The Vermont Long-Term Care Ombudsman Project

A Project of Vermont Legal Aid

1. **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

2. **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 care homes
   - The community through Choices for Care (CFC)

3. **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

4. **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
   - 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 ombudsman do not work for or participate in the management of any facility

5. Vermont LTC Ombudsman Project Staffing

State Long-Term Care Ombudsman:

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Local Ombudsman:

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❖ **The Vermont LTC Ombudsman Project has 4 trained Volunteer Ombudsmen**

6. Cases and Complaints

- For FY2019, the VT LTC Ombudsmen Project **opened** 618 complaint investigations and 353 cases.

- For FY2019, the VT LTC Ombudsmen Project **closed** 399 cases.
    - 91.75% of closed cases, during FY2019, were **fully or partially resolved** to the satisfaction of the individuals receiving services

Listed below are some of the complaints investigated by the VT LTC Ombudsman Project over the course of the last three years (2017-2019).

- ❖ 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. The participants 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 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.

- ❖ A resident's hearing aid 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. An ombudsman became involved and was able to determine exactly how the resident's hearing aid ended up in the wash. After hearing from the ombudsman, the facility decided that they were at fault and paid the cost of a replacement hearing aid for the resident.

- ❖ A community-based CFC participant complained that her home health agency was not consistently providing home health aides for evening assist to bed shifts. The participant was wheelchair-bound and unable to independently transfer herself to bed. Without assistance from others, the participant is forced to remain in her wheelchair overnight. The local ombudsman educated the home health agency's scheduler and LTC manager of their obligation to meet the needs of the participant by providing shift coverage per the participant's Service Plan. The ombudsman also stressed the importance of timely communication with the participant regarding any problems concerning shift coverage. The home health agency responded by filling the participant's shifts and informing her in a timely manner when they were unable to cover a shift (so she has time enough to secure her backup caregiver).

- ❖ A community-based CFC participant had concerns about the Green Mountain Transit Authority (GMTA) making changes to her morning pick-up time for a regular health appointment. The change was problematic because it meant that her caregiver's schedule

had to be rearranged to accommodate an earlier time. The participant attempted to work through the problem on her own. She was left feeling that her caregiver's schedule could not be changed. The local ombudsman intervened and worked with home health staff and the case manager. As a result, the caregiver's schedule was rearranged so that the participant would receive her morning care and meal earlier. The change to the caregiver's schedule allowed for the participant to be ready for the GMTA transport necessary for her to make her regularly scheduled appointment.

- An HCBS CFC participant contacted an ombudsman because he was not receiving all his weekly LTC services and supports. He was supposed to receive 17.5 hours of LTC services and supports per week; instead he was receiving only 9.5 hours of LTC services and supports per week. The ombudsman assisted the participant in filing a grievance with the home health agency. The ombudsman provided the relevant facts to the home health agency. The ombudsman requested written findings of the home health's inquiry into the participant's grievance – and that the finding be sent to the participant (and the ombudsman copied). Ultimately a split plan was initiated and the participant's 17.5 hours of LTC services and supports per week were provided.

- A residential care home resident had concerns about the meals being served and that he was losing weight. The ombudsman learned from the resident that he was not being offered alternative menu choice items, as was the resident's right. 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. Subsequently, the resident was offered alternative meal choices.

- A HCBS CFC participant required help with his walker when he came down the stairs from his apartment building. An ombudsman was contacted after the transportation provider (which had been assisting the participant) decided that its drivers would no longer bring the walker down the stairs for the participant. The ombudsman contacted the case manager. The case manager was able to obtain a second walker that is now being left at the bottom of the stairs for the participant to use for outings from home.

- During a general visit, a local ombudsman spoke with a resident who complained her eyeglasses were broken and that she needed a new prescription. After speaking with the ombudsman, the resident decided that her concerns should be brought to the facility's social worker. As a result, an eye appointment was made, the facility transported the resident to the exam, and new glasses were prescribed.

- A HCBS CFC participant requested assistance from an ombudsman because he was anticipating that a nurse from a home health agency was planning to decrease his service plan hours and not allow the PCA to apply over the counter tropical lotions to participant's back and ankle. The participant was unable to reach his back and ankle due

to physical ailments. The ombudsman contacted the LTC Director. The LTC Director reviewed the participant's medical records and service plan. She later informed the ombudsman that the nurse: (1) would not be reducing the participant's care hours; and (2) the lotions could be applied by the PCA, so long as participant's skin was in intact.

- An elderly man had been living at a residential care home for many years. The resident had no history of any concerning behavior. The resident was spending time with another resident, who was female. The family of the female resident asked that the residential care home not allow the two to have contact. The facility gave the male resident a 30-day discharge notice. The male resident and family met with a local ombudsman to learn if anything could be done. The male resident appealed his discharge and won, allowing him to remain living at the residential care home.

- A community-based CFC LTC Medicaid client reported that her home health agencies were not always allowing her to have breakfast prior to being bathed and not always assisting her with her compression stockings. The local ombudsman contacted the supervising nurses from both of the home health agencies serving the CFC participant to have them acknowledge the participant's preferences and requests for assistance and to educate staff about person-centered care.

- An individual with significant cognitive impairment had been waiting for CFC LTC Medicaid financial eligibility approval for many months. The client's power of attorney had submitted all required documentation to the State in a timely manner. The client had been approved "clinically" months before. The local ombudsman informed the State case worker and the supervisor of the significant delay, and asked for an expedited review. The client was found eligible within the week.

- 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. The participant used the new mattress and cover for two weeks and reported no problems with either.

- An ombudsman was informed 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 staff from the home health agency (HHA) without translators. In addition, a HHA staff member was willing to help get 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. After a period of time, the participant was invited to move to nursing home.

- A HCBS CFC LTC Medicaid participant was informed that his case manager was going to be replaced. This was to happen after the participant had three different case managers within a 2-month period. The participant felt his current case manager was doing a good job and wanted her to stay on as his case manager. The ombudsman helped the participant file a grievance. After the grievance was filed, it was agreed upon that the participant could keep his current case manager.

- A HCBS CFC participant called an ombudsman due to concerns that DVHA/ESD had not reviewed documents properly or timely, meaning the State would no longer be paying the participant's Medicare Part B premium. The ombudsman contacted the participant's Economic Services Division (EDS) case worker. In turn, the case worker reviewed the participant's case file and discovered that ESD had not accounted for a reduction in participant's income. ESD corrected the oversight.

7. Non-Complaint-Related Activities

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

- Provide family members with guidance concerning how to approach facilities and home health providers with their concerns
- Support and work with resident and family councils in efforts to address their issues and concerns
- Educate facility and home health staff on topics such as the role of the LTC Ombudsman Project and residents' rights
- Perform general visits at each LTC facility
- Assist residents with advance directives

Below is a summary of the activities performed by the ombudsmen during FY2019:

Activities in FY2019	
Activities	**Number of Instances**
Consultations to Individuals	760
Consultations to Facilities/Agencies	359
Assist with Advance Directives	52
Work with Resident and Family Councils	35
Community Education	10
Non-Complaint-Related Facility Visits	1060
Total	**2276**

8. Issues being observed in the field by the Vermont LTC Ombudsman Project

- *Staffing levels at LTC facilities and for home health agencies*

The lack of adequate staffing in long-term care facilities and home health agencies continues to be the biggest problem facing VOP clients.

- *Individuals in long-term care facilities often don't receive appropriate behavioral health care and services*

We continue to be concerned that a significant number of individuals are transferred (and sometimes discharged) from a long-term care facility to the hospital because the facility is unable to manage behaviors associated with the person's condition. **Federal regulations for nursing homes have recognized this problem and added a new behavioral health requirement that emphasizes that nursing homes have the responsibility to provide necessary behavioral health care and services**.

- *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 remains alarming. Efforts must be initiated to ensure that residents of these facilities are treated with dignity and respect. One positive development on this front, is the State's decision to rewrite Vermont's regulations for both residential care homes and assisted living residences.

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

Despite the rigorous review (and the improvement in care and safety that the requirements bring), there remain concerted efforts to undo or weaken the regulations (and delay their implementation).

In the view of the VT LTC Ombudsman Project, neither the LTC industry nor CMS has provided a valid justification for proposing changes that weaken the current federal 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 are to be resisted.

9. Vermont LTC Ombudsman Project's systems work

- The VOP was a participant in both the Nursing Home Oversight workgroup and the Older Vermonters Act workgroup; and remain a member of the Vulnerable Adult Fatality Review Team
- Review, analysis and comment on proposed federal and state regulations (Federal: regulations for nursing homes - arbitration, grievances, transfer and discharge notices, facility assessment; State: home health regulations, CFC regulations, residential care home regulations, and assisted living residence regulations)
- Personal needs allowance increased by $25.00 for nursing home residents on LTC Medicaid

10. Vermont LTC Ombudsman Project - challenges

- Staffing, funding, resources, and time
- Recruiting volunteers from all areas of the State