VERMONT
LONG TERM CARE OMBUDSMAN PROJECT

Vermont Legal Aid

Annual Report
October 1, 2014 - September 30, 2015

STATE LONG TERM CARE OMBUDSMAN
Jackie Majoros

LOCAL OMBUDSMEN
Michelle Carter
Alice Harter
Carol Hutcheon (in training)
Jane Munroe

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The Vermont Long Term Care Ombudsman Project

Who Are We?

Long Term Care Ombudsmen protect the safety, welfare, and rights of more than 11,000 Vermonters who receive long term care services in institutions like nursing homes, residential care homes and assisted living residences and in the community. Ombudsmen help them get individualized, person centered care that reflects their needs and wishes.

An ombudsman's primary duty is to investigate and resolve complaints. Federal and state law also requires ombudsmen to:

- help individuals seek administrative and legal remedies to protect their rights, health, safety and welfare;
- review and comment on laws, 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 impact individuals who receive long term care services.

➢ We Achieve Positive Outcomes.

- **Responded to complaints promptly**

Ombudsmen responded to over 98% of the complaints they received within two business days of receiving the complaint.

- **Achieved positive results for clients**

87% 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**

Every facility received a visit from an ombudsman at least once a quarter.

➢ We Are an Independent Voice.

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.

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 the Department of Aging and Independent Living (DAIL) must certify that VOP carries out its duties free of any conflicts of interest. (See Appendix 4.)

The organizational structure of the Vermont Ombudsman Project enhances its ability to operate free of any conflicts of interest. The project is housed within Vermont Legal Aid (VLA). All ombudsmen are employees of VLA. The Staff consists of the State Long Term Care Ombudsman, 4.6FTE local Ombudsmen, a .2FTE Volunteer Coordinator and 14 Certified Volunteers.

➢ We Protect the Rights of Residents.

The Federal Nursing Home Reform Act and the State Residential Care Home (RCH) and Assisted Living Residence (ALR) Regulations recognize that residents are entitled to quality care and a quality of life that reflects their individual needs and preferences. These laws give residents specific rights to ensure that they will be treated with dignity and respect and that they will enjoy the same rights as someone living in the community.

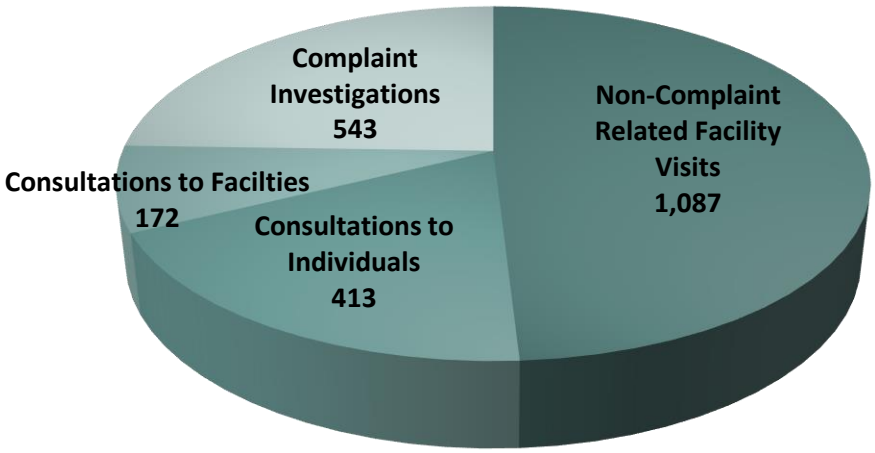
Every year a significant portion of our compliant investigations involve residents' rights. In 2015, about 40% of our facility based complaints involved residents who wanted to exercise rights guaranteed to them under the Nursing home Reform Act or state RCH or ALR regulations.

Though out this report, we will highlight specific rights guaranteed to NH, RCH and ALR residents.

You have the right to receive the care you need free of mistreatment or abuse.

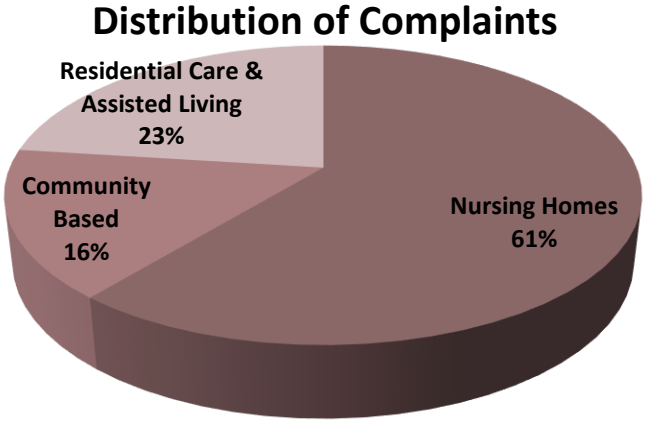
You would like a bath once a week because it helps relieve the pain in your back. The aides must help you with your weekly bath without complaining about how long it takes or without handling you roughly because they are in a hurry to help the next resident.

Overview of all our Activities



Distribution of Complaints in all Settings

Vermonters receive long term care services in a variety of settings, including nursing homes, residential care home, assisted living residences and in the community. However, no matter where they receive their care, they share the same goals. 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**.**



<u>You have the right to choose your own physician</u>.

You just moved to the home and they want you to switch your care to the home's medical director because they have a good relationship with her. You can keep your own doctor even though it might create more work for the home.

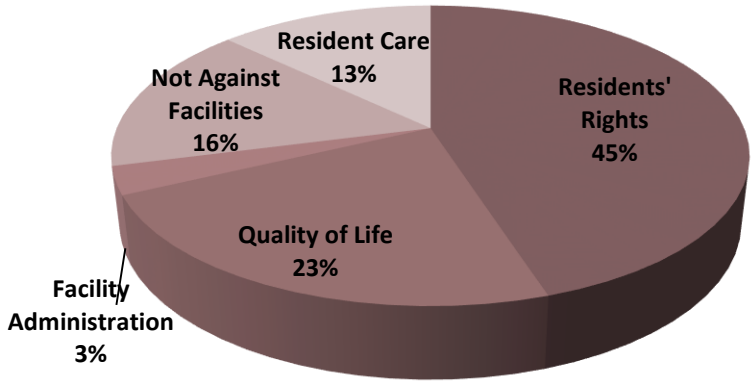
Vermont Legal Aid
Working for Justice

Facility Based Complaints

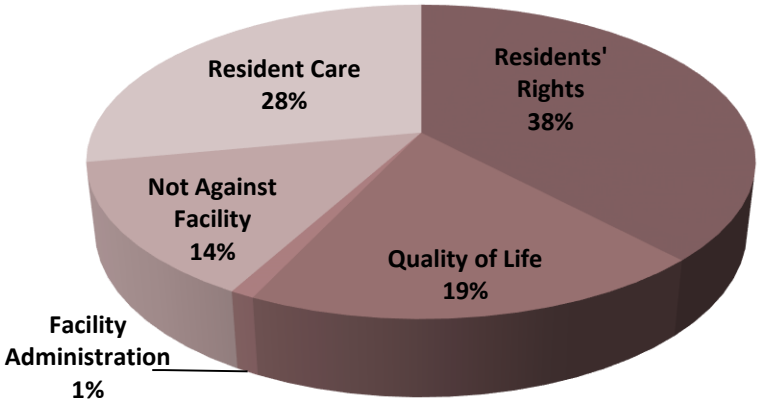
We are required to collect, categorize, and record specific information about each complaint we receive. (See Appendix 1 for specific complaint details.) Each year, residents' rights, care and quality of life make up the majority of the complaints received.

Not all complaints are against facilities. In 2015, about 14% of the facility based complaints investigated involved a state, federal or private agency, family member or medical provider outside a facility.

Residential Care Home Complaints



Nursing Home Based Complaints



<u>You have the right to visit or communicate with any one you choose</u>.

You want to visit with your nephew who was just released from jail. Your family and the home think it is a bad idea. The home must allow your nephew to visit and it must provide a place for you to meet so that you can talk to him privately.

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Who Makes Complaints?

Most complaints are made by the individuals receiving services or their friends or relatives. However, many providers contact us because 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.

We open a case for each complaint we investigate. In 2015 we opened 382 cases, 307 facility based cases and 75 cases concerning individuals in community settings.

Who Makes Complaints?			
	Nursing Home	**Residential Care/Assisted Living**	**Community Setting**
Resident	112	50	43
Relative/friend of resident	42	21	13
Non-relative guardian, legal representative	1	3	0
Ombudsman/ombudsman volunteer	17	8	0
Facility administrator/staff or former staff	18	5	1
Other medical: physician/staff	0	0	1
Representative of other health or social service agency or program	10	5	16
Unknown/anonymous	6	6	0
Other: Bankers, Clergy, Law Enforcement, Public Officials, etc.	2	1	1
Total	**208**	**99**	**75**

You have the right to refuse medical treatment.

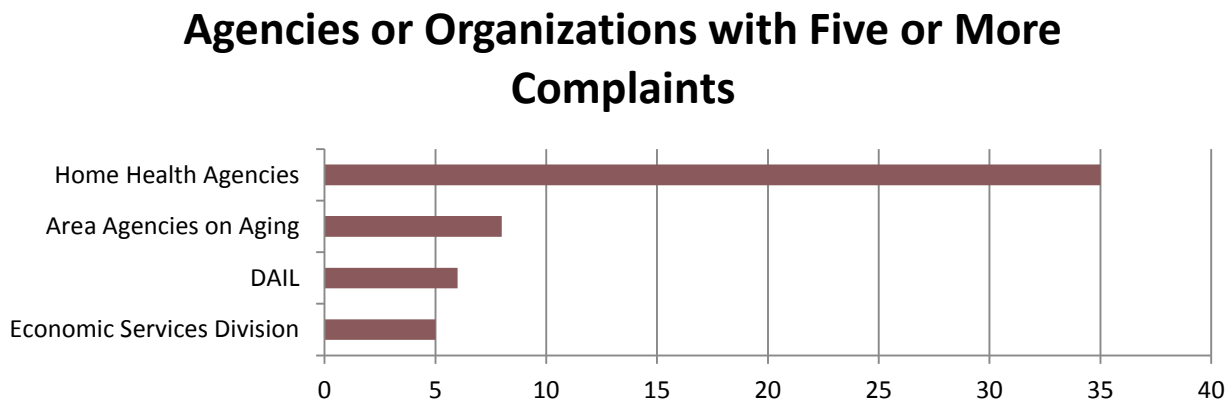
The home told you that you cannot have the chips your 10 year old grandson brought you because you are on a sodium restricted diet. Your grandson rarely visits and you don't want to make him feel bad by refusing his gift. You can refuse to follow your special diet if you can understand and weigh the consequences.

Community Based Complaints in 2015

We responded to 83 community based complaints. This is approximately 16% of all the complaints closed in 2015 and is almost the same number and percentage as 2014.

Over 42% of the community based complaints were complaints against the home health agencies. 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.

As in prior years, we received complaints about the agencies' inability to provide the personal care and homemaker services required in the service plan. We also received complaints that aides and homemakers did not call before cancelling visits.



You have the right to privacy in treatment and care.

The home is providing foot care for all residents in the activities room. You are embarrassed to get this care in such a public setting. The home must provide the care in a private setting.

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Complaints We Investigated and Resolved in 2015

A 52 year old nursing home resident with a spinal cord injury complained that he needed assistance with drinking and repositioning, but no one at the nursing home helped him consistently. He wanted to leave the nursing home, but he had developed a stage four pressure sore. He agreed that he should not leave until the pressure sore was resolved. The ombudsman intervened. Aides helped him drink and repositioned him every two hours. Eventually, he was able to move to his own apartment.

The client complained that her homemaker should come twice a week, but some weeks she does not come at all. The ombudsman reviewed the HHA records for the past three months and confirmed that the client had not been receiving the services in her plan. She also saw that the HHA recorded that the client had cancelled the visit if she did not answer her phone when the aide called right before the visit. The HHA agreed to change this practice and the HHA and the client agreed to new schedule of one longer visit each week instead of two.

Client living at home changed medical providers. His new provider is located in the adjoining county, but closer to his home. The Medicaid transportation agency said it would not pay to transport him to the new provider since she is not in the county where he resides. The ombudsman worked with the case manager and DVHA. DVHA agreed to pay to transport him to the new provider.

An RCH resident complained that he wanted to change the time when the aides woke him in the morning and brought him breakfast. He had raised his concern with the facility, but nothing changed. The ombudsman and resident met with the facility staff. They agreed to change the resident's morning schedule.

Client living at home complained that the HHA failed to honor her request to stay up past 8:00pm and that it failed to notify her about changes in her caregiver's schedule. The client wanted to file a complaint with Survey and Certification (S&C). The ombudsman helped her file the complaint. S&C did not find any regulatory violations, however the HHA honored some of the client's staffing and scheduling requests and she decided not to appeal S&C's decision.

A nursing home resident wanted to follow a Halal diet (food that is permissible according to Islamic law). She complained that her daughter had to provide all of her meals. The ombudsman, the resident and daughter met with the staff and gave them some recipes and identified places where the home could purchase Halal meat, spices, etc. The home is now preparing Halal meals for the resident.

Client living at home needed a new hospital bed because her old one was in disrepair. The DME provider told her that DVHA had denied the bed. The ombudsman investigated and learned that the DME provider must evaluate the broken bed to determine if the repair would cost more than 50% of the new bed before Medicaid would pay for the bed. The DME provider insisted that the doctor complete the evaluation. The ombudsman explained that their contract with DVHA requires them to do it. They completed the evaluation, sent it to DVHA and the client got a new bed.

An RCH resident's friends took her to church every Sunday. An aide told the friends that the resident's family no longer wanted them to do that because of safety concerns. The ombudsman intervened and the friends were trained on how to transport the resident safely. The resident has started going to church again.

The hospital discharge planner contacted us because the home health agency refused to provide services in the client's home after discharge. The ombudsman met with the client and participated in discharge planning meetings. The client agreed to a short term nursing home stay so the HHA could hire and train staff. She returned home with HHA services in place.

*

Non-Complaint Related Activities

The 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 empower individuals by giving them information to help them resolve complaints on their own. They give family members guidance about how to approach facilities with their concerns. They support resident and family councils by helping them work with the home to address facility wide problems.

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 2015	
Activities	**Number of Instances in 2015**
Consultations to Individuals	585
Consultations to Facility Staff/Providers	274
Work with Resident and Family Councils	31
Community Education	17
Total	**907**

You have the right to manage your own money.

The home wants to become your representative payee because you were late paying them last month. Your daughter was on vacation and you usually sit down and go over your bills with her. The home cannot take control of your finances without your permission.

Our Volunteers

Volunteers contributed over 1,500 hours in 2015.

We rely on volunteers to help us with all our activities. They enable us 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. It includes 20 hours of classroom training and independent study. After the classroom training, they shadow their supervising local ombudsman for 30 hours of facility based training.

Thank you Volunteers!

Matt Asinger
Bruce Boedtker
Laurie Boerma
Ann Crider
Ann Doucette
Sally Lindberg
Sharon McBride
George Long
Winifred McDowell
Gloria Mindell
Teresa Patch
Carol Schoneman
Carol Smith
Russ Tonkin
Steve Williams

Funding

In FY 2015, the Long Term Care Ombudsman Project received $702,743 from DAIL to provide ombudsmen services in Vermont. This amount includes funds from the following:

$79,314	OAA Title VII, chapter II
$223,614	OAA Title IIIB
$311,471	Medical Assistance Program (Global Commitment)
$88,344	State General Funds
$702,743	**Total**

Systemic Advocacy

Ombudsmen are 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.

Ombudsmen use the information they gain during their complaint investigations, general visits, and 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 2015, ombudsmen participated in the:

- Elder Justice Workgroup
- Center on Aging Community Advisory Council
- Quality Care No matter where Workgroup
- LANE – Local Area Network for Excellence in nursing homes
- VCHIP Steering Committee
- VCHIP Care Models Workgroup
- VCHIP DLTSS Workgroup
- Medicaid Exchange and Advisory Board
- Vulnerable Adult Fatality Review Team Workgroup
- Oral Health Coalition

In 2015, the Ombudsman Project focused its legislative advocacy on H.46 and S.40, companion bills that would establish an Adult Fatality Review Team in Vermont. We also supported S. 20, a bill that would create a new category of dental health professional in Vermont. Our reason for identifying these bills as priorities, are discussed in our Recommendations.

Recommendations

The first and second issues below were identified in our report last year. Although some progress has been made, we believe there is more work to be done to resolve these concerns and they remain priorities for our project.

1. Issue: We must expand and coordinate 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. 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.

<u>Recommendation #1:</u> Last year bills were introduced in the House and the Senate to create a multi-disciplinary Vulnerable Adult Fatality Review Team. The legislature should pass H.46 and S.40.

2. Issue: People who need long term care often have limited access to mental health services.

We continue to see a 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 dementia. There appears to be a lack of mental health resources available to facilities and to individuals in community settings.

In some cases, 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.

<u>Recommendation #2:</u> DAIL and the Department of Mental Health should convene a group of stakeholders to help identify the root cause of the problem and provide recommendations on how address this growing concern.

3. Issue: Residents of nursing homes have difficulty accessing basic dental services.

A recent study shows that a significant number of Vermont nursing home residents have poor oral health. Between July of 2013 and January 2014, the Division of Health Promotion and Disease Prevention at the Department of Health surveyed 342 residents in 20% of Vermont's nursing homes.

The study found that among all residents surveyed:

- 41.9% needed dental care
- 8.1% needed urgent care (within 48 hours)
- 33.8% needed care (within several weeks)

Among those with residents with teeth, the study found that:

- 48.3% had untreated teeth decay
- 80% had severe gum inflammation
- 70% had substantial oral debris in their mouths
- 57% were in need of gum care.

Federal and state law requires nursing homes to provide routine or emergency dental care or obtain that care from an outside source. A bill was introduced last year to establish and regulate licensed dental practitioners, a new category of dental health professionals. We believe that this bill, S.20, creates a new, flexible, affordable option that will help facilities meet their dental care requirement.

Recommendation #3: The legislature should pass S.20.

Respectfully Submitted,

Jackie Majoros, State Long Term Care Ombudsman
Vermont Legal Aid
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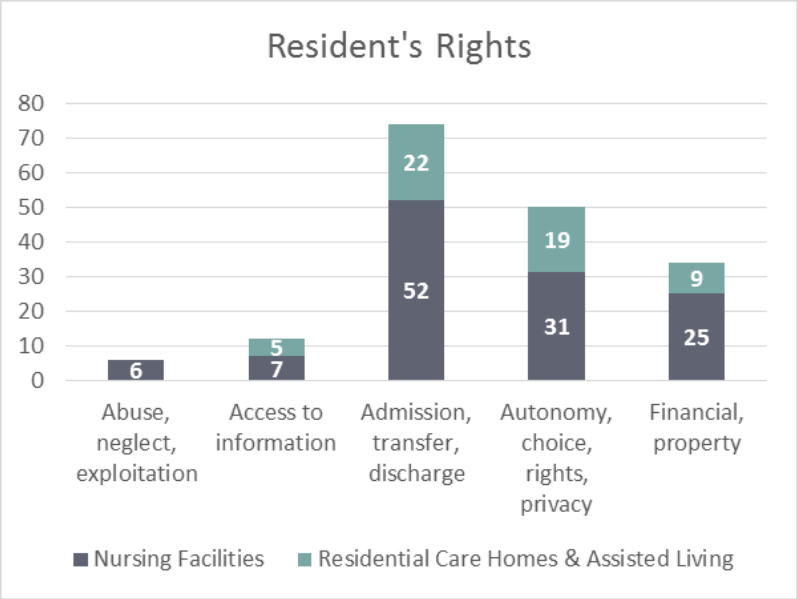
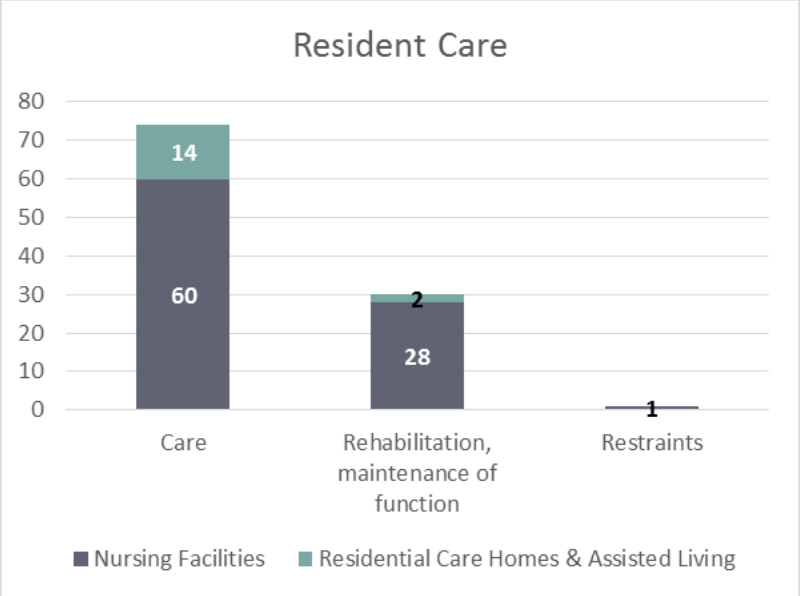
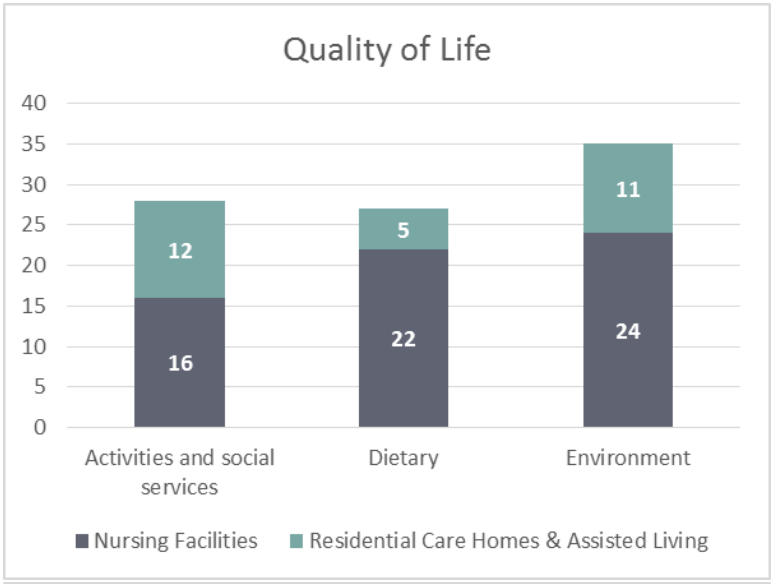
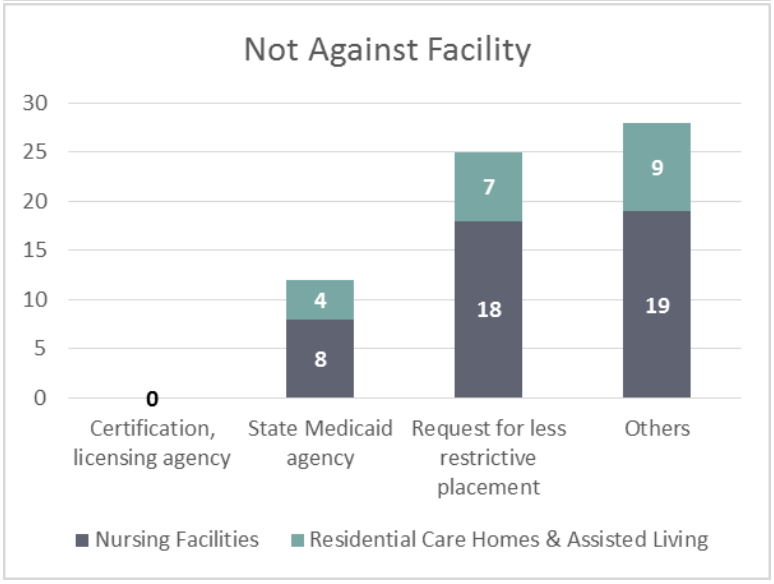
802.383.2227

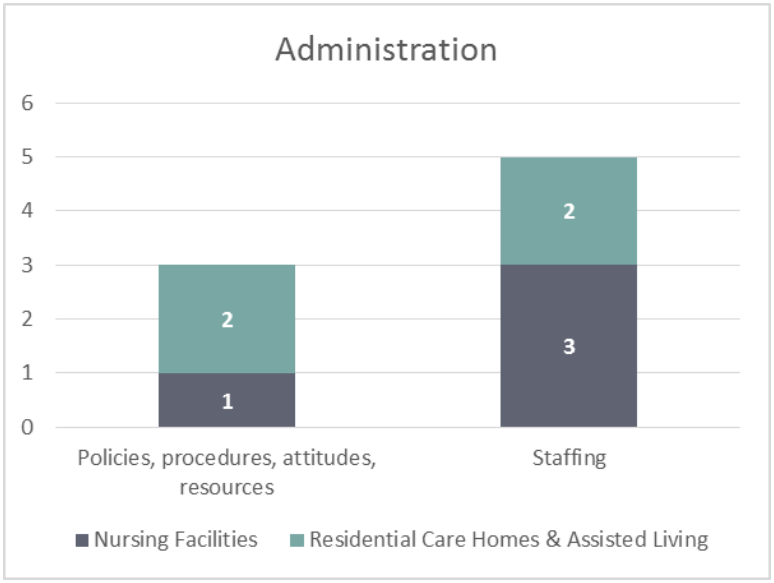
Appendix 1 – *Facility Complaints in Major Complaint Categories*






Quality of Life
40
35
30
25
20
15
10
5
0
12
16
5
22
11
24
Activities and social services
Dietary
Environment
Nursing Facilities
Residential Care Homes & Assisted Living


Not Against Facility
30
25
20
15
10
5
0
0
4
8
7
18
9
19
Certification, licensing agency
State Medicaid agency
Request for less restrictive placement
Others
Nursing Facilities
Residential Care Homes & Assisted Living


Administration
6
5
4
3
2
1
0
2
1
2
3
Policies, procedures, attitudes, resources
Staffing
Nursing Facilities
Residential Care Homes & Assisted Living

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

January 2016

State Long Term Care Ombudsman:

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VERMONT

AGENCY OF HUMAN SERVICES
DEPARTMENT OF DISABILITIES, AGING AND INDEPENDENT LIVING
Commissioner's Office
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Voice (802) 871-3213
Fax (802) 871-3052

December 17, 2015

Jackie Majoros, State Long Term Care Ombudsman
Vermont Long Term Care Ombudsman Program
P.O. Box 1367
Burlington, Vermont 05401

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]umit 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 its Advisory Board as the aforementioned committee. This year, a subcommittee of the committee was convened to take an in-depth look at the issue of conflict of interest in the Ombudsman Program. The subcommittee 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. At the committee's November 12, 2015 meeting, the subcommittee reported its findings to the full committee. As a result, 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,

Monica Caserta Hutt
Commissioner

Cc: Robert Borden, Chair, DAIL Advisory Board
Robert Farrell, DAIL