

**VERMONT
LONG-TERM CARE OMBUDSMAN
PROJECT**

Vermont Legal Aid

**Annual Report
October 1, 2017 - September 30, 2018**

**STATE LONG-TERM CARE OMBUDSMAN
Sean Londergan**

LOCAL OMBUDSMEN

**Susan Alexander
Katrina Boemig
Michelle Carter
Alice Harter
Jane Munroe
Wendy Rowe**



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Table of Contents

I. Who Are We?.....	4
II. Complaints and Cases.....	5
III. Where Complaints Came From.....	6
IV. Facility-Based Complaints	6
V. Community-Based Complaints.....	7
VI. Who Made Complaints	8
VII. Case Summaries.....	8
VIII. Non-Complaint-Related Activities.....	11
IX. Project Volunteers	11
X. Funding.....	12
XI. Systemic Advocacy	13
XII. Issues and Recommendations.....	14
Appendix 1. Facility Complaints Closed in FY2018 by Categories.....	17
Appendix 2. History of Ombudsman Program.....	20
Appendix 3. Staff Roster.....	21
DAIL Conflict of Interest Letter.....	22

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 this State Fiscal Year 2018 (SFY18) Legislative Report.

The Vermont Long-Term Care Ombudsman Project

I. 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 (CFC) in the community. LTC ombudsmen are trained to resolve problems. When given permission to do so, LTC ombudsmen can help individuals receiving long-term care services and supports in facilities and CFC 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 CFC

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 CFC 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 DAIL Conflict of Interest letter.)
 - ✓ 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.
- During FY2018, the Vermont Long-Term Care Ombudsman Project (LTC Ombudsmen Project) staff consisted of the State Long-Term Care Ombudsman, 5 full-time local ombudsmen, 1 part-time local ombudsman, and 11 certified volunteer ombudsmen.

II. Complaints and Cases

- ✓ For FY2018, the LTC Ombudsmen Project **opened**:
 - **538** complaint investigations; and
 - **362** cases (300 facility-based; 60 community-based, and 2 in hospitals)
- ✓ For FY2018, the LTC Ombudsmen Project **closed**:
 - **372** cases (316 facility-based; 54 community-based; and 2 cases in hospitals or other settings)
- **87.4%** of closed cases, during FY2018, were fully or partially resolved to the satisfaction of the individuals receiving services.

III. Where Did Complaints Come From?

Vermonters receive long-term care services and supports in a variety of settings. No matter where long-term care services and supports are received, the objectives are the same. Vermonters receiving long-term care services and supports must *be treated with respect and dignity, and receive quality care, which is centered on the needs and preferences of the individual receiving long-term care services.*

- ✓ **In FY2018**, the percentage of closed cases (for the LTC Ombudsmen Project) for each setting broke down as follows:
 - Nursing homes: **58.7%**
 - Residential care homes and assisted living residences: **29.9%**
 - Community-based: **10.6%**

IV. Facility-Based Complaints

Every year, a significant portion of the complaint investigations closed by the LTC Ombudsman Project involves residents' rights, resident care, and quality of life. For FY2018, the percentage of closed complaints involving **residents' rights, resident care, and quality of life** broke down as follows:

- ✓ **Nursing homes**
 - Resident Rights: **46.6%**
 - Care: **27.0%**
 - Quality of Life: **16.6%**
- ✓ **Residential care homes/Assisted living residences**
 - Resident Rights: **66.9%**
 - Care: **12.0%**
 - Quality of Life: **12.0%**
- In total, **53.4%** of complaints closed in FY2018 for residents of long-term care facilities concerned **resident rights**.

V. **Community-Based Complaints**

- ✓ In FY2018, community based complaints constituted **10.6%** of all closed complaints.

- ✓ In FY2018, ombudsmen:
 - Investigated **65** community based complaints; and
 - Opened **60** cases

- ✓ **Home health agencies** provide the majority of the personal care, homemaker and case management services that people receive through CFC.
 - Thirty-three (**50.7%**) of the community-based complaints received in FY2018 were complaints against home health agencies

VI. Who Made Complaints?

The chart below shows who made the complaints across settings for cases that were opened in FY2018.

Who made complaints in FY2018?				
	Nursing Home	Residential Care/ Assisted Living	Community Setting	Hospital/Other
Resident	177	99	46	0
Relative/friend of resident	83	26	8	2
Non-relative guardian, legal representative	0	2	0	0
Caregiver – non-relative/family	4	2	2	0
Ombudsman/ombudsman volunteer	23	11	1	0
Facility administrator/staff or former staff	15	5	0	0
Other medical: physician/staff	0	0	0	0
Representative of other health or social service agency or program	10	1	7	0
Unknown/anonymous	5	4	0	2
Other	2	0	1	0
Total	319	150	65	4

- ✓ Most complaints are made by the individuals receiving services or their friends or relatives.
- ✓ No matter who makes the complaint, the LTC Ombudsman Project tries to resolve the problem to the satisfaction of the person receiving long-term services and supports.

VII. Case Summaries

Below are case summaries for some of the home and community-based service (HCBS) complaints investigated and resolved by LTC ombudsmen during FY2018.

- Two HCBS CFC participants were issued discharge notices by their home health agency (HHA). The participants were being discharged from home health services due to a billing issue between the HHA and the State. An ombudsman informed both the HHA and the State that the discharge notices had to be withdrawn. The individuals in need of LTC services had done nothing wrong. The ombudsman worked with the HHA and the State to try to understand what was causing the billing issue. It was discovered that certain “provider

(Case summaries continued)

numbers” in the system had not been updated. After the system was updated, the internal billing issue was resolved and the discharge notices were withdrawn.

- An HCBS CFC participant requested ombudsman assistance on behalf of other residents residing at a Group Directed Attendant Care Home (Home). The participant was concerned about low staff levels, believing that low staff levels could result in some residents not getting their care. The ombudsman asked that the HHA LTC manager work to resolve the low staffing issues and provide residents with assurances that their needs would be met in a timely manner, per the residents’ preferences.
- An HCBS CFC participant who must use a special pressure-relieving air mattress contacted an ombudsman because he was experiencing skin issues due to ill-fitting mattress covers. The participant tried to resolve the problem with the medical supplier, but was unsuccessful. The ombudsman spoke with a representative from the medical supplier about the participant’s concerns. Afterwards, the medical supplier provided a new air mattress and cover to the participant. The participant used the new mattress and cover for two weeks and reported no problems with either product.
- An HCBS CFC participant contacted an ombudsman because an HHA was not fulfilling all the scheduled hours of service. The HHA responded by providing all the participant’s service hours, along with a PCA that was satisfactory to the participant.
- An HCBS CFC participant reported to an ombudsman that an HHA was unable to provide staff to transfer the participant from her wheelchair back to bed in the late afternoons. The ombudsman spoke with the HHA’s LTC Director, explaining the HHA’s responsibility to: (1) ensure that services and staff are available to meet the needs of those who have been accepted for services within the HHA’s designated geographic area; and (2) provide (or arrange for) all designated services to all eligible participants. The HHA responded to the ombudsman by sending (to the participant’s home) staff seven days a week, two times a day.
- An HCBS CFC participant reported to an ombudsman that he had been told by his HHA aide that he should call the agency to request a “fill-in aide” for two weeks, as the aide would not be available. Despite the participant calling the HHA in advance, he received a call from the HHA (on the day before the shift was to start) telling him that the VNA did not have staff for him. The ombudsman talked with staff at the HHA. The ombudsman insisted that staff coverage be provided to the participant for the time in question. The HHA found staff coverage for the participant.
- An HCBS CFC participant reported to an ombudsman that a licensed nursing assistant (LNA) working with him was unsure of skin care treatments and his physical therapist (PT)

(Case summaries continued)

did not adequately train the participant's family members on a restorative range of motion (ROM) program. The ombudsman contacted supervisory staff at the HHA about the participant's concerns. In response, the LNA was removed from the care team and replaced with new LNAs; all LNA shifts for the participant were covered; and the PT returned to re-train the participant's family.

- An HCBS CFC participant told an ombudsman she was not able to get out of bed on weekends because staff was not showing up, and if staff did come, they lacked training. The participant indicated that she had a wound on her buttock, and that her wound healed during the week but then got worse over the weekends due to lack of transfers. The ombudsman met with the case manager and home health staff. Afterwards, the participant reported that staffing and care had improved.
- An HCBS CFC participant reported to an ombudsman that a supplier of durable medical equipment was making repairs on the participant's wheelchair. The participant made multiple calls to the company to get an update on the status of the repairs, but never received a call-back. The ombudsman contacted the supplier and was later able to facilitate a phone call between the participant and the owner of the company. The owner apologized to the participant for the delay in repairs. In addition, the supplier pledged to provide a loaner chair for the participant until the repairs to her chair were completed. The repairs were completed.
- An ombudsman was informed (by an Area Agency on Aging case manager) that an HCBS CFC participant was being refused admission to a nursing home because the facility did not want to provide translation services. The ombudsman learned that the participant was able to communicate with HHA without translators. In addition, an HHA staff member was willing to help with getting the participant admitted to a nursing home by teaching staff from the nursing home how she had been communicating with the participant. The nursing home administrator agreed to look at the participant's application again and afterwards the participant was put on the nursing home's wait list. Later, it was arranged for the participant to meet with a potential roommate. After the meeting, the participant was invited to move to nursing home. The participant is doing well at the nursing home.

VIII. Non-Complaint-Related Activities

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

- ✓ 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 FY2018:

Activities in FY2018	
Activities	Number of Instances
Consultations to Individuals	773
Consultations to Facilities/Agencies	289
Assist with Advance Directives	57
Work with Resident and Family Councils	40
Community Education	10
Non-Complaint-Related Facility Visits	1083
Total	2252

IX. Project Volunteers

The LTC Ombudsman Project relies on volunteers to help us with all of our responsibilities and duties. **Volunteers contributed close to 1,135 hours in FY 2018.** Volunteers enable the project to maintain a regular presence in Vermont's 170 long-term care facilities. Volunteers do the work of ombudsmen - such as responding to individual complaints, attending resident council meetings, and monitoring conditions in long-term care facilities. Before becoming a volunteer with the LTC Ombudsman Project, an individual must complete a comprehensive training program. The training program for project volunteers includes 20 hours of classroom training and independent study. After the classroom training, a prospective volunteer shadows a local ombudsman for 30 hours of facility-based training. If a trainee satisfactorily completes both the classroom and facility-based parts of the training, a local ombudsman may recommend designation and certification.

***Thank you
Volunteers!***

*Laurie Boerma
Jean Cass
Ann Crider
Paula DiCrosta
Jane Dwinell
Lucy Ferrada
Howard Fisher
Don Place
Michelle Rutman
Nancee Schaffner
Mohammed Shaikh*

X. Funding

In FY2018, the LTC Ombudsman Project was level funded again. The project received \$702,501 from DAAIL to provide ombudsmen services in Vermont. Funding breaks down as follows:

\$79,072	OAA Title VII, chapter II
\$223,614	OAA Title IIIB
\$311,471	Medical Assistance Program (Global Commitment)
\$88,344	State General Funds
\$702,501	Total

XI. 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 long-term care services and supports in Vermont. In FY2018, representatives of the Office served on the:

- Nursing Home Oversight Workgroup (Act 125)
- Older Vermonters Act Work Group (Act 172)
- Consumer Voice Leadership Council
- Vermont Vulnerable Adult Fatality Review Team
- Vermont Legal Aid Individual Rights Task Force

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:

- Providing a separate authorization for \$20 million to fund ombudsman services provided to assisted living facility residents;
- Updating the minimum funding provisions for FY2019 to ensure that funding for State Long-Term Care Ombudsman Programs is not cut during state budget crises; and
- Increasing the current Title VII State Long-Term Care Ombudsman Program authorized funding level to \$35 million.

In addition, the LTC Ombudsman Project is participating in planning by NASOP's policy committee to counter efforts initiated by the Centers on Medicare and Medicaid (CMS) to "reduce provider burden" (i.e., roll-back federal regulations for long-term care facilities).

XII. Issues and Recommendations

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

1. Staffing levels at long-term care facilities and for home health agencies

The lack of adequate staffing in long-term care facilities, as well as the insufficient number of appropriately-trained workers available to meet the needs of clients living at home under the CFC program, continues to be the biggest problem facing Vermonters receiving long-term care services and supports.

Recommendations

- ✓ Seek a commitment from both the State and the administrators of long-term care facilities and home health agencies to better align staff compensation and training with the responsibilities and importance of the work being done for those in need of long-term care services and supports.
- ✓ Ensure that the State report publically on their findings from a recent initiative from the CMS on staffing. The 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 facilities to be investigated will be identified through CMS's review of the new Payroll-Based Journal (PBJ) data.
- ✓ Request that the State report on efforts to ensure full compliance of the Affordable Care Act provision requiring staffing information for long-term care facilities to be collected through PBJ data.

2. Individuals who need long-term care often have limited access to mental health services

The LTC Ombudsman Project continues to be concerned that individuals receiving long-term care services and supports do not get the mental health services that they need. The revised federal regulations for long-term care facilities recognized this problem. (*See 42 CFR § 483.40 - stating that nursing homes have a responsibility to provide necessary behavioral health care and services to residents.*)

Recommendations

- ✓ Convene a state commission to develop recommendations to address the fact that individuals receiving long-term care services and supports do not get the mental health services that they need.
- ✓ Ensure that the State reports on the degree of compliance, by Vermont nursing homes, with 42 CFR § 483.40.
- ✓ Support laws and regulations, like 42 CFR § 483.40, that address access to mental health services for all residents in need of such services who are residing in a long-term care facility in Vermont.

3. The lack of federal regulations for residential care homes and assisted living residences, coupled with weak state regulations for residential care homes and assisted living residences

The lack of accountability of residential care homes and assisted living residences to residents has become alarming. Efforts must be initiated to ensure that residents of these facilities are treated with dignity and respect.

Recommendations

- ✓ Call for a state-wide effort to educate Vermonters about the role of residential care homes and assisted living residences in Vermont's system of long-term care services and supports.
- ✓ Initiate a discussion on how to ensure that there is greater accountability to residents by Vermont's residential care homes and assisted living residences.
- ✓ Examine ways to achieve greater regulatory oversight of residential care homes and assisted living residences by the state agencies charged with the responsibility of oversight of the facilities.

4. Continued industry pushback against current federal regulations governing long-term care facilities

The current federal regulations for long-term care facilities were the culmination of years of work. CMS began consulting with stakeholders in 2012. There were multiple opportunities for groups

representing a range of interests to express their perspective and concerns. When released, the regulations received nearly 10,000 comments. CMS considered each comment. Despite the rigorous review, there remain concerted efforts to undo, weaken, and delay implementation of federal nursing home regulations.

In the view of the LTC Ombudsman Project, neither the long-term care industry nor CMS has provided a valid justification for proposing changes that weaken the current federal regulations (which were issued in October of 2016). The same is true for efforts which have resulted in delaying implementation of certain provisions of the same regulations.

Efforts aimed at weakening the regulations, either through proposed revisions or delaying implementation, are not in the best interests of residents of long-term care facilities. Such efforts must be resisted.

Recommendations

- ✓ Support the passage of state laws and regulations that strengthen, or at a minimum, maintain the current federal regulations for long-term care facilities (especially if CMS continues to place provider interests before resident interests).
- ✓ Resist any efforts by the long-term care industry or CMS to weaken (or further delay implementation) the federal nursing home requirements of participation.
- ✓ Be mindful that CMS's focus must be on the care of residents, not on reducing provider burden.

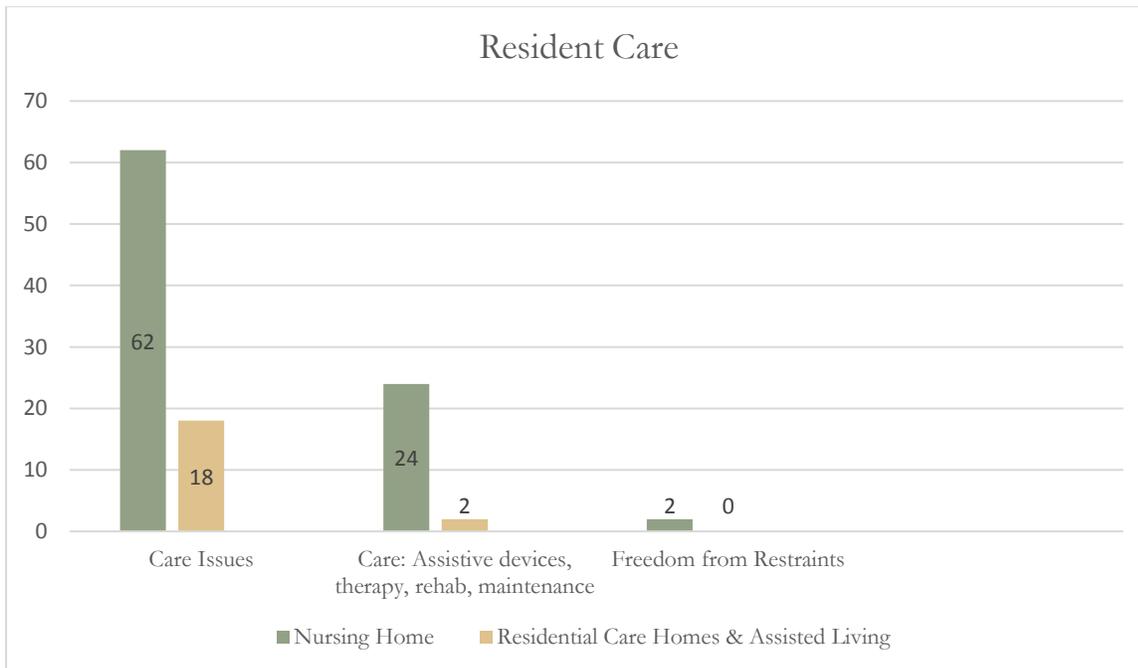
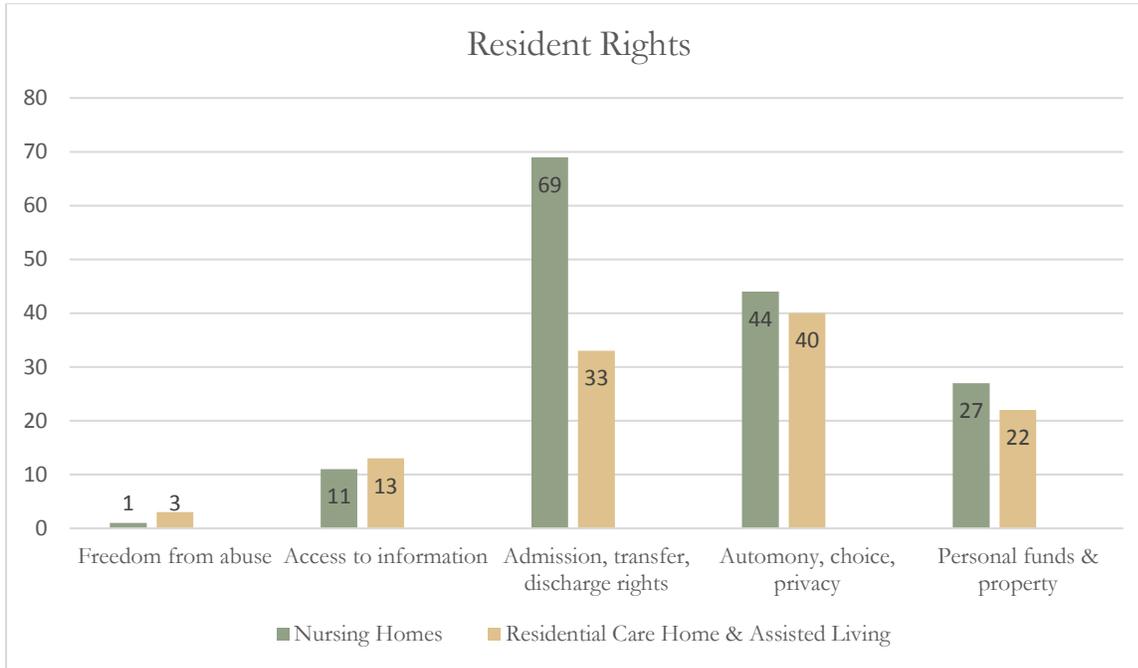
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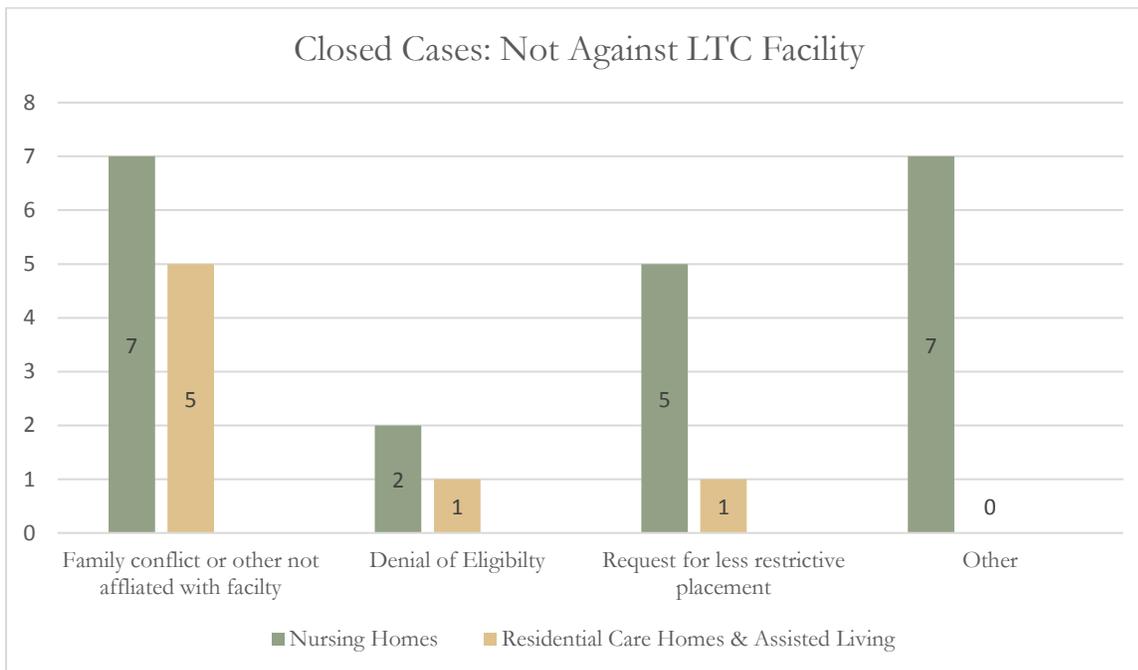
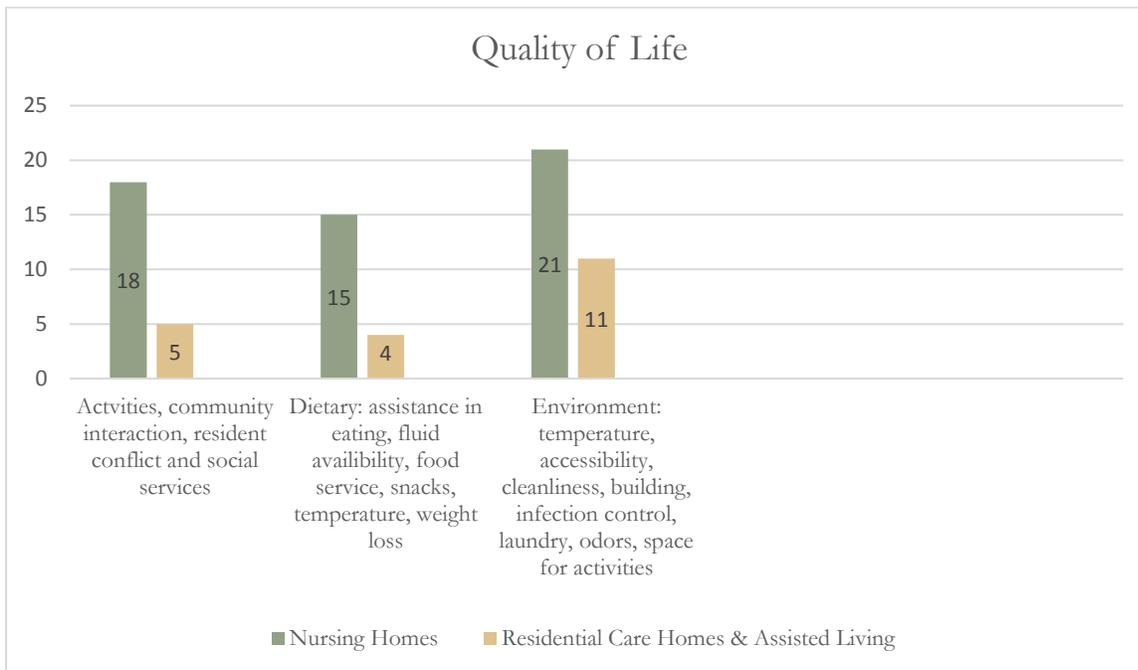


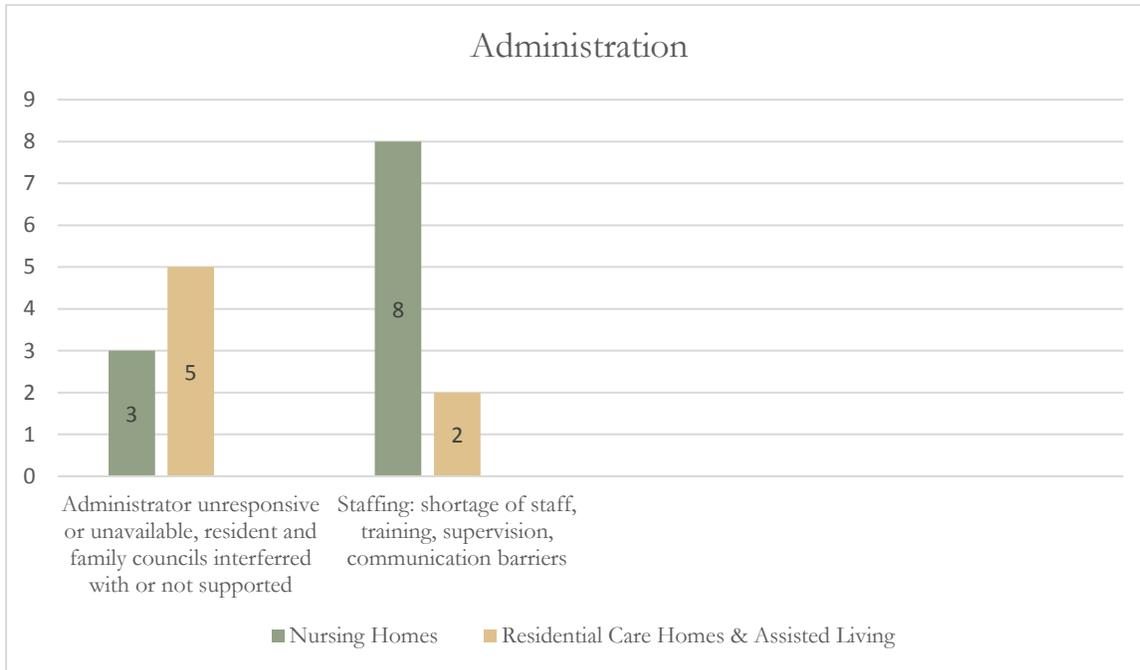
Sean Londergan, State Long-Term Care Ombudsman
Vermont Long-Term Care Ombudsman Project
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Appendix 1

Facility Complaints Closed in FY2018 by Categories







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 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 LTC Ombudsman Project at VLA protects the rights of Vermont's long-term care residents and CFC participants. The Project also fulfills the mandates of the OAA and OBRA '87. 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 Vermont LTC Ombudsman Project. Act No. 56 requires ombudsmen to service individuals receiving home-based long-term care through the home- and community-based Medicaid waiver, CFC.

Appendix 3

VERMONT LONG-TERM CARE OMBUDSMAN PROJECT

Vermont Legal Aid

January 2019

State Long-Term Care Ombudsman:

Sean Londergan

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Local Ombudsmen:

<p>Susan Alexander (Franklin, Grand Isle Counties)</p> <p>264 N. Winooski Avenue Burlington, VT 05402 Phone: 802.383.2242 Fax: 802.863.7152 salexander@vtlegalaid.org Toll free: 1.800.889.2047</p>	<p>Katrina Boemig (Windham, Windsor Counties)</p> <p>56 Main Street, Suite 301 Springfield, VT 05156 Phone: 802.495.0488 Fax: 802.885.5754 kboemig@vtlegalaid.org Toll free: 1.800.889.2047</p>	<p>Michelle R. Carter (Washington, Orange, Addison Counties)</p> <p>56 College St. Montpelier, VT 05601 Phone: 802.839.1327 Fax: 802.223.7281 mcarter@vtlegalaid.org Toll free: 1.800.889.2047</p> <p>* Also covers: Rochester, Hancock, Pittsfield, Stockbridge & Granville</p>
<p>Alice S. Harter (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 Toll free: 1.800.889.2047</p>	<p>Jane Munroe (Rutland, Bennington Counties)</p> <p>57 North Main Street Rutland, VT 05701 Phone: 802.855.2411 Fax: 802.775.0022 jmunroe@vtlegalaid.org Toll free: 1.800.889.2047</p>	<p>Wendy Rowe (Chittenden County)</p> <p>264 N. Winooski Avenue Burlington, VT 05402 Phone: 802.448.1690 Fax 802.863.7152 wrowe@vtlegalaid.org Toll free: 1.800.889.2047</p>



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

December 20, 2018

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 September 13, 2018, 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', with a long horizontal flourish extending to the right.

Monica Hutt
DAIL Commissioner

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