

VERMONT LONG-TERM CARE OMBUDSMAN PROJECT
Vermont Legal Aid

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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 Vermonters who receive long-term care services in facilities like nursing homes, residential care homes and assisted living residences and in the community. Ombudsmen help these Vermonters get individualized, person centered care that reflects their needs and wishes.

➤ **Our Responsibilities.**

Federal and state law sets forth the responsibilities of the Office and ombudsman. Among the responsibilities are to:

- Identify, investigate and resolve complaints made by, or on behalf, of individuals receiving long-term care in a facility or in the community.
- Provide services to individuals receiving long-term care to assist in protecting the health, safety, welfare and rights of those individuals.
- Represent the interests of individuals before governmental agencies and seek administrative, legal remedies and other remedies to protect the health, safety, welfare and rights of those individuals.
- Provide information to the public regarding problems and concerns of individuals receiving long-term care, including recommendations related to such problems and concerns.
- Analyze, comment, and monitor on development and implementation of laws, regulations or policies pertaining to the health, safety, welfare and rights of individuals receiving long-term care services.

➤ **We Are an Independent Voice.**

No ombudsman 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.

The organizational structure of the VOP 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. During FY2017, the Staff consisted of the State Long-Term Care Ombudsman (Sean Londergan assumed the position full-time on May 1, 2017); 5.4 FTE Local Ombudsmen; a .2 FTE Volunteer Coordinator; and 7 certified volunteer ombudsmen.

➤ **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 also give residents specific rights to ensure that they will be treated with dignity, respect and have the same rights as someone living in the community.

Every year a significant portion of our complaint investigations involve residents' rights. In FY 2017, approximately 39% of complaints received from residents of long-term care facilities concerned residents' rights afforded under federal and state regulations (which includes freedom from abuse, neglect and exploitation; access to information by residents; admission, transfer and discharge; autonomy, choice, preference, privacy; management of personal finances; respect for personal property) involved residents who wanted to exercise rights.

Residents have the right to privacy in treatment and care.

A home is providing foot care for all residents in the activities room. When a resident's preference is **not** to get foot care in such a public setting, the home must provide the care in a private setting.

Types of Complaints We Investigated and Resolved in 2017

- A 44 year-old man with cerebral palsy had been living in a long-term care facility for 10 years. The resident expressed that he wanted more independence and meaningful activity. The local ombudsman supported the resident in every way: helping to connect the resident with the agencies and providers capable of finding him a home in the community; participating in team meetings to make sure that the resident's needs were addressed; assisting in efforts aimed at overcoming the barriers to the resident's move to the community; and making sure the discharge process continued to move forward. Later the resident moved into the community (an adult family home) where he is able join others to participate in various activities.
- A skilled nursing facility resident improved better than expected. It was determined that he no longer required a nursing home level of care. The resident said that he wanted to return home; however, not all of the resident's family members wanted him to return home. The local ombudsman meet with family members to talk about the rights of the resident and of the availability of home health services. The resident moved back home and is doing well.
- A resident of a long-term care facility experienced the loss of a hearing aide. The hearing aide was ruined after being put through the wash. The facility, having decided that the resident was at fault, told the resident that they would not pay for a replacement. The resident's local ombudsman got involved and was able to determine exactly how the resident's hearing aide ended up in the wash. The ombudsman explained in detail what she had found. The facility, having heard from the ombudsman, decided that they were at fault and paid the cost of a replacement hearing aide for the resident.
- Residential care home resident had concerns about the meals being served and that he was losing weight. A local ombudsman met with the resident to discuss his concerns. The local ombudsman learned from the resident that he was not being offered, and was unaware of his right to, alternative menu choice items. The resident was also unaware that he could request meals and snacks at various times throughout the course of a day. The ombudsman and the resident met with facility staff to review meal options. Afterwards, the resident was offered alternative meal choices.

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

In 2005 the Vermont legislature expanded the duties and responsibilities of the Ombudsman project. Act No. 56 requires Ombudsmen to service individuals receiving home based long-term care through the home and community based Medicaid waiver, Choices for Care.