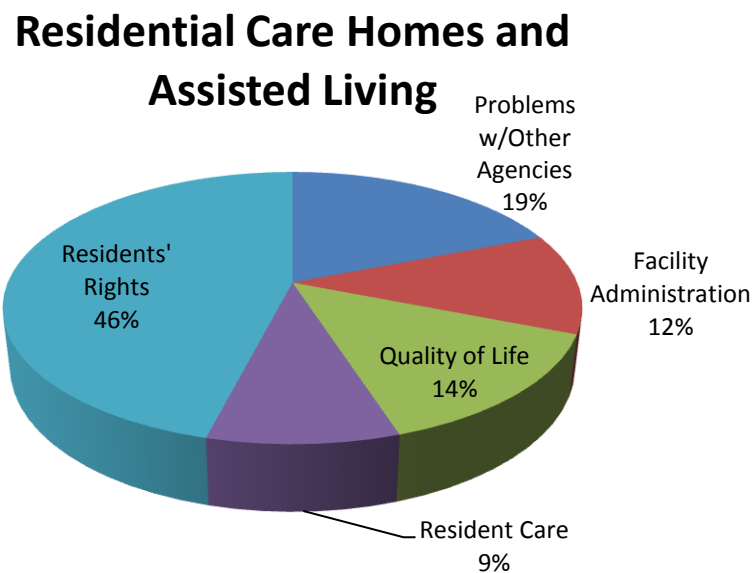
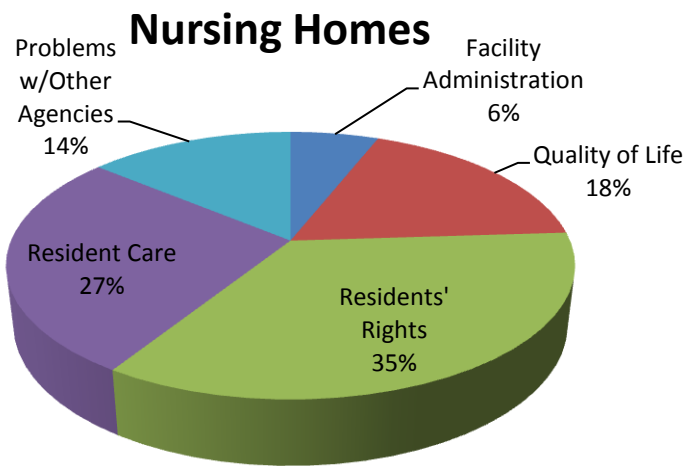
- Abuse, neglect and exploitation;
- Access to information;
- Admission, transfer and discharge;
- Autonomy, privacy, choice, preference; and
- Financial mismanagement and mismanagement of property.

We receive a variety of complaints about other issues. In our quarterly report to DAIL, we identify facilities that received 10 or more complaints for the quarter and we briefly summarize those complaints. Here's an example of some of the complaints that we received about one facility during one quarter last year:

- Resident received medications later in the day than ordered;
- Resident did not receive medication for three days;

- Facility refused to give relative with advance directive a copy of the resident's CT scan;
- Resident on Medicaid was told he could not expect to get attention from staff as he "wasn't a paying customer";
- Resident complained about unanswered call bells;
- Family complained that the facility was not assisting the resident with eating and drinking; and

***We closed 581 facility based complaints in FY11.***



- **Community Based Complaint (CFC)**

Vermont is one of about a dozen states that investigates complaints on behalf of individuals living in the community. Currently, the AoA reporting system puts 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. AoA has acknowledged the need to modify its reporting system and it intends to modify the system so that it can capture more detailed information about homecare complaints.

In the interim, DAIL asks us to include more details about our CFC complaints in our quarterly reports. 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.

***We opened 106 Community Based Complaints in FY11.***

**Who are the Community Based Complaints Against?**

The chart below lists the agencies or organizations with five or more complaints last year.

	1 <sup>st</sup> qtr.	2 <sup>nd</sup> qtr.	3 <sup>rd</sup> qtr.	4 <sup>th</sup> qtr.	Total
Home Health Agencies	11	4	3	12	30
Long Term Care Clinical Coordinators	4	3	4	2	13
Economic Services Division	1	0	2	8	11
Department Vermont Health Access	1	3	1	5	10
PACE	0	2	1	3	6
DAIL	1	1	2	2	5



Example of complaints against DAIL and CFC providers:

*Despite several requests by the family and the case manager, the Long Term Care Clinical Coordinator (LTCCC) would not reassess a high needs client. The ombudsman intervened and explained to the LTCCC that the regulations required her to reassess the client. LTCC completed a reassessment and determined that the client met the highest needs criteria and thus qualified for services.*

\*

*The client complained that her homemaker was not performing her chores. The ombudsman met with the client and her home health case manager. They developed a list of tasks for the homemaker and identified the day the aide would complete each task.*

\*

*PACE client complained that her lift chair was removed from her home without advance notice. PACE maintained that the lift chair was not medically necessary. Ombudsman assisted the client with an appeal. After a telephone hearing, PACE agreed to provide the client with a lift chair.*

\*

*A moderate needs client complained that she did not receive the home health agency (HHA) homemaker services specified in her service contract. The ombudsman worked with the AAA case manager and the HHA to resolve the problem.*

\*

*The client complained that the HHA refused to provide services until she signed a contract removing all guns from her home and forbidding her son to be in the home when they provide services. The son resides in a trailer on the client's land and visits the client frequently. The HHA maintained that the son was a threat to the HHA aides. The client disagreed and wanted to appeal the HHA's decision to require the agreement. The ombudsman referred the client to the Disability Law Project of Vermont Legal Aid for assistance with the appeal. The case is still pending.*

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

Examples of other complaints:

*Client complained because the local post office would no longer deliver mail to the client's street. Because of physical limitations, the client was unable to leave home and had to rely on friends to go to the post office to get the mail. The client complained, but the post office refused to deliver mail. We referred the case to an attorney in the Disability Law Project at Vermont Legal Aid. The attorney asked the post office to make an accommodation based on the Americans with Disability Act. The post office resumed delivering mail to the client's home.*

\*

*Client complained that a medical provider who had supplied a leg brace no longer had a representative in the area available to make home visits. The brace needed adjustment and the provider asked the client to mail the brace to a regional office. The ombudsman worked with the provider so that the representative who fitted the brace originally could assist personally with the adjustment.*

\*

*The case manager contacted the ombudsman because the client's family was not honoring the client's right to make decisions about the client's diet. The ombudsman met with the family and the client to discuss the client's rights to make decisions. The family believed it was their responsibility to determine what was best for the client to eat. After the meeting they understood that they should let the client make some decisions, especially about diet.*

\*

*The client's doctor had been making home visits but decided he did not want to continue that practice. The ombudsman helped the client write a letter to the doctor explaining why the client wanted the doctor to continue the home visits. The doctor agreed to continue the visits.*

## **Complaint Resolution**

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

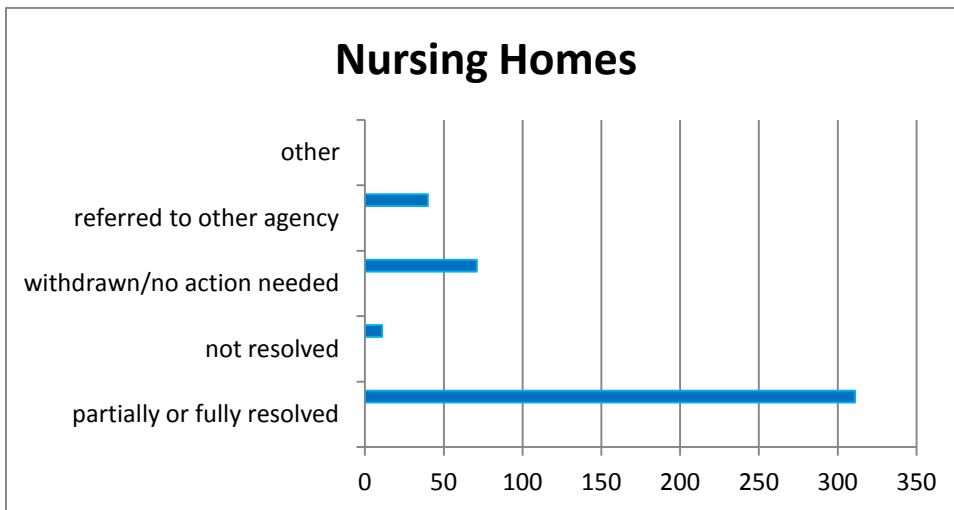
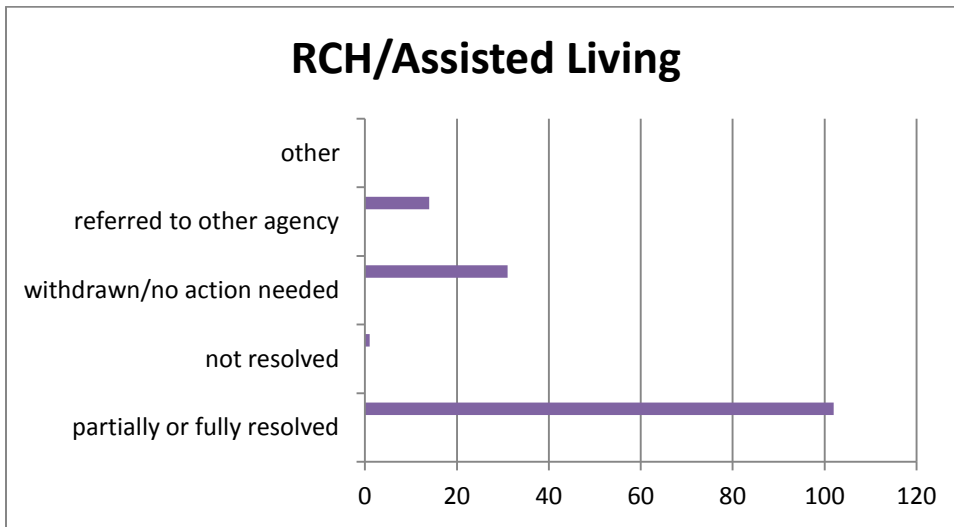
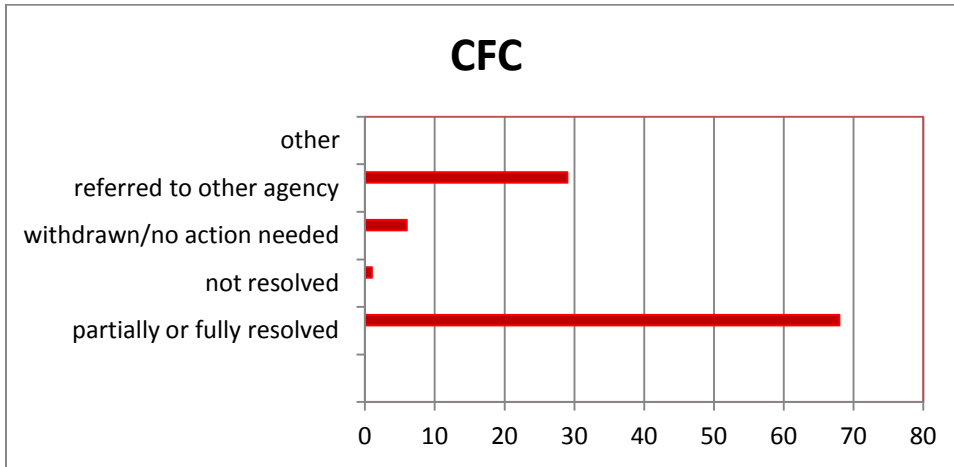
*Over **86%** of all complaints are verified*

In some cases the ombudsman cannot verify that a problem actually exists. For example, Mrs. Jones complains that the aide took her bible. The ombudsman investigated and found that the aide, with client's permission, had put the bible in a drawer to make room for the client's new phone. Even though the ombudsman could not verify the complaint, it still falls within AoA's definition of a complaint and the ombudsman must work with the resident to address her concern. Perhaps the ombudsman could help the resident find a better place to store her bible so that it was more easily within her reach.

Over **86%** of all complaints are verified. They reflect very real concerns that affect the quality of care and quality of individuals receiving long term care services. Ombudsmen try to resolve all complaints to the satisfaction of the person receiving the service.

*Approximately **70%** of all complaints are fully or partially resolved*

# Disposition of Complaints



## Other Activities

In addition to investigating complaints, ombudsmen educate consumers, family members, facility staff and other providers on issues that impact people who receive long term care services.

Ombudsmen answer specific questions people have about their situation and options and they provide general information about Vermont's long term care system. They support resident and family councils. They consult with and deliver training to facility staff on a variety of issues including residents' rights, advance directives and the role of the ombudsman. They also provide a regular presence in facilities through their resident visits and routine facility visits.

*In FY11 ombudsmen staff and volunteers made 1,249 non-complaint related resident visits in addition to all their other activities.*

<b>Activities</b>	<b>Number of Instances in FY11</b>
Consultations to Individuals	262
Consultations to Facility staff/Providers	187
<b>Resident Visits</b>	<b>1,249</b>
Work with Resident and Family Councils	51
Training for Facility Staff	20
Community Education	9
Training and Technical Assistance for VOP Staff and Volunteers	199
Routine Facility Visits  (Number of facilities that received at least one general, non-complaint related visit <b>each quarter</b> .)	Nursing Homes: 42 (100%)  Residential Care Homes/ Assisted Living Residences: 119 (100%)

## Volunteer Program

The Ombudsman Project relies on certified volunteers to maintain a regular presence in Vermont's 161 long term care facilities. They 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.

***Volunteers contributed over 1,600 hours to the Ombudsman Project last year.***

***Volunteers***  
*Ann Crider*  
*Ann Doucette*  
*Phil Gray*  
*Sally Lindberg*  
*Kurt Mehta*  
*Winifred McDowell*  
*Gloria Mindell*  
*Suzi Mudge*  
*Maureen Profera*  
*Marty Quilan*  
*Lynn Reilly*  
*Carol Schoneman*  
*Russ Tonkin*  
*Steve Williams*  
*Audrey Winograd*

## Funding

In FY 2011, the Long Term Care Ombudsman Project received \$649,918 from the DAIL to provide ombudsmen services in Vermont. This amount includes funds from the following:

\$83,947      OAA Title VII, chapter II  
\$223,614      OAA Title IIIB  
\$254,013      Medical Assistance Program (Global Commitment)  
\$ 88,344      State General Funds

## **Systemic Advocacy**

The ombudsman project's primary responsibility is to resolve complaints on behalf of individuals receiving long term care services. It also has a broader mandate to address underlying problems that impact consumers' quality of care and quality of life.

To further this goal, ombudsmen engage in legislative and administrative advocacy. They promote the development of consumer organizations and they participate in numerous workgroups, committees and task forces that address systemic issues effecting Vermonters receiving long term care.

Here are two systemic initiatives that the ombudsman project worked on last year.

1. Creation of a task force on the long term care service needs of Vermont Veterans

The state long term care ombudsman, the veteran's service director of the Vermont office of veterans' affairs and the deputy commissioner of AHS asked the legislature to create a task force to examine the existing long term care services, gaps in those service, and make recommendations about how to improve the care, coordination and financing of long-term care for veterans.

The task force met five times and issued a report with several recommendations, including the development and dissemination of easy to understand and useful information about existing benefits for veterans in need of long term care services. The report also recommended on-going training on veterans' benefits that would be available to all organizations involved with veterans and long term care.

*Over the next year the ombudsman project will work with stakeholders and DAIL to implement these and other recommendations in the report.*

## 2. Participation in a national initiative to improve home care services in Vermont

Vermont is one of five states invited to participate in a national initiative to improve home care services and ensure a strong consumer voice in advocating for quality home care. This initiative, *Consumers for Quality Care, No Matter Where* is sponsored by *Consumer Voice*, a nation-wide organization that has been advocating for long term care residents for over 30 years.

The State Long Term Care Ombudsman worked with *Consumer Voice* to create a state advisory committee made up of consumers and consumer organizations that will guide the initiative over the next three years.

With the help of DAIL, the advisory committee was able to reach out to individuals receiving home care services to see if they would like to participate in a telephone survey about the care they receive. *Consumer Voice* and the advisory committee will prepare a report which describes the results of the survey and makes recommendations based on information obtained from consumers.

*Over the next year, the ombudsman project will work to develop a stronger consumer voice for quality homecare.*

Respectfully Submitted,

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802.383.2227



## Appendix 1

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

<b>1. RESIDENTS' RIGHTS</b>	Nursing Facilities	Residential Care Homes & Assisted Living
A. Abuse, neglect, exploitation	7	7
B. Access to information	16	6
C. Admission, transfer, discharge	40	21
D. Autonomy, choice, rights, privacy	56	23
E. Financial, property	33	11
<b>TOTAL</b>	<b>152</b>	<b>68</b>

<b>2. RESIDENT CARE</b>	Nursing Facilities	Residential Care Homes & Assisted Living
F. Care	88	10
G. Rehabilitation, maintenance of function	27	4
H. Restraints	0	0
<b>TOTAL</b>	<b>115</b>	<b>14</b>

<b>3. QUALITY OF LIFE</b>	Nursing Facilities	Residential Care Home & Assisted Living
I. Activities and social services	13	5
J. Dietary	23	5
K. Environment	43	11
<b>TOTAL</b>	<b>79</b>	<b>21</b>

<b>4. ADMINISTRATION</b>	Nursing Facilities	Residential Care Homes & Assisted Living
L. Policies, procedures, attitudes, resources	5	7
M. Staffing	20	10
<b>TOTAL</b>	<b>25</b>	<b>17</b>

<b>5. PROBLEMS WITH OTHER AGENCIES</b>	Nursing Facilities	Residential Care Homes & Assisted Living
N. Certification, licensing agency	1	0
State Medicaid agency	19	7
Others	42	21
<b>TOTAL</b>	<b>62</b>	<b>28</b>
<b>TOTAL FOR THE FIVE MAJOR COMPLAINT CATEGORIES</b>	<b>433</b>	<b>148</b>

## 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

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